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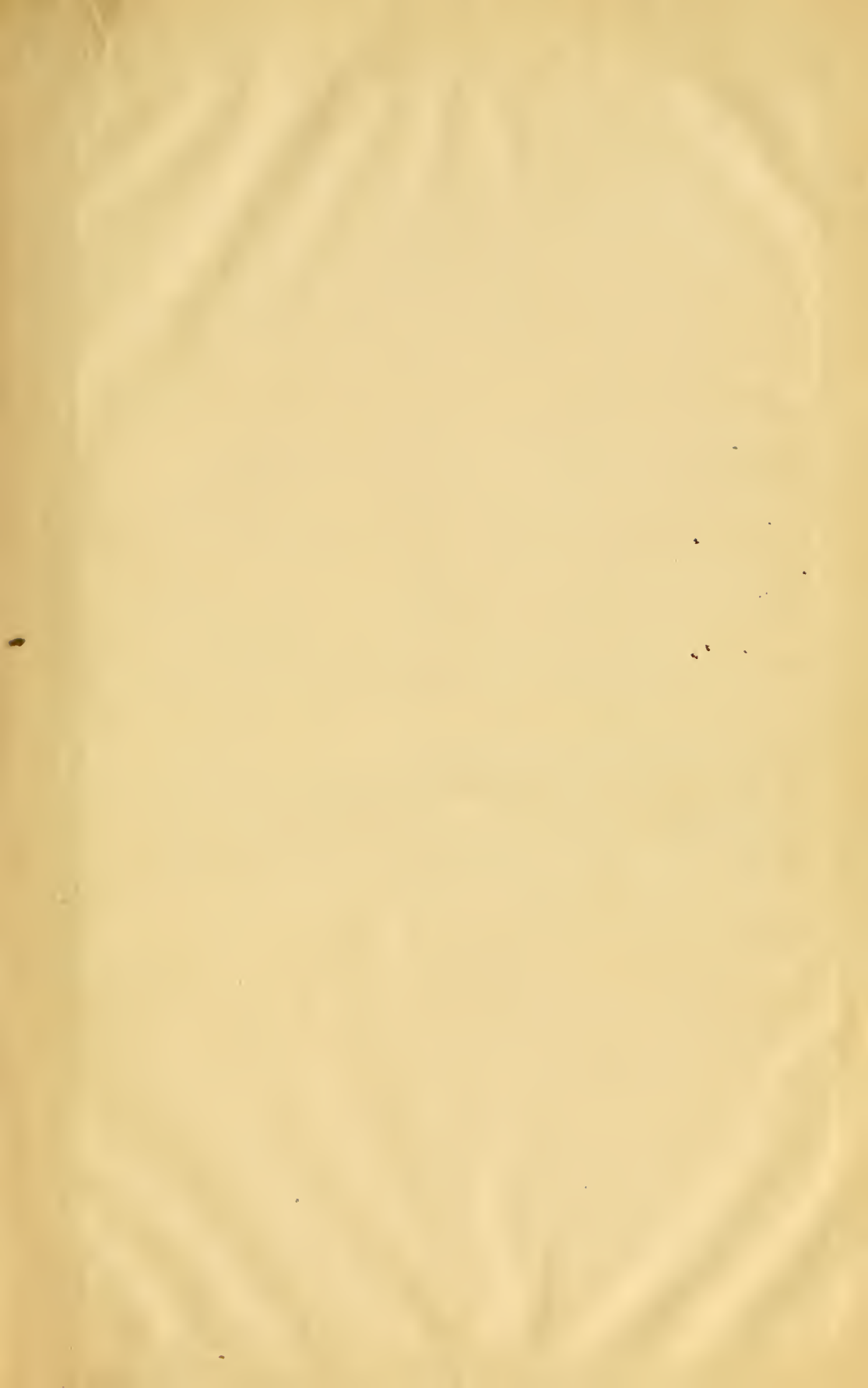


SHELF N<sup>o</sup>

★ ADAMS

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THE  
*Charles F. Adams Jr.*  
**GENERAL STATUTES**  
*L. C. Curtis*  
OF THE

**COMMONWEALTH OF MASSACHUSETTS:**

REVISED BY COMMISSIONERS APPOINTED UNDER A RESOLVE OF FEBRUARY 16, 1855,  
AMENDED BY THE LEGISLATURE, AND PASSED DECEMBER 28, 1859.

TO WHICH THE

CONSTITUTIONS OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

---

EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTERS 138, 140,  
AND 144 OF THE RESOLVES OF 1859.



BOSTON:  
PUBLISHED BY WILLIAM WHITE,  
STATE PRINTER, 4 SPRING LANE.

1860.



ADAMS 1205

ELECTROTYPED AT THE  
BOSTON STEREOTYPE FOUNDRY.

# P R E F A C E.

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ON the 16th day of February, 1855, pursuant to the recommendation of commissioners appointed by the governor under a resolve of the preceding year to report a plan for consolidating and arranging the general statutes of the commonwealth, the legislature passed a resolve requiring the governor, with the advice and consent of the council, to appoint three commissioners "for consolidating and arranging the general statutes of the commonwealth on the basis, plan, and general form and method of the Revised Statutes," with authority to "omit redundant enactments and those which may have ceased to have any effect or influence on existing rights; to reject superfluous words, and condense into as concise and comprehensive a form, as is consistent with a full and clear expression of the will of the legislature, all circuitous, tautological, and ambiguous phraseology; to suggest any mistakes, omissions, inconsistencies, and imperfections which may appear in the laws to be consolidated and arranged, and the manner in which they may be corrected, supplied, and amended." By virtue of this resolve,

JOEL PARKER, of CAMBRIDGE,  
WILLIAM A. RICHARDSON, of LOWELL, and  
ANDREW A. RICHMOND, of ADAMS,

were appointed and commissioned March 9, 1855. The commissioners immediately entered upon the discharge of their duties; and,

having completed the same in the autumn of 1858, their report was submitted in print to the legislature at the commencement of the annual session in January, 1859, by Messrs. Parker and Richardson; Mr. Richmond having been prevented by illness from participating in the work during the last year of its progress.

On the 23d day of February, 1859, resolves were passed providing for a special session of the legislature, to be commenced on the first Wednesday of the next September, for the purpose of completing the revision, and also providing for the appointment of a joint special committee, consisting of the president and eleven other members of the Senate and the speaker and twenty-eight other members of the House of Representatives, to examine and consider, during the recess of the legislature, the report of the commissioners, to incorporate therein all general laws passed by the legislature at the annual session of that year, and with power to propose such amendments and alterations in existing laws as the committee might deem expedient.

The committee appointed under these resolves organized early in April, immediately after the adjournment of the legislature, and was in session about eighty days, exclusive of intervals of adjournment, holidays, and Sundays.

The committee reported in print, at the special session in September, numerous amendments to the commissioners' report, incorporating the legislation of the previous session and proposing many changes in the existing laws.

The legislature commenced its special session on the first Wednesday of September, and at that session, on the 28th day of December, 1859, passed the following act, which is therein designated as the GENERAL STATUTES.

By chapter 140 of the resolves of 1859, the undersigned were appointed commissioners "to edit and superintend the printing and publication of the General Statutes of the commonwealth, together with the Constitution thereof, the Constitution of the United States, and such other additions as they deem expedient," and to prepare marginal notes to the sections of the Statutes, and an exact and copious Index to the whole.

The text of the Constitution of Massachusetts and of the Statutes has been carefully compared with the rolls by the editors personally. In the necessary haste in which the Statutes were engrossed upon parchment during the last part of the special session, some errors appear to have been made therein. These have been noted by brackets, thus [ ], enclosing in Roman letters, like the body of the text, any omitted word or words which should have been engrossed upon the roll, and in *Italics* any erroneous or superfluous word or words found there; but this does not apply to cases where brackets are used in forms.

The marginal references to the statutes and decisions are taken chiefly from the commissioners' report; the references to the acts of the legislature of 1859, and to the later volumes of Gray's Reports, and a few other references having been added. The editors have attempted to connect together, by cross references in the margin, many of the provisions of law relating to the same subject.

A list of general acts passed subsequently to the passage of the Revised Statutes and expressly repealed before the passage of the General Statutes, with references to the repealing acts or sections, has been added, as a useful appendage to chapter 182, in order that the fact and time of the repeal of many laws not enumerated in that chapter may be more easily ascertained.

In compliance with chapter 138 of the resolves of 1859, a Glossary has been added, which is made rather for popular than for professional use, according to the supposed object of the resolve.

Much care and labor have been devoted to the Index, and it is believed that it will be found more full than that to any former edition of the laws of this commonwealth.

The editors trust that the short time allowed for printing the volume and for preparing the Glossary and Index will be deemed a sufficient excuse for any errors or imperfections which may be discovered in their editorial labors.

WILLIAM A. RICHARDSON,  
GEORGE P. SANGER.

*May, 1860.*



# ANALYSIS

OF THE

## SEVERAL TITLES AND CHAPTERS

CONTAINED IN

# THE GENERAL STATUTES.

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## PART I.

OF THE INTERNAL ADMINISTRATION OF THE GOVERNMENT.

---

### TITLE I.

OF THE JURISDICTION OF THE COMMONWEALTH, LEGISLATURE, STATUTES, PUBLIC REPORTS AND DOCUMENTS, STATE LIBRARY, AND OTHER PUBLIC PROPERTY.

	PAGE
CHAPTER 1.—Of the Jurisdiction of the Commonwealth and Places ceded to the United States, . . . . .	43
CHAPTER 2.—Of the Legislature, . . . . .	46
CHAPTER 3.—Of the Statutes, . . . . .	49
CHAPTER 4.—Of Public Reports and Documents, . . . . .	52
CHAPTER 5.—Of the State Library and other Public Property, . . . . .	53

### TITLE II.

OF ELECTIONS.

CHAPTER 6.—Of the Qualifications of Electors, . . . . .	56
CHAPTER 7.—Of the Manner of conducting Elections and returning Votes, . . . . .	57
CHAPTER 8.—Of the Election of Governor and other State Officers, . . . . .	61
CHAPTER 9.—Of the Election of Representatives in Congress and Electors of President and Vice-President, . . . . .	67
CHAPTER 10.—Of the Election of District and County Officers, . . . . .	70

### TITLE III.

OF THE ASSESSMENT AND COLLECTION OF TAXES.

CHAPTER 11.—Of the Assessment of Taxes, . . . . .	73
CHAPTER 12.—Of the Collection of Taxes, . . . . .	81

## TITLE IV.

	PAGE
CHAPTER 13. — OF THE MILITIA, . . . . .	88

## TITLE V.

## OF CERTAIN STATE OFFICERS AND MATTERS OF FINANCE.

CHAPTER 14. — Of certain State Officers, . . . . .	127
CHAPTER 15. — Of the Auditor, Treasurer, Land Agent, and Matters of Finance, . . . . .	135
CHAPTER 16. — Of the State Board of Agriculture, . . . . .	141

## TITLE VI.

CHAPTER 17. — OF COUNTIES AND CERTAIN COUNTY OFFICERS, . . . . .	142
--	-----

## TITLE VII.

## OF TOWNS AND CITIES.

CHAPTER 18. — Of the Powers of Towns, and the Election, Qualification, and Duties, of Town Officers, . . . . .	156
CHAPTER 19. — Of certain Powers and Duties of Cities, . . . . .	166
CHAPTER 20. — Of the Census, . . . . .	167
CHAPTER 21. — Of the Registry and Returns of Births, Marriages, and Deaths, . . . . .	168
CHAPTER 22. — Of Workhouses and Almshouses, . . . . .	170
CHAPTER 23. — Of Watch and Ward, . . . . .	173
CHAPTER 24. — Of Fires and Fire Departments, . . . . .	175
CHAPTER 25. — Of Fences and Fence Viewers, Pounds, and Field Drivers, . . . . .	182

## TITLE VIII.

## OF THE PUBLIC HEALTH AND BURIALS.

CHAPTER 26. — Of the Preservation of the Public Health, . . . . .	187
CHAPTER 27. — Of the Promotion of Anatomical Science, . . . . .	195
CHAPTER 28. — Of Cemeteries and Burials, . . . . .	195

## TITLE IX.

CHAPTER 29. — OF THE PUBLIC RECORDS, . . . . .	197
--	-----

## TITLE X.

## OF PARISHES AND RELIGIOUS SOCIETIES; AND OF RELIGIOUS, CHARITABLE, AND EDUCATIONAL FUNDS AND ASSOCIATIONS.

CHAPTER 30. — Of Parishes and Religious Societies, . . . . .	199
CHAPTER 31. — Of Donations and Conveyances for Pious and Charitable Uses, . . . . .	205
CHAPTER 32. — Of Associations for Religious, Charitable, and Educational Purposes, . . . . .	207
CHAPTER 33. — Of Public Libraries, . . . . .	207

## TITLE XI.

## OF PUBLIC INSTRUCTION AND REGULATIONS RESPECTING CHILDREN.

	PAGE
CHAPTER 34.— Of the Board of Education, . . . . .	209
CHAPTER 35.— Of Teachers' Institutes and Associations, . . . . .	211
CHAPTER 36.— Of the School Funds, . . . . .	212
CHAPTER 37.— Of State Scholarships, . . . . .	213
CHAPTER 38.— Of the Public Schools, . . . . .	215
CHAPTER 39.— Of School Districts, . . . . .	220
CHAPTER 40.— Of School Registers and Returns, . . . . .	226
CHAPTER 41.— Of the Attendance of Children in the Schools, . . . . .	228
CHAPTER 42.— Of the Employment of Children and Regulations respecting them, . . . . .	229

## TITLE XII.

## OF WAYS, BRIDGES, PUBLIC PLACES, FERRIES, SEWERS, AND DRAINS.

CHAPTER 43.— Of the Laying out and Discontinuance of Highways, Town Ways, and Private Ways, . . . . .	231
CHAPTER 44.— Of the Repairs of Ways and Bridges, . . . . .	244
CHAPTER 45.— Of Regulations and By-Laws respecting Ways and Bridges, . . . . .	249
CHAPTER 46.— Of the Boundaries of Highways and other Public Places, and Encroachments thereon, . . . . .	251
CHAPTER 47.— Of Ferries, . . . . .	252
CHAPTER 48.— Of Sewers and Drains, . . . . .	253

## TITLE XIII.

## OF THE REGULATION OF TRADE IN CERTAIN CASES.

CHAPTER 49.— Of the Inspection and Sale of Provisions and other Merchandise, . . . . .	256
CHAPTER 50.— Of Sales by Auctioneers and Hawkers and Pedlars, . . . . .	280
CHAPTER 51.— Of Weights and Measures, . . . . .	284
CHAPTER 52.— Of Shipping and Pilotage, . . . . .	286
CHAPTER 53.— Of Money, Bonds, Bills of Exchange, and Promissory Notes, . . . . .	292
CHAPTER 54.— Of Agents, Consignees, and Factors, . . . . .	294
CHAPTER 55.— Of Limited Partnerships, . . . . .	296
CHAPTER 56.— Of the unauthorized Use of Trade Marks and Names, . . . . .	297

## TITLE XIV.

## OF CORPORATIONS AND PROPRIETORS OF COMMON LANDS.

CHAPTER 57.— Of Banks and Banking, . . . . .	299
CHAPTER 58.— Of Insurance Companies, . . . . .	319
CHAPTER 59.— Of Loan and Fund Associations, . . . . .	334
CHAPTER 60.— Of Manufacturing and other Corporations organized under Special Charters, . . . . .	336
CHAPTER 61.— Of Corporations organized under General Statutes, . . . . .	341
CHAPTER 62.— Of Turnpike, Canal, and Bridge Corporations, . . . . .	343
CHAPTER 63.— Of Railroad Corporations, . . . . .	348
CHAPTER 64.— Of Telegraph Companies, . . . . .	372
CHAPTER 65.— Of Aqueduct Corporations, . . . . .	374
CHAPTER 66.— Of Agricultural and Horticultural Societies, . . . . .	376
CHAPTER 67.— Of Proprietors of Wharves, General Fields, and Real Estate lying in common, . . . . .	379
CHAPTER 68.— Of the Powers, Duties, and Liabilities of Corporations, . . . . .	384

TITLE XV.

OF THE INTERNAL POLICE OF THE COMMONWEALTH.

	PAGE
CHAPTER 69.— Of the Settlement of Paupers, . . . . .	390
CHAPTER 70.— Of the Support of Paupers by Cities and Towns, . . . . .	392
CHAPTER 71.— Of Alien Passengers and State Paupers, . . . . .	395
CHAPTER 72.— Of the Maintenance of Bastard Children, . . . . .	404
CHAPTER 73.— Of the State Lunatic Hospitals, . . . . .	406
CHAPTER 74.— Of County Receptacles for Insane Persons, . . . . .	411
CHAPTER 75.— Of the State Industrial School for Girls, . . . . .	413
CHAPTER 76.— Of the State Reform School for Boys, . . . . .	417
CHAPTER 77.— Of the Law of the Road, . . . . .	423
CHAPTER 78.— Of Timber afloat or cast on Shore, . . . . .	424
CHAPTER 79.— Of Lost Goods and Stray Beasts, . . . . .	425
CHAPTER 80.— Of Unclaimed Property transported by Common Carriers, . . . . .	426
CHAPTER 81.— Of Wrecks and Shipwrecked Goods, . . . . .	427
CHAPTER 82.— Of the Preservation of certain Birds and Animals, . . . . .	429
CHAPTER 83.— Of Fisheries, Kelp and Seaweed, . . . . .	431
CHAPTER 84.— Of the Observance of the Lord's Day, . . . . .	434
CHAPTER 85.— Of Gaming, . . . . .	435
CHAPTER 86.— Of the Manufacture, Sale, &c., of Intoxicating Liquors, . . . . .	437
CHAPTER 87.— Of the Suppression of Common Nuisances, . . . . .	453
CHAPTER 88.— Of Licenses and Municipal Regulations of Police, . . . . .	454

---

PART II.

OF THE ACQUISITION, THE ENJOYMENT, AND THE TRANSMISSION  
OF PROPERTY, REAL AND PERSONAL; THE DOMESTIC RELATIONS,  
AND OTHER MATTERS CONNECTED WITH PRIVATE RIGHTS.

---

TITLE I.

OF REAL PROPERTY AND THE ALIENATION THEREOF.

CHAPTER 89.— Of Alienation by Deed; the Legal Formalities, Construction, and Operation, of Deeds for the Conveyance of Lands, . . . . .	465
CHAPTER 90.— Of Estates in Dower, by the Curtesy, for Years, and at Will; and General Pro- visions concerning Real Estate, . . . . .	468

TITLE II.

CHAPTER 91.— OF TITLE TO REAL PROPERTY BY DESCENT, . . . . .	473
--	-----

TITLE III.

	PAGE
CHAPTER 92.— OF WILLS, . . . . .	475

TITLE IV.

OF THE SETTLEMENT OF ESTATES OF DECEASED PERSONS, TRUSTS, AND SPECIAL PROVISIONS RELATING TO ESTATES, TRUSTS, AND GUARDIANSHIPS.

CHAPTER 93.— Of Letters Testamentary and Proceedings on the Probate of Wills, . . . . .	481
CHAPTER 94.— Of Administration and the Distribution of Estates of Intestates, . . . . .	482
CHAPTER 95.— Of Public Administrators, . . . . .	485
CHAPTER 96.— Of Inventories, Allowances to Widows and Children, and Collection of the Effects of Deceased Persons, . . . . .	488
CHAPTER 97.— Of the Payment of Debts and Legacies, . . . . .	490
CHAPTER 98.— Of the Accounts and Settlements of Executors and Administrators, . . . . .	494
CHAPTER 99.— Of Insolvent Estates, . . . . .	496
CHAPTER 100.— Of Trusts, . . . . .	500
CHAPTER 101.— Special Provisions relating to Estates, Trusts, and Guardianships, . . . . .	503

TITLE V.

OF TITLE TO REAL PROPERTY BY SPECIAL PROVISIONS OF LAW.

CHAPTER 102.— Of Sales of Lands by Executors, Administrators, and Guardians, . . . . .	509
CHAPTER 103.— Of taking Land to satisfy Executions for Debt, . . . . .	516
CHAPTER 104.— Of Homesteads, . . . . .	524

TITLE VI.

CHAPTER 105.— OF THE PREVENTION OF FRAUDS AND PERJURIES, . . . . .	527
--	-----

TITLE VII.

OF THE DOMESTIC RELATIONS.

CHAPTER 106.— Of Marriage, . . . . .	528
CHAPTER 107.— Of Divorce, . . . . .	531
CHAPTER 108.— Of certain Rights and Liabilities of Husband and Wife, . . . . .	537
CHAPTER 109.— Of Guardians and Wards, . . . . .	542
CHAPTER 110.— Of the Adoption of Children and Change of Names, . . . . .	547
CHAPTER 111.— Of Masters, Apprentices, and Servants, . . . . .	549



## PART III.

OF COURTS AND JUDICIAL OFFICERS AND PROCEEDINGS IN  
CIVIL CASES.

## TITLE I.

## OF COURTS AND JUDICIAL OFFICERS.

	PAGE
CHAPTER 112.— Of the Supreme Judicial Court, . . . . .	552
CHAPTER 113.— Of the Supreme Judicial Court — Equity Jurisdiction, . . . . .	558
CHAPTER 114.— Of the Superior Court, . . . . .	561
CHAPTER 115.— Of Matters common to the Supreme Judicial and Superior Courts, . . . . .	565
CHAPTER 116.— Of Police Courts, . . . . .	568
CHAPTER 117.— Of Probate Courts, . . . . .	574
CHAPTER 118.— Of Courts of Insolvency, . . . . .	579
CHAPTER 119.— Of Judges and Registers of Probate and Insolvency, . . . . .	601
CHAPTER 120.— Of Justices of the Peace, . . . . .	604
CHAPTER 121.— Of Clerks, Attorneys, and other Officers of Judicial Courts, . . . . .	611
CHAPTER 122.— Special Provisions respecting Courts and the Administration of Justice, . . . . .	617

## TITLE II.

## OF ACTIONS AND PROCEEDINGS THEREIN.

CHAPTER 123.— Of the Commencement of Actions and Service of Process, . . . . .	619
CHAPTER 124.— Of Arrest, Imprisonment, and Discharge, . . . . .	632
CHAPTER 125.— Of Bail, . . . . .	642
CHAPTER 126.— Of Proceedings against Absent Defendants, and upon Insufficient Service, . . . . .	645
CHAPTER 127.— Of Actions which survive, and the Death and Disabilities of Parties, . . . . .	647
CHAPTER 128.— Of Actions by and against Executors and Administrators, . . . . .	650
CHAPTER 129.— Of Pleadings and Practice, . . . . .	652
CHAPTER 130.— Of Set-off and Tender, . . . . .	669
CHAPTER 131.— Of Witnesses and Evidence, . . . . .	672
CHAPTER 132.— Of Juries, . . . . .	679
CHAPTER 133.— Of Judgment and Execution, . . . . .	684

## TITLE III.

## OF REMEDIES RELATING TO REAL PROPERTY.

CHAPTER 134.— Of the Writ of Entry and Petitions for the Settlement of Title, . . . . .	691
CHAPTER 135.— Of the Writ of Dower, . . . . .	697
CHAPTER 136.— Of the Partition of Lands, . . . . .	698
CHAPTER 137.— Of Forcible Entry and Detainer, . . . . .	707
CHAPTER 138.— Of Waste and Trespass on Real Estate, . . . . .	708
CHAPTER 139.— Of Actions for Private Nuisances, . . . . .	710
CHAPTER 140.— Of the Foreclosure and Redemption of Mortgages, . . . . .	711
CHAPTER 141.— Of Information for Intrusion and the Recovery of Lands by the Commonwealth, . . . . .	717

## TITLE IV.

## OF CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES.

	PAGE
CHAPTER 142. — Of Trustee Process, . . . . .	720
CHAPTER 143. — Of Replevin of Property, . . . . .	730
CHAPTER 144. — Of Habeas Corpus, Personal Replevin, and Personal Liberty, . . . . .	733
CHAPTER 145. — Of Audita Querela, Certiorari, Mandamus, and Quo Warranto, . . . . .	742
CHAPTER 146. — Of Writs of Error and Review, . . . . .	745
CHAPTER 147. — Of Reference to Arbitration by Agreement before a Justice of the Peace, . . . . .	749
CHAPTER 148. — Of Improving Meadows and Swamps, . . . . .	750
CHAPTER 149. — Of the Support and Regulation of Mills, . . . . .	754
CHAPTER 150. — Of Liens on Buildings and Land, . . . . .	761
CHAPTER 151. — Of Mortgages, Pledges, and Liens upon Personal Property, . . . . .	766
CHAPTER 152. — Of Recognizances for Debts, . . . . .	770
CHAPTER 153. — Of Seizing and Libelling Forfeited Goods, . . . . .	772

## TITLE V.

## OF THE LIMITATION OF ACTIONS.

CHAPTER 154. — Of the Limitation of Real Actions and Rights of Entry, . . . . .	774
CHAPTER 155. — Of the Limitation of Personal Actions, . . . . .	777

## TITLE VI.

## OF COSTS AND THE FEES OF CERTAIN OFFICERS.

CHAPTER 156. — Of Costs in Civil Actions, . . . . .	780
CHAPTER 157. — Of the Fees of certain Officers, . . . . .	783

## PART IV.

OF CRIMES, PUNISHMENTS, PROCEEDINGS IN CRIMINAL CASES,  
AND PRISONS.

## TITLE I.

## OF CRIMES AND PUNISHMENTS.

CHAPTER 158. — Of the Rights of Persons accused, . . . . .	789
CHAPTER 159. — Of Offences against the Sovereignty of the Commonwealth, . . . . .	790
CHAPTER 160. — Of Offences against the Person, . . . . .	791
CHAPTER 161. — Of Offences against Property, . . . . .	795
CHAPTER 162. — Of Forgery and Offences against the Currency, . . . . .	807

	PAGE
CHAPTER 163. — Of Offences against Public Justice, . . . . .	811
CHAPTER 164. — Of Offences against the Public Peace, . . . . .	815
CHAPTER 165. — Of Offences against Chastity, Morality, and Decency, . . . . .	817
CHAPTER 166. — Of Offences against the Public Health, . . . . .	822
CHAPTER 167. — Of Offences against Public Policy, . . . . .	823
CHAPTER 168. — Of Felonies, Accessories, Abettors, and Attempts to commit Crimes, . . . . .	825

## TITLE II.

### OF PROCEEDINGS IN CRIMINAL CASES.

CHAPTER 169. — Of Proceedings to prevent the Commission of Crimes, . . . . .	827
CHAPTER 170. — Of Search Warrants, Rewards, Arrest, Examination, Commitment, and Bail, . . . . .	829
CHAPTER 171. — Of Indictments, Prosecutions, and Proceedings before Trial, . . . . .	336
CHAPTER 172. — Of Trials, . . . . .	840
CHAPTER 173. — Of Appeals, New Trials, and Reports, . . . . .	842
CHAPTER 174. — Of Judgment and Execution, . . . . .	844
CHAPTER 175. — Of Inquests on Dead Bodies, . . . . .	848
CHAPTER 176. — Of Fines, Forfeitures, and Costs, . . . . .	850
CHAPTER 177. — Of Fugitives from Justice and Pardons, . . . . .	853

## TITLE III.

### OF PRISONS AND IMPRISONMENT.

CHAPTER 178. — Of Jails and Houses of Correction, . . . . .	856
CHAPTER 179. — Of the State Prison, . . . . .	869
CHAPTER 180. — Of the Transfer of Lunatics and Discharge of Poor Convicts, . . . . .	877

## PART V.

### OF THE GENERAL STATUTES AND THE REPEAL OF EXISTING LAWS.

CHAPTER 181. — Of the General Statutes and their Effect, . . . . .	880
CHAPTER 182. — Of the Express Repeal of Existing Laws, . . . . .	881

CONSTITUTIONS

OF THE

UNITED STATES OF AMERICA,

AND OF THE

COMMONWEALTH OF MASSACHUSETTS.





# CONSTITUTION

OF THE

## UNITED STATES OF AMERICA.

### PREAMBLE.

Objects of the Constitution.

### SECTION

#### ARTICLE I.

1. Legislative powers, in whom vested.
2. House of representatives, how and by whom chosen.—Qualifications of a representative.—Representatives and direct taxes, how apportioned.—Census.—Vacancies to be filled.—Power of choosing officers, and of impeachment.
3. Senators, how and by whom chosen.—How classified.—State executive to make temporary appointments, in case, &c.—Qualifications of a senator.—President of the senate, his right to vote.—President *pro tem.* and other officers of senate, how chosen.—Power to try impeachments.—When president is tried, chief justice to preside.—Sentence.
4. Times, &c. of holding elections, how prescribed.—One session in each year.
5. Membership.—Quorum.—Adjournments.—Rules.—Power to punish or expel.—Journal.—Time of adjournment limited, unless, &c.
6. Compensation.—Privileges.—Disqualification in certain cases.
7. House to originate all revenue bills.—Veto.—Bill may be passed by two thirds of each house, notwithstanding, &c.—Bill not returned in ten days.—Provision as to all orders, &c. except, &c.
8. Powers of congress.
9. Provision as to migration or importation of certain persons.—*Habeas corpus.*—Bills of attainder, &c.—Taxes, how apportioned.—No export duty.—No commercial preferences.—No money drawn from treasury, unless, &c.—No titular nobility.—Officers not to receive presents, unless, &c.
10. States prohibited from the exercise of certain powers.

#### ARTICLE II.

### SECTION

1. President and vice president, their term of office.—Electors of president and vice president, number, and how appointed.—Electors to vote on same day.—Qualification of president.—On whom his duties devolve in case of his removal, death, &c.—President's compensation.—His oath.

### SECTION

2. President to be commander in chief.—He may require opinion of, &c. and may pardon.—Treaty making power.—Nomination of certain officers.—When president may fill vacancies.
3. President shall communicate to congress.—He may convene and adjourn congress, in case, &c.; shall receive ambassadors, execute laws, and commission officers.
4. All civil offices forfeited for certain crimes.

#### ARTICLE III.

### SECTION

1. Judicial power.—Tenure.—Compensation.
2. Judicial power, to what cases it extends.—Original jurisdiction of supreme court.—Appellate.—Trial by jury, except, &c.—Trial, where.
3. Treason defined.—Proof of.—Punishment of.

#### ARTICLE IV.

### SECTION

1. Credit to be given to public acts, &c. of every state.
2. Privileges of citizens of each state.—Fugitives from justice to be delivered up.—Persons held to service, having escaped, to be delivered up.
3. Admission of new states.—Power of congress over territory and other property.
4. Republican form of government guaranteed.—Each state to be protected.

#### ARTICLE V.

Constitution, how amended.—Proviso.

#### ARTICLE VI.

Certain debts, &c. adopted.—Supremacy of constitution, treaties and laws of the United States.—Oath to support constitution, by whom taken.—No religious test.

#### ARTICLE VII.

What ratification shall establish constitution.

### AMENDMENTS.

### ARTICLE

1. Religious establishment prohibited.—Freedom of speech, of the press, and right to petition.
2. Right to keep and bear arms.
3. No soldier to be quartered in any house, unless, &c.

## ARTICLE OF AMENDMENT.

4. Right of search and seizure regulated.
5. Provisions concerning prosecutions, trials, and punishments. — Private property, not to be taken for public use, without, &c.
6. Further provisions respecting criminal prosecutions.
7. Right of trial by jury secured.

## ARTICLE OF AMENDMENT.

8. Bail, fines, and punishments.
9. Rule of construction.
10. Same subject.
11. Same subject.
12. Manner of choosing president and vice president.

Preamble.  
 2 Dall. 419.  
 1 Wheat. 304.  
 4 Wheat. 316.  
 9 Wheat. 1.

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

## ARTICLE I.

Legislative powers, in whom vested.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

House of representatives, how and by whom chosen.

SECT. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualifications of a representative.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes, how apportioned.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Census.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies to be filled.

Power of choosing officers, and of impeachment. Senators, how and by whom chosen.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECT. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

How classified.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

State executive to make temporary appointments, in case, &c.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Qualifications of a senator.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

President of the senate, his right to vote.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

President *pro temp.* and other officers of senate, how chosen.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

Power to try impeachments. When president is tried, chief justice to preside.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sentence.

SECT. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

Times, &c. of holding elections, how prescribed. U. S. Statutes, 1842, 47, § 2.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

One session in each year.

SECT. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Membership. Quorum. Adjournments.

Each house may determine the rules of its proceedings, and punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Rules. Power to punish or expel.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Time of adjournment limited, unless, &c.

SECT. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation. Privileges.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Disqualification in certain cases.

SECT. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

House to originate all revenue bills.



- Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.
- Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.
- SECT. 8. The congress shall have power—To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;—To borrow money on the credit of the United States;—To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;—To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;—To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;—To provide for the punishment of counterfeiting the securities and current coin of the United States;—To establish post offices and post roads;—To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;—To constitute tribunals inferior to the supreme court;—To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;—To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;—To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;—To provide and maintain a navy;—To make rules for the government and regulation of the land and naval forces;—To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions;—To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;—To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings;—And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers,
- Veto.
- Bill may be passed by two thirds of each house, notwithstanding, &c.
- Bill not returned in ten days.
- Provision as to all orders, &c. except, &c.
- Powers of congress.
- 5 Wheat. 317.  
12 Wheat. 419.
- 9 Wheat. 1.  
12 Pct. 72.  
2 Wheat. 259.
- 4 Wheat. 122.  
12 Wheat. 213.
- 4 Gray, 559.
- 5 Wheat. 153.
- 5 Wheat. 1.  
12 Wheat. 19.
- 1 Cranch. 137.  
9 Wheat. 738.  
12 Wheat. 136.

and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECT. 9. The migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Provision as to migration or importation of certain persons.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

*Habeas corpus.*  
4 Cranch, 73.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct, tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Bills of attainder, &c.  
3 Dall. 386.  
12 Wheat. 213.  
Taxes, how apportioned.  
No export duty.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No commercial preferences.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No money drawn from treasury, unless, &c.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

No titular nobility.  
Officers, not to receive presents, unless, &c.

SECT. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

States prohibited from the exercise of certain powers.  
11 Pet. 257, 420.  
5 Gray, 297.

12 Wheat. 419.

## ARTICLE II.

SECT. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected, as follows:

President and vice president, their term of office.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: But no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of president and vice-president, number, and how appointed.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest

Amendment XII, a substitute for this paragraph.

number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

Electors to vote on same day. U. S. Statutes, 1845, 1.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualifications of president.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

On whom his duties devolve in case of his removal, death, &c. U. S. Statutes, 1792; 8, § 10.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

President's compensation. U. S. Statutes, 1793, 9. 1853, 97, § 4.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

His oath.

“I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States.”

President to be commander in chief. He may require opinion of, &c., and may pardon.

SECT. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Treaty-making power. 1 Cranch. 137. 2 Pet. 253. 12 Pet. 524. 13 Pet. 415. Nomination of certain officers.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

1 Pet. 511. 13 Pet. 230.

When president may fill vacancies.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

President shall communicate to congress. He may convene and adjourn congress, in case, &c.

SECT. 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment,



he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECT. 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECT. 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECT. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers, and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more states; — between a state and citizens of another state; — between citizens of different states, — between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECT. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECT. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECT. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Shall receive ambassadors; execute laws, and commission officers.

All civil offices forfeited for certain crimes.

Judicial power.

Tenure.

Compensation.

Judicial power, to what cases it extends.

2 Dall. 439.

1 Cranch, 137.

11 Wheat. 467.

1 Pet. 511.

12 Pet. 657.

5 Pet. 1.

See amendment XI.

Original jurisdiction of supreme court.

Appellate.

7 Cranch, 108.

1 Wheat. 304.

Trial by jury, except, &c.

Trial, where.

Treason defined.

1 Dall. 56.

2 Dall. 348.

Proof of.

4 Cranch, 470.

Punishment of.

Credit to public acts, &c. of every state.

U. S. Statutes, 1790, 11.

1804, 55.

7 Cranch, 481.

3 Wheat. 234.

Privileges of citizens of each state.

18 How. 71.

3 Gray, 276.

Fugitives from justice to be delivered up.

Persons held to service, having escaped, to be delivered up. U. S. Statutes, 1793, 7. 1850, 60. 16 Pct. 539. Admission of new states.

Power of congress over territory and other property.

Republican form of government guaranteed. Each state to be protected.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECT. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

## ARTICLE V.

Constitution, how amended.

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Proviso.

## ARTICLE VI.

Certain debts, &c. adopted.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Supremacy of constitution, treaties and laws of the U. States.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath to support constitution, by whom taken.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

No religious test.

## ARTICLE VII.

What ratification shall establish constitution.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

ARTICLES

IN ADDITION TO, AND AMENDMENT OF,

*The constitution of the United States of America, proposed by congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.*

ARTICLE I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Religious establishment prohibited.  
Freedom of speech; of the press, and right to petition.  
Right to keep and bear arms.

ART. II. A well regulated militia, being necessary to the security of a free state, the right of the people to keep, and bear arms, shall not be infringed.

ART. III. No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

No soldier to be quartered in any house, unless, &c.

ART. IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Right of search and seizure regulated.  
3 Cranch, 48.

ART. V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Provisions concerning prosecutions, trials, and punishments.

2 Sumner, 19.

Private property, not to be taken for public use, without, &c.  
7 Pet. 243.

ART. VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Further provisions respecting criminal prosecutions.

ART. VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Right of trial by jury secured.  
3 Pet. 433.  
5 Gray, 141.

ART. VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Bail, fines, and punishments.  
5 Gray, 482.  
Rule of construction.

ART. IX. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ART. X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Same subject.  
3 Gray, 268.

ART. XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Same subject.  
3 Dall. 378.

ART. XII. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice

Manner of choosing president and vice president.



Manner of choosing president and vice president.

president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in presence of the senate and house of representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

Same subject.

The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

Same subject.

But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

[NOTE. The constitution was adopted 17th September, 1787, by the unanimous consent of the states present in the convention appointed in pursuance of the resolution of the congress of the confederation, of the 21st February, 1787, and was ratified by the conventions of the several states, as follows, viz.: By convention of Delaware, 7th December, 1787; Pennsylvania, 12th December, 1787; New Jersey, 18th December, 1787; Georgia, 2d January, 1788; Connecticut, 9th January, 1788; Massachusetts, 6th February, 1788; Maryland, 28th April, 1788; South Carolina, 23d May, 1788; New Hampshire, 21st June, 1788; Virginia, 26th June, 1788; New York, 26th July, 1788; North Carolina, 21st November, 1789; Rhode Island, 29th May, 1790.

The first ten of the amendments were proposed at the first session of the first congress of the United States, 25th September, 1789, and were finally ratified by the constitutional number of states on the 15th day of December, 1791. The eleventh amendment was proposed at the first session of the third congress, 5th March, 1794, and was declared in a message from the President of the United States to both houses of congress, dated 8th January, 1798, to have been adopted by the constitutional number of states. The twelfth amendment was proposed at the first session of the eighth congress, 12th December, 1803, and was adopted by the constitutional number of states in 1804, according to a public notice thereof by the secretary of state, dated 25th September of the same year.]

## CONSTITUTION

OR

## FORM OF GOVERNMENT

FOR THE

## Commonwealth of Massachusetts.

## PREAMBLE.

Objects of government.—Body politic, how formed.—Its nature.

## PART THE FIRST.

## ARTICLE

1. Equality and natural rights of all men.
2. Right and duty of public religious worship.—Protection therein.
3. Legislature empowered to compel provision for public worship; and to enjoin attendance thereon.—Exclusive right of electing religious teachers secured.—Option, as to whom parochial taxes may be paid, unless, &c.—All denominations equally protected.—Subordination of one sect to another, prohibited.
4. Right of self-government secured.
5. Accountability of all officers, &c.
6. Services rendered to the public being the only title to peculiar privileges, hereditary offices are absurd and unnatural.
7. Objects of government; right of people to institute and change it.
8. Right of people to secure rotation in office.
9. All, having the qualifications prescribed, equally eligible to office.
10. Right of protection and duty of contribution, correlative.—Taxation, founded on consent.—Private property not to be taken for public uses, without, &c.
11. Remedies, by recourse to the law, to be free, complete and prompt.
12. Prosecutions regulated.—Right to trial by jury in criminal cases, except, &c.
13. Crimes to be proved in the vicinity.
14. Right of search and seizure, regulated.
15. Right to trial by jury sacred, except, &c.
16. Liberty of the press.
17. Right to keep and bear arms.—Standing armies dangerous.—Military power, subordinate to civil.
18. Moral qualifications for office.—Moral obligations of lawgivers and magistrates.

## ARTICLE

19. Right of people to instruct representatives and petition legislature.
20. Power to suspend the laws, or their execution.
21. Freedom of debate, &c., and reason thereof.
22. Frequent sessions, and objects thereof.
23. Taxation founded on consent.
24. *Ex post facto* laws, prohibited.
25. Legislature not to convict of treason, &c.
26. Excessive bail or fines, and cruel punishments, prohibited.
27. No soldier to be quartered in any house, unless, &c.
28. Citizens exempt from law martial, unless, &c.
29. Judges of supreme judicial court.—Tenure of their office.—Salaries.
30. Separation of executive, judicial, and legislative departments.

## PART THE SECOND.

## FRAME OF GOVERNMENT.

Title of body politic.

## CHAPTER I.

## SECTION 1.

## ARTICLE

1. Legislative department.
2. Governor's veto.—Bill may be passed by two thirds of each house, notwithstanding.
3. General court may constitute judicatories, courts of record, &c.—Courts, &c., may administer oaths.
4. General court may enact laws, &c., not repugnant to the constitution; may provide for the election or appointment of officers; prescribe their duties; impose taxes, duties and excises, to be disposed of for defence, protection, &c.—Valuation of estates, once in ten years, at least, while, &c.

## SECTION 2.

## ARTICLE

1. Senate, number of, and by whom elected. — Counties to be districts, until, &c.
2. Manner and time of choosing senators and councillors. — Word "inhabitant," defined. — Selectmen to preside at town meetings. — Return of votes. — Inhabitants of unincorporated plantations, who pay state taxes, may vote. — Plantation meetings. — Assessors to notify, &c.
3. Governor and council to examine and count votes and issue summonses.
4. Senate to be final judges of elections, &c., of its own members. — Vacancies, how filled.
5. Qualifications of a senator.
6. Senate not to adjourn more than two days.
7. shall choose its officers and establish its rules.
8. shall try all impeachments. — Oaths. — Limitation of sentence.
9. quorum.

## SECTION 3.

## ARTICLE

1. Representation of the people.
2. Representatives, by whom chosen. — Proviso as to towns having less than 150 ratable polls. — Towns liable to fine, in case, &c. — Expense of travelling to and from the general court, how paid.
3. Qualifications of a representative.
4. Qualifications of a voter.
5. Representatives, when chosen.
6. House alone can impeach.
7. House to originate all money bills.
8. Not to adjourn more than two days.
9. Quorum.
10. House to judge of returns, &c., of its own members; to choose its officers and establish its rules, &c. — May punish for certain offences. — Privileges of members.
11. Governor and council may punish. — General limitations. — Trial may be by committee, or otherwise.

## CHAPTER II.

## SECTION 1.

## ARTICLE

1. Governor. — His title.
2. to be chosen annually. — Qualifications.
3. to be chosen by the people, by a majority of votes. — How chosen, when no person has a majority.
4. Power of governor, and of governor and council.
5. Same subject.
6. Governor and council may adjourn general court, in cases, &c., but not exceeding ninety days.
7. Governor to be commander-in-chief. — Limitation.
8. Governor and council may pardon offences, except, &c. — But not before conviction.
9. All judicial officers, &c., how nominated and appointed.
10. Militia officers, how elected. — How commissioned. — Major generals, how appointed and commissioned. — Vacancies, how filled, in case, &c. — Officers, duly commissioned, how removed. — Adjutants, &c., how appointed. — Organization of militia.
11. Money, how drawn from the treasury, except, &c.
12. All public boards, &c., to make quarterly returns.
13. Salary of governor. — Salaries of justices of

## ARTICLE

supreme judicial court. — Salaries to be enlarged, if insufficient.

## SECTION 2.

## ARTICLE

1. Lieutenant governor; his title and qualifications. — How chosen.
2. President of council. — Lieutenant governor a member of, except, &c.
3. Lieutenant governor to be acting governor, in case, &c.

## SECTION 3.

## ARTICLE

1. Council.
2. Number; from whom and how chosen. — If senators become councillors their seats to be vacated.
3. Rank of councillors.
4. No district to have more than two.
5. Register of council.
6. Council to exercise the power of governor, in case, &c.
7. Elections may be adjourned, until, &c. — Order thereof.

## SECTION 4.

## ARTICLE

1. Secretary, &c., by whom and how chosen. — Treasurer, ineligible for more than five successive years.
2. Secretary to keep records, to attend the governor and council, &c.

## CHAPTER III.

## ARTICLE

1. Tenure of all commissioned officers to be expressed. — Judicial officers, to hold office during good behavior, except, &c. — But may be removed on address.
2. Justices of supreme judicial court to give opinions, when required.
3. Justices of the peace; tenure of their office.
4. Provisions for holding probate courts.
5. Provisions for determining causes of marriage, divorce, &c.

## CHAPTER IV.

Delegates to congress.

## CHAPTER V.

## SECTION 1.

## ARTICLE

1. Harvard college. — Powers, privileges, &c., of the president and fellows, confirmed.
2. All gifts, grants, &c., confirmed.
3. Who shall be overseers. — Power of alteration reserved to the legislature.

## SECTION 2.

Duty of legislators and magistrates in all future periods.

## CHAPTER VI.

## ARTICLE

1. Oaths of allegiance and office, &c.
2. Plurality of offices, prohibited to governor, &c., except, &c. — Incompatible offices. — Bribery, &c., disqualify.
3. Value of money ascertained. — Property qualifications may be increased.
4. Provisions respecting commissions.
5. Provisions respecting writs.
6. Continuation of former laws, except, &c.
7. Benefit of habeas corpus secured except, &c.
8. The enacting style.
9. Officers of former government continued until, &c.



ARTICLE

10. Provision for revising constitution.
11. Provision for preserving and publishing this constitution.

AMENDMENTS.

ARTICLE

1. Bill, &c., not approved within five days, not to become a law, if legislature adjourn in the mean time.
2. General court empowered to charter cities. — Proviso.
3. Qualifications of voters for governor, lieutenant governor, senators and representatives.
4. Notaries public, how appointed and removed. — Vacancies in the office of secretary and treasurer, how filled, in case, &c. — Commissary general may be appointed, in case, &c. — Militia officers, how removed.
5. Who may vote for captains and subalterns.
6. Oath to be taken by all officers; or affirmation in case, &c.
7. Tests abolished.
8. Incompatibility of offices.
9. Amendments to constitution, how made.
10. Commencement of political year; and termination. — Meetings for choice of governor, lieutenant governor, &c., when to be held. — May be adjourned. — Article, when to go into operation. — Inconsistent provisions, annulled.
11. Religious freedom established.
12. Census of ratable polls. — Representatives, how apportioned.
13. Census of inhabitants. — Senatorial dis-

ARTICLE

- tricts. — Apportionment of representatives and councillors. — Freehold as a qualification for a seat in general court or council not required.
14. Election by people to be by plurality.
  15. Time of annual election of governor and legislature.
  16. Eight councillors, how chosen. — State to be districted. — Day and manner of election. — Vacancies, how filled. — Organization of government.
  17. Election of secretary, treasurer, auditor, and attorney general by the people. — Vacancies, how filled. — To qualify within ten days. — Qualifications.
  18. School money not to be applied for sectarian schools.
  19. Legislature to prescribe for election of sheriffs, registers of probate, &c., by the people.
  20. Reading constitution in English and writing, necessary qualifications of voters. — Proviso.
  21. Census of voters and inhabitants. — House of representatives to consist of 240 members. — Legislature to apportion, &c. — Qualifications of representatives, and number for quorum.
  22. Census of voters and inhabitants. — Senate to consist of 40 members. — Senatorial districts. — Qualifications of senators, and number for quorum.
  23. Residence of two years required of naturalized citizens to entitle to suffrage, or make eligible to office.

PREAMBLE.

The end of the institution, maintenance and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it, with the power of enjoying in safety and tranquillity, their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

Objects of government.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

Body politic, how formed. Its nature.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

## PART THE FIRST.

*A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.*

Equality and natural rights of all men.

ART. I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Right and duty of public religious worship. Protection therein. 2 Cush. 104.

II. It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

Amendment, Art. XI. substituted for this.

[III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision at their own expense, for the institution of the public worship of God, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

Legislature empowered to compel provision for public worship;

and to enjoin attendance thereon.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Exclusive right of electing religious teachers secured.

Provided notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

Option as to whom parochial taxes may be paid, unless, &c.

And all moneys, paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

All denominations equally protected. Subordination of one sect to another prohibited. Right of self-government secured.

And every denomination of christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.]

Accountability of all officers, &c.

IV. The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled.

Services rendered to the public being the only title to peculiar privileges, hereditary offices are absurd and unnatural.

V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by



blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

IX. All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual, can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

XIV. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation

Objects of government; right of people to institute and change it.

Right of people to secure rotation in office.

All, having the qualifications prescribed, equally eligible to office.

Right of protection and duty of contribution correlative. Taxation founded on consent. 1 Pick. 418. 7 Pick. 344. 12 Pick. 184, 467. 16 Pick. 87. 23 Pick. 360. 4 Gray, 474. 7 Gray, 363.

Private property not to be taken for public uses without, &c.

Remedies by recourse to the law, to be free, complete and prompt.

Prosecutions regulated. 8 Pick. 211. 10 Pick. 9. 21 Pick. 542. 2 Met. 329. 1 Gray, 1. 5 Gray, 160.

Right to trial by jury, in criminal cases, except, &c.

Crimes to be proved in the vicinity.

Right of search and seizure regulated. Const. U. S., Amendments, Art. IV. 2 Met. 329. 5 Cush. 369. 1 Gray, 1.

- of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.
- Right to trial by jury sacred, except, &c.**  
Const. of U. S., Amend't VII.  
2 Pick. 382.  
7 Pick. 366.  
5 Gray, 144.
- Liberty of the press.**
- Right to keep and bear arms. Standing armies dangerous. Military power subordinate to civil.**  
5 Gray, 121.  
Moral qualifications for office.
- Moral obligations of lawgivers and magistrates.**
- Right of people to instruct representatives and petition legislature.**
- Power to suspend the laws or their execution.**
- Freedom of debate, &c., and reason thereof.**
- Frequent sessions, and objects thereof.**
- Taxation founded on consent.**
- Ex post facto laws prohibited.**
- Legislature not to convict of treason, &c. Excessive bail or fines, and cruel punishments prohibited.**  
5 Gray, 482.  
No soldier to be quartered in any house, unless, &c.  
Citizens exempt from law-martial, unless, &c.
- XV.** In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.
- XVI.** The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth.
- XVII.** The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.
- XVIII.** A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.
- XIX.** The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good: give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.
- XX.** The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.
- XXI.** The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.
- XXII.** The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening and confirming the laws, and for making new laws, as the common good may require.
- XXIII.** No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature.
- XXIV.** Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.
- XXV.** No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.
- XXVI.** No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.
- XXVII.** In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.
- XXVIII.** No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.



XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

Judges of supreme judicial court.

Tenure of their office.

Salaries.

XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Separation of executive, judicial, and legislative departments.  
2 Cush. 577.

## PART THE SECOND.

### *The Frame of Government.*

The people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body politic, or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

Title of body politic.

### CHAPTER I.

#### THE LEGISLATIVE POWER.

#### SECTION I. *The General Court.*

ART. I. The department of legislation shall be formed by two branches, a Senate and House of Representatives; each of which shall have a negative on the other.

Legislative department.

The legislative body shall assemble every year on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled, THE GENERAL COURT OF MASSACHUSETTS.

See amendments, Art. X.

II. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revision; and if he, upon such revision, approve thereof he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve. But if after such reconsideration, two-thirds of the said senate or house of representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law: but in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the commonwealth.

Governor's veto.

Bill may be passed by two thirds of each house, notwithstanding.

See amend-  
ments, Art. I.  
3 Mass. 507.

General court  
may constitute  
judicatories,  
courts of rec-  
ord, &c.

Courts, &c.,  
may administer  
oaths.

General court  
may enact laws,  
&c.,

not repugnant  
to the constitu-  
tion ;

may provide for  
the election or  
appointment of  
officers ;

prescribe their  
duties ;

impose taxes,

duties and ex-  
cises,

to be disposed  
of for defence,  
protection, &c.

Valuation of es-  
tates once in ten  
years, at least,  
while, &c.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law.

III. The general court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes and things, whatsoever, arising or happening within the commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same: whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and making out of execution thereupon. To which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy or depending before them.

IV. And further, full power and authority are hereby given and granted to the said general court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said commonwealth; the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth; and also to impose, and levy, reasonable duties and excises, upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this commonwealth for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the commonwealth, taken anew once in every ten years at least, and as much oftener as the general court shall order.

## CHAPTER I.

### SECTION II. *Senate.*

Senate, number  
of, and by  
whom elected.  
See amend-  
ments, Art.  
XIII. and XVI.

I. There shall be annually elected, by the freeholders and other inhabitants of this commonwealth, qualified as in this constitution is provided, forty persons to be councillors and senators for the year ensuing their election; to be chosen by the inhabitants of the districts,



into which the commonwealth may from time to time be divided by the general court for that purpose: and the general court in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the commonwealth, the limits of each district, and the number of councillors and senators to be chosen therein; provided, that the number of such districts shall never be less than thirteen; and that no district be so large as to entitle the same to choose more than six senators.

And the several counties in this commonwealth shall, until the general court shall determine it necessary to alter the said districts, be districts for the choice of councillors and senators, (except that the counties of Dukes county and Nantucket shall form one district for that purpose) and shall elect the following number for councillors and senators, viz.:—Suffolk, six; Essex, six; Middlesex, five; Hampshire, four; Plymouth, three; Barnstable, one; Bristol, three; York, two; Dukes county and Nantucket, one; Worcester, five; Cumberland, one; Lincoln, one; Berkshire, two.

Counties to be districts, until, &c.  
See amendments, Art. XIII. and XXII.

II. The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz.: there shall be a meeting on the first Monday in April, annually, forever, of the inhabitants of each town in the several counties of this commonwealth; to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be senators and councillors; and at such meetings every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "inhabitant" in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office, or place within this state, in that town, district or plantation, where he dwelleth, or hath his home.

Manner and time of choosing senators and councillors.  
See amendments, Art. II., X., XIV., and XV.  
See amendments, Art. III., XX., and XXIII.

Word "inhabitant" defined.

The selectmen of the several towns shall preside at such meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for senators, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectmen, and in open town meeting, of the name of every person voted for, and of the number of votes against his name: and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the secretary of the commonwealth for the time being, with a superscription, expressing the purport of the contents thereof, and delivered by the town clerk of such towns, to the sheriff of the county in which such town lies, thirty days at least before the last Wednesday in May annually; or it shall be delivered into the secretary's office seventeen days at least before the said last Wednesday in May: and the sheriff of each county shall deliver all such certificates by him received, into the secretary's office, seventeen days before the said last Wednesday in May.

Selectmen to preside at town meetings.

Return of votes.

See amendments, Art. II. and X.

And the inhabitants of plantations unincorporated, qualified as this constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for councillors and senators in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually on the same first Monday in April, at such place in the plantations respectively, as the assessors thereof shall direct; which assess-

Inhabitants of unincorporated plantations, who pay state taxes, may vote.

Plantation meetings.  
See amendments, Art. X.

Assessors to notify, &c.

ors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this constitution. And all other persons living in places unincorporated (qualified as aforesaid) who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of giving in their votes for councillors and senators, in the town where they shall be assessed, and be notified of the place of meeting by the selectmen of the town where they shall be assessed, for that purpose, accordingly.

Governor and council to examine and count votes, and issue summonses. See amendments, Art. X.

III. And that there may be a due convention of senators on the last Wednesday in May annually, the governor with five of the council, for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day he shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day, and take their seats accordingly: provided nevertheless, that for the first year the said returned copies shall be examined by the president and five of the council of the former constitution of government; and the said president shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.

Senate to be final judge of elections, &c. of its own members. See amendments, Art. X. and XIV.

IV. The senate shall be the final judge of the elections, returns and qualifications of their own members, as pointed out in the constitution; and shall, on the said last Wednesday in May annually, determine and declare who are elected by each district, to be senators by a majority of votes; and in case there shall not appear to be the full number of senators returned elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, viz.: The members of the house of representatives, and such senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of senators wanting, if there be so many voted for; and out of these shall elect by ballot a number of senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the commonwealth; and in like manner all vacancies in the senate, arising by death, removal out of the state, or otherwise, shall be supplied as soon as may be, after such vacancies shall happen.

Vacancies, how filled.

Qualifications of a senator. See amendments, Art. XIII. and XXII.

V. Provided nevertheless, that no person shall be capable of being elected as a senator, who is not seised in his own right of a freehold, within this commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and who has not been an inhabitant of this commonwealth for the space of five years immediately preceding his election, and at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.

Senate not to adjourn more than two days.

VI. The senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

Shall choose its officers and establish its rules. Shall try all impeachments.

VII. The senate shall choose its own president, appoint its own officers, and determine its own rules of proceedings.

Oath.

VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives, against any officer or officers of the commonwealth, for misconduct and mal-administration in their offices. But previous to the trial of every impeachment the members of the senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this commonwealth: but the

Limitation of sentence.



party so convicted, shall be, nevertheless, liable to indictment, trial, judgment, and punishment, according to the laws of the land.

IX. Not less than sixteen members of the senate shall constitute a quorum for doing business.

Quorum. See amendments, Art. XXII.

CHAPTER I.

SECTION III. *House of Representatives.*

I. There shall be, in the legislature of this commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

Representation of the people.

II. And in order to provide for a representation of the citizens of this commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty ratable polls, may elect one representative; every corporate town containing three hundred and seventy-five ratable polls, may elect two representatives; every corporate town containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty-five ratable polls, the mean increasing number for every additional representative.

Representatives, by whom chosen. See amendments, Art. XII., XIII., and XXI.

Provided nevertheless, that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls.

Proviso as to towns having less than 150 ratable polls.

And the house of representatives shall have power from time to time to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this constitution.

Towns liable to fine in case, &c.

The expenses of travelling to the general assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can, in the judgment of the house, and does not depart without leave.

Expense of travelling to and from the general court, how paid.

III. Every member of the house of representatives shall be chosen by written votes; and for one year at least next preceding his election, shall have been an inhabitant of, and have been seised in his own right of a freehold of the value of one hundred pounds within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds; and he shall cease to represent the said town, immediately on his ceasing to be qualified as aforesaid.

Qualifications of a representative. See amendments, Art. XIII., XIV., and XXI.

IV. Every male person, being twenty-one years of age, and resident in any particular town in this commonwealth for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative, or representatives for the said town.

Qualifications of a voter. See amendments, Art. III. XX., and XXIII.

V. The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.

Representatives, when chosen. See amendments, Art. X. and XV. House alone can impeach.

VI. The house of representatives shall be the grand inquest of this commonwealth; and all impeachments made by them, shall be heard and tried by the senate.

VII. All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

House to originate all money bills.

VIII. The house of representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time.

Not to adjourn more than two days.

Quorum.  
See amend-  
ments, Art.  
XXI.  
House to judge  
of returns, &c.,  
of its own mem-  
bers; to choose  
its officers and  
establish its  
rules, &c.  
May punish for  
certain offences.

IX. Not less than sixty members of the house of representatives, shall constitute a quorum for doing business.

X. The house of representatives shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution; shall choose their own speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house. They shall have authority to punish by imprisonment, every person, not a member, who shall be guilty of disrespect to the house, by any disorderly, or contemptuous behavior, in its presence; or who, in the town where the general court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for any thing said or done in the house; or who shall assault any of them therefor; or who shall assault, or arrest, any witness, or other person, ordered to attend the house, in his way in going or returning; or who shall rescue any person arrested by the order of the house.

Privileges of  
members.

And no member of the house of representatives shall be arrested, or held to bail on mean process, during his going unto, returning from, or his attending the general assembly.

Governor and  
council may  
punish.  
General limita-  
tion.

XI. The senate shall have the same powers in the like cases; and the governor and council shall have the same authority to punish in like cases: provided that no imprisonment on the warrant or order of the governor, council, senate, or house of representatives, for either of the above described offences, be for a term exceeding thirty days.

Trial may be  
by committee,  
or otherwise.

And the senate and house of representatives may try, and determine, all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

## CHAPTER II.

### EXECUTIVE POWER.

#### SECTION I. *Governor.*

Governor.

I. There shall be a supreme executive magistrate, who shall be styled—THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose title shall be—HIS EXCELLENCY.

His title.

To be chosen  
annually.  
Qualifications.

II. The governor shall be chosen annually; and no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this commonwealth for seven years next preceding; and unless he shall at the same time, be seised in his own right, of a freehold, within the commonwealth of the value of one thousand pounds; and unless he shall declare himself to be of the christian religion.

See Amend-  
ments, Art.  
VII.

By whom cho-  
sen, if he have a  
majority of  
votes.

See amend-  
ments, Art. II.,  
X., XIV., and  
XV.

III. Those persons who shall be qualified to vote for senators and representatives within the several towns of this commonwealth, shall, at a meeting to be called for that purpose, on the first Monday of April annually, give in their votes for a governor, to the selectmen, who shall preside at such meetings; and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the last Wednesday in May; and the sheriff shall transmit the same to the secretary's office, seventeen days at least before the said last Wednesday in May; or the selectmen may cause returns of the same to be made to the office of the secretary of the commonwealth,



seventeen days at least before the said day; and the secretary shall lay the same before the senate and the house of representatives, on the last Wednesday in May, to be by them examined; and in case of an election by a majority of all the votes returned, the choice shall be by them declared and published; but if no person shall have a majority of votes, the house of representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have been voted for, but, if otherwise, out of the number voted for; and make return to the senate of the two persons so elected; on which the senate shall proceed, by ballot, to elect one, who shall be declared governor.

How chosen, when no person has a majority.

IV. The governor shall have authority from time to time, at his discretion, to assemble and call together the councillors of this commonwealth for the time being; and the governor with the said councillors, or five of them at least, shall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, agreeably to the constitution and the laws of the land.

Power of governor, and of governor and council.

V. The governor, with advice of council, shall have full power and authority, during the session of the general court to adjourn or prorogue the same to any time the two houses shall desire; and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause happening whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient place within the state.

Same subject.

See amendments, Art. X.

And the governor shall dissolve the said general court on the day next preceding the last Wednesday in May.

See amendments, Art. X.

VI. In cases of disagreement between the two houses, with regard to the necessity, expediency or time of adjournment or prorogation, the governor, with advice of the council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days, as he shall determine the public good shall require.

Governor and council may adjourn the general court in cases, &c., but not exceeding ninety days.

VII. The governor of this commonwealth, for the time being, shall be the commander-in-chief of the army and navy, and of all the military forces of the state, by sea and land; and shall have full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them, to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or without the limits of this commonwealth, and also to kill, slay and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law martial, in time of war or invasion, and also in time of rebellion, declared by the legislature to exist, as occasion shall necessarily require; and to take and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this commonwealth; and that the governor be intrusted with all these and other powers, incident to the offices of captain-general and commander-in-chief, and

Governor to be commander-in-chief.

admiral, to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land, and not otherwise.

Limitation.

Provided, that the said governor shall not, at any time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court; except so far as may be necessary to march or transport them by land or water, for the defence of such part of the state to which they cannot otherwise conveniently have access.

Governor and council may pardon offences, except, &c. But not before conviction.

VIII. The power of pardoning offences, except such as persons may be convicted of before the senate by an impeachment of the house, shall be in the governor, by and with the advice of council; but no charter of pardon, granted by the governor, with advice of the council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

All judicial officers, &c., how nominated and appointed. See amendments, Art. XIV., XVII., and XIX. Militia officers, how elected. See amendments, Art. V.

IX. All judicial officers, the attorney-general, the solicitor-general, all sheriffs, coroners, and registers of probate, shall be nominated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

How commissioned.

X. The captains and subalterns of the militia, shall be elected by the written votes of the train-band and alarm list of their respective companies, of twenty-one years of age and upwards; the field officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments: the brigadiers shall be elected, in like manner, by the field officers of their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

Major-generals, how appointed and commissioned.

The legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor, the officers elected.

Vacancies, how filled, in case, &c.

The major-generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

Officers duly commissioned, how removed. See amendments, Art. IV.

And if the electors of brigadiers, field officers, captains or subalterns, shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the governor, with advice of council, shall appoint suitable persons to fill such offices.

Adjutants, &c., how appointed.

And no officer, duly commissioned to command in the militia, shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court martial, pursuant to the laws of the commonwealth for the time being.

The commanding officers of regiments shall appoint their adjutants and quartermasters; the brigadiers their brigade-majors; and the major-generals their aids; and the governor shall appoint the adjutant-general.

The governor, with advice of council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this commonwealth shall appoint, as also all officers of forts and garrisons.

Organization of militia.

The divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this commonwealth, until the same shall be altered in pursuance of some future law.

Money, how drawn from the treasury, except, &c.

XI. No moneys shall be issued out of the treasury of this commonwealth, and disposed of (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the gov-



ernor for the time being, with the advice and consent of the council, for the necessary defence and support of the commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

XII. All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this commonwealth, and all commanding officers of forts and garrisons within the same, shall once in every three months, officially, and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea or harbor or harbors, adjacent.

All public boards, &c., to make quarterly returns.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

XIII. As the public good requires that the governor should not be under the undue influence of any of the members of the general court by a dependence on them for his support; that he should in all cases, act with freedom for the benefit of the public, that he should not have his attention necessarily diverted from that object to his private concerns — and that he should maintain the dignity of the commonwealth in the character of its chief magistrate, it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the general court, after the commencement of this constitution, to establish such salary by law accordingly.

Salary of governor.

Permanent and honorable salaries shall also be established by law for the justices of the supreme judicial court.

Salaries of justices of supreme judicial court. Salaries to be enlarged if insufficient.

And if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time be enlarged, as the general court shall judge proper.

## CHAPTER II.

### SECTION II. *Lieutenant-Governor.*

I. There shall be annually elected a lieutenant-governor of the commonwealth of Massachusetts, whose title shall be — His Honor; and who shall be qualified, in point of religion, property, and residence in the commonwealth, in the same manner with the governor: and the day and manner of his election, and the qualifications of the electors, shall be the same as are required in the election of a governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner: and if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the senate and house of representatives, in the same manner as the governor is to be elected, in case no one person shall have a majority of the votes of the people to be governor.

Lieutenant-governor; his title and qualifications. See amendments, Art. III., VI., X., XV., XX. and XXIII.

How chosen.

II. The governor, and in his absence the lieutenant-governor, shall be president of the council, but shall have no vote in council; and the lieutenant-governor shall always be a member of the council except when the chair of the governor shall be vacant.

President of council. Lieutenant-governor a member of, except, &c. Lieutenant-

III. Whenever the chair of the governor shall be vacant, by reason

governor to be acting governor, in case, &c.

of his death, or absence from the commonwealth, or otherwise, the lieutenant-governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the governor, and shall have and exercise all the powers and authorities, which by this constitution the governor is vested with, when personally present.

CHAPTER II.

SECTION III. *Council, and the Manner of settling Elections by the Legislature.*

Council. See amendments, Art. XVI.

I. There shall be a council for advising the governor in the executive part of the government, to consist of nine persons besides the lieutenant-governor, whom the governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, according to the laws of the land.

Number; from whom, and how chosen. See amendments, Art. X., XIII. and XVI.

II. Nine councillors shall be annually chosen from among the persons returned for councillors and senators, on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room: and in case there shall not be found upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of senators left shall constitute the senate for the year. The seats of the persons thus elected from the senate, and accepting the trust, shall be vacated in the senate.

If senators become councillors, their seats to be vacated.

Rank of councillors.

III. The councillors, in the civil arrangements of the commonwealth, shall have rank next after the lieutenant-governor.

No district to have more than two. Register of council.

IV. Not more than two councillors shall be chosen out of any one district of this commonwealth.

V. The resolutions and advice of the council shall be recorded in a register, and signed by the members present; and this record may be called for at any time by either house of the legislature; and any member of the council may insert his opinion, contrary to the resolution of the majority.

Council to exercise the power of governor, in case, &c.

VI. Whenever the office of the governor and lieutenant-governor shall be vacant, by reason of death, absence, or otherwise, then the council, or the major part of them, shall, during such vacancy, have full power and authority to do, and execute, all and every such acts, matters and things, as the governor or the lieutenant-governor might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present.

Elections may be adjourned until, &c.

VII. And whereas the elections appointed to be made, by this constitution, on the last Wednesday in May annually, by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed.

Order thereof.

And the order of elections shall be as follows: the vacancies in the senate, if any, shall first be filled up; the governor and lieutenant-governor shall then be elected, provided there should be no choice of them by the people: and afterwards the two houses shall proceed to the election of the council.

CHAPTER II.

SECTION IV. *Secretary, Treasurer, Commissary &c.*

Secretary, &c., by whom and how chosen.

I. The secretary, treasurer and receiver-general, and the commissary-general, notaries public, and naval officers, shall be chosen an-

nually, by joint ballot of the senators and representatives in one room. And, that the citizens of this commonwealth may be assured, from time to time, that the moneys remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as treasurer and receiver-general more than five years successively.

See amendments, Art. IV. and XVII.  
Treasurer ineligible for more than five successive years.

II. The records of the commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable, and he shall attend the governor and council, the senate and house of representatives, in person, or by his deputies, as they shall respectively require.

Secretary to keep records; to attend the governor and council, &c.

### CHAPTER III.

#### JUDICIARY POWER.

I. The tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: provided nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature.

Tenure of all commissioned officers to be expressed. Judicial officers to hold office during good behavior, except, &c. But may be removed on address. Justices of supreme judicial court to give opinions when required.

II. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

Justices of the peace; tenure of their office.

III. In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the commonwealth.

IV. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require. And the legislature shall from time to time, hereafter appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

Provisions for holding probate courts.

V. All causes of marriage, divorce, and alimony, and all appeals from the judges of probate shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.

Provisions for determining causes of marriage, divorce, &c.

### CHAPTER IV.

#### DELEGATES TO CONGRESS.

The delegates of this commonwealth to the congress of the United States, shall, some time in the month of June annually be elected by the joint ballot of the senate and house of representatives, assembled together in one room; to serve in congress for one year, to commence on the first Monday in November then next ensuing. They shall have commissions under the hand of the governor, and the great seal of the commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.

Delegates to congress.



## CHAPTER V.

## THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE &amp;c.

SECTION I. *The University.*

Harvard Col-  
lege.

I. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences, which qualified them for public employments, both in church and state: and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the christian religion, and the great benefit of this and the other United States of America, — it is declared, that the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy: and the same are hereby ratified and confirmed unto them, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

Powers, privi-  
leges, &c. of the  
president and  
fellows, con-  
firmed.

II. And whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the president and fellows of Harvard College, or to the said college, by some other description, under several charters, successively: it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the president and fellows of Harvard College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

All gifts,  
grants, &c. con-  
firmed.

III. And whereas, by an act of the general court of the colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy-governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said act described, constituted the overseers of Harvard College: and it being necessary, in this new constitution of government to ascertain who shall be deemed successors to the said governor, deputy-governor and magistrates: it is declared, that the governor, lieutenant-governor, council and senate of this commonwealth, are, and shall be deemed, their successors, who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the overseers of Harvard College; provided, that nothing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said university, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late Province of the Massachusetts Bay.

Who shall be  
overseers.  
Statutes,  
1851, 224.

Power of altera-  
tion reserved to  
the legislature.

## CHAPTER V.

SECTION II. *The Encouragement of Literature, &c.*

Duty of legis-  
latures and ma-  
gistrates in all

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their



rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

future periods.  
See amend-  
ments, Art.  
XVIII.

## CHAPTER VI.

OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF AND EXCLUSION FROM OFFICES; PECUNIARY QUALIFICATIONS; COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS; THE ENACTING STYLE; CONTINUANCE OF OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE CONSTITUTION, &c.

I. Any person chosen governor, lieutenant-governor, councillor, senator or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz.:

Oaths, &c.

I, A. B., do declare, that I believe the christian religion, and have a firm persuasion of its truth; and that I am seised and possessed, in my own right, of the property required by the constitution as one qualification for the office or place to which I am elected.

Abolished, see  
amendments,  
Art. VII.

And the governor, lieutenant-governor, and councillors, shall make and subscribe the said declaration, in the presence of the two houses of assembly; and the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution, and forever afterwards before the governor and council for the time being.

And every person chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, viz.:

["I, A. B., do truly and sincerely acknowledge, profess, testify and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign and independent state; and I do swear, that I will bear true faith and allegiance to the said commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever; and that I do renounce and abjure all allegiance, subjection and obedience to the king, queen, or government of Great Britain, (as the case may be) and every other foreign power whatsoever; and that no foreign prince, person, prelate, state or potentate, hath, or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing or other power, in any matter, civil, ecclesiastical or spiritual, within this commonwealth, except the authority and power which is or may be vested by their constituents in the congress of the United States: and I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration, or affirmation; and that I do make this acknowledgment, profession, testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptance of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me, God."]

Oath of allegi-  
ance, see substi-  
tute, amend-  
ment, Art. VI.

"I, A. B., do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as \_\_\_\_\_, according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution and the laws of the commonwealth. So help me, God."

Oath of office.

Proviso.

Provided always, that when any person chosen or appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words "*I do swear,*" "*and abjure,*" "*oath or,*" "*and abjuration,*" in the first oath; and in the second oath, the words "*swear and,*" and in each of them the words "*So help me, God;*" subjoining instead thereof, "*This I do under the pains and penalties of perjury.*"

And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant-governor, and councillors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons and in such manner as from time to time shall be prescribed by the legislature.

Plurality of offices prohibited to governor, &c. except, &c. See amendments, Art. VIII.

II. No governor, lieutenant-governor, or judge of the supreme judicial court, shall hold any other office or place, under the authority of this commonwealth, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justices of the peace through the state; nor shall they hold any other place or office, or receive any pension or salary from any other state or government or power whatever.

Same subject.

No person shall be capable of holding or exercising at the same time, within this state more than one of the following offices, viz.: judge of probate—sheriff—register of probate—or register of deeds; and never more than any two offices which are to be held by appointment of the governor, or the governor and council, or the senate, or the house of representatives, or by the election of the people of the state at large, or of the people of any county, military offices, and the offices of justices of the peace excepted, shall be held by one person.

Incompatible offices. See amendments, Art. VIII.

No person holding the office of judge of the supreme judicial court—secretary—attorney-general—solicitor-general—treasurer or receiver-general—judge of probate—commissary-general—president, professor, or instructor of Harvard College—sheriff—clerk of the house of representatives—register of probate—register of deeds—clerk of the supreme judicial court—clerk of the inferior court of common pleas—or officer of the customs, including in this description naval officers—shall at the same time have a seat in the senate or house of representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the senate or house of representatives; and the place so vacated shall be filled up.

Same subject.

And the same rule shall take place in case any judge of the said supreme judicial court, or judge of probate, shall accept a seat in council; or any councillor shall accept of either of those offices or places.

Bribery, &c., disqualify.

And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption in obtaining an election or appointment.

Value of money ascertained. Property qualifications may be increased. See amendments, Art. XIII.

III. In all cases where sums of money are mentioned in this constitution, the value thereof shall be computed in silver, at six shillings and eight pence per ounce; and it shall be in the power of the legislature from time to time to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the commonwealth shall require.

Provisions respecting commissions.

IV. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the governor and attested by the secretary or

his deputy, and have the great seal of the commonwealth affixed thereto.

V. All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue; they shall bear test of the first justice of the court to which they shall be returnable, who is not a party, and be signed by the clerk of such court.

Provisions respecting writs.  
2 Pick. 592.  
3 Met. 58.  
13 Gray, 74.

VI. All the laws which have heretofore been adopted, used and approved in the Province, Colony or State of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

Continuation of former laws, except, &c.  
1 Mass. 59.  
2 Mass. 534.  
8 Pick. 309, 316.  
16 Pick. 107, 115.  
2 Met. 118.

VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this commonwealth, in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months.

Benefit of *habeas corpus* secured, except, &c.

VIII. The enacting style, in making and passing all acts, statutes and laws, shall be — “Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same.”

The enacting style.

IX. To the end there may be no failure of justice, or danger arise to the commonwealth from a change of the form of government, all officers, civil and military, holding commissions under the government and people of Massachusetts Bay in New England, and all other officers of the said government and people, at the time this constitution shall take effect, shall have, hold, use, exercise and enjoy, all the powers and authority to them granted or committed, until other persons shall be appointed in their stead: and all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority; until the general court, and the supreme and executive officers under this constitution, are designated and invested with their respective trusts, powers and authority.

Officers of former government continued until, &c.

X. In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary, the general court which shall be in the year of our Lord one thousand seven hundred and ninety-five, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution, in order to amendments.

Provision for revising constitution.

And if it shall appear, by the returns made, that two-thirds of the qualified voters throughout the state, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the general court shall issue precepts, or direct them to be issued from the secretary's office to the several towns to elect delegates to meet in convention for the purpose aforesaid.

The said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the legislature are by this constitution to be chosen.

XI. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this commonwealth, in all future editions of the said laws.

Provision for preserving and publishing this constitution.



## ARTICLES OF AMENDMENT.

Bill, &c. not approved within five days, not to become a law, if legislature adjourn in the mean time.  
3 Mass. 567.  
See Const., Ch. 1, § 1, art. 2.  
General court empowered to charter cities.

ARTICLE I. If any bill or resolve shall be objected to, and not approved by the governor; and if the general court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution, such bill or resolve shall not become a law, nor have force as such.

Proviso.

ART. II. The general court shall have full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this commonwealth, and to grant to the inhabitants thereof such powers, privileges and immunities, not repugnant to the constitution as the general court shall deem necessary or expedient for the regulation and government thereof and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise for the election of officers under the constitution, and the manner of returning the votes given at such meetings. Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants, nor unless it be with the consent, and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose. And provided also, that all by-laws made by such municipal or city government shall be subject, at all times to be annulled by the general court.

Qualifications of voters for governor, lieutenant-governor, senators and representatives.  
11 Pick. 538.  
See amendments, Art. XX.

ART. III. Every male citizen of twenty-one years of age and upwards, (excepting paupers and persons under guardianship) who shall have resided within the commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant-governor, senators or representatives, and who shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him in any town or district of this commonwealth; and also, every citizen who shall be, by law, exempted from taxation, and who shall be, in all other respects, qualified as above mentioned, shall have a right to vote in such election of governor, lieutenant-governor, senators and representatives; and no other person shall be entitled to vote in such elections.

Notaries public, how appointed and removed.

ART. IV. Notaries public shall be appointed by the governor in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor with the consent of the council, upon the address of both houses of the legislature.

Vacancies in the offices of secretary and treasurer, how filled in case, &c. See amendments, Art. XVII.

In case the office of secretary or treasurer of the commonwealth shall become vacant from any cause during the recess of the general court, the governor, with the advice and consent of the council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the general court.

Commissary-general may be appointed, in case, &c.

Whenever the exigencies of the commonwealth shall require the appointment of a commissary-general, he shall be nominated, appointed and commissioned in such manner as the legislature may, by law, prescribe.

Militia officers, how removed.

All officers commissioned to command in the militia may be removed from office in such manner as the legislature may, by law, prescribe.

Who may vote for captains and subalterns.

ART. V. In the elections of captains and subalterns of the militia, all the members of their respective companies, as well those under as those above the age of twenty-one years, shall have a right to vote.



ART. VI. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military under the government of this commonwealth, before he shall enter on the duties of his office, to wit:—

Oath to be taken by all officers; See Const. Chap.VI. Art.1.

“I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So help me God.”

*Provided*, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word “swear” and inserting instead thereof the word “affirm;” and omitting the words “So help me God,” and subjoining, instead thereof, the words “This I do under the pains and penalties of perjury.”

or affirmation, in case, &c.

ART. VII. No oath, declaration or subscription, excepting the oath prescribed in the preceding article and the oath of office, shall be required of the governor, lieutenant-governor, councillors, senators or representatives, to qualify them to perform the duties of their respective offices.

Tests abolished.

ART. VIII. No judge of any court of this commonwealth, (except the court of sessions) and no person holding any office under the authority of the United States (postmasters excepted) shall, at the same time, hold the office of governor, lieutenant-governor, or councillor, or have a seat in the senate or house of representatives of this commonwealth; and no judge of any court in this commonwealth (except the court of sessions) nor the attorney-general, solicitor-general, county-attorney, clerk of any court, sheriff, treasurer and receiver-general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the Congress of the United States, and accepting that trust; but the acceptance of such trust by any of the officers aforesaid shall be deemed and taken to be a resignation of his said office; and judges of the courts of common pleas shall hold no other office under the government of this commonwealth, the office of justice of the peace and militia offices excepted.

Incompatibility of offices.

ART. IX. If, at any time hereafter any specific and particular amendment or amendments to the constitution be proposed in the general court, and agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the general court then next to be chosen, and shall be published; and if, in the general court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two-thirds of the members of the house of representatives present and voting thereon; then it shall be the duty of the general court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this commonwealth.

Amendments to constitution, how made.

ART. X. The political year shall begin on the first Wednesday of January instead of the last Wednesday of May, and the general court shall assemble every year on the said first Wednesday of January, and shall proceed at that session to make all the elections, and do all the other acts which are by the constitution required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the general court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the governor. But nothing herein contained shall prevent the general court from assembling at such other times as they shall

Commencement of political year,

and termination.

judge necessary, or when called together by the governor. The governor, lieutenant-governor and councillors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

Meetings for the choice of governor, lieutenant-governor, &c., when to be held. May be adjourned. See amendments, Art. XV.

The meeting for the choice of governor, lieutenant-governor, senators and representatives shall be held on the second Monday of November in every year; but meetings may be adjourned if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

All the other provisions of the constitution respecting the elections and proceedings of the members of the general court, or of any other officers or persons whatever, that have reference to the last Wednesday of May, as the commencement of the political year, shall be so far altered as to have like reference to the first Wednesday of January.

Article, when to go into operation.

This article shall go into operation on the first day of October next following the day when the same shall be duly ratified and adopted as an amendment of the constitution; and the governor, lieutenant-governor, councillors, senators, representatives and all other state officers, who are annually chosen, and who shall be chosen for the current year, when the same shall go into operation, shall hold their respective offices until the first Wednesday of January then next following, and until others are chosen and qualified in their stead, and no longer. And the first election of the governor, lieutenant-governor, senators and representatives to be had in virtue of this article shall be had conformably thereunto, in the month of November following the day on which the same shall be in force, and go into operation, pursuant to the foregoing provision.

Inconsistent provisions annulled.

Religious freedom established. See Dec. of Rights, Art. III.

All the provisions of the existing constitution inconsistent with the provisions herein contained are hereby wholly annulled.

ART. XI. Instead of the third article of the bill of rights, the following modification and amendment thereof is substituted:—

“As the public worship of GOD and instructions in piety, religion and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract, which may be thereafter made, or entered into by such society: and all religious sects and denominations, demeaning themselves peaceably and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.”

Census of ratable polls to be taken in 1837, and decennially thereafter. See amendments, Art. XIII. and XXI.

ART. XII. In order to provide for a representation of the citizens of this commonwealth, founded upon the principles of equality a census of the ratable polls, in each city, town and district of the commonwealth, on the first day of May, shall be taken and returned into the secretary's office, in such manner as the legislature shall provide, within the month of May, in the year of our Lord one thousand eight hundred and thirty-seven, and in every tenth year thereafter, in the month of May, in manner aforesaid, and each town or city having three hundred ratable polls at the last preceding decennial census of polls, may elect one representa-

Representatives, how apportioned.



tive, and for every four hundred and fifty ratable polls in addition to the first three hundred, one representative more.

Any town having less than three hundred ratable polls shall be represented thus: The whole number of ratable polls, at the last preceding decennial census of polls, shall be multiplied by ten, and the product divided by three hundred, and such town may elect one representative as many years within ten years, as three hundred is contained in the product aforesaid.

Towns having less than 300 ratable polls, how represented.

Any city or town having ratable polls enough to elect one or more representatives, with any number of polls beyond the necessary number, may be represented as to that surplus number by multiplying such surplus number by ten and dividing the product by four hundred and fifty; and such city or town may elect one additional representative as many years within the ten years as four hundred and fifty is contained in the product aforesaid.

Fractions, how represented.

Any two or more of the several towns and districts may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns and districts respectively called for that purpose, and held previous to the first day of July in the year in which the decennial census of polls shall be taken, form themselves into a representative district, to continue until the next decennial census of polls, for the election of a representative, or representatives, and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of ratable polls.

Towns may unite into representative districts.

The governor and council shall ascertain and determine within the months of July and August, in the year of our Lord one thousand eight hundred and thirty-seven, according to the foregoing principles, the number of representatives, which each city, town and representative district is entitled to elect, and the number of years within the period of ten years then next ensuing, that each city, town, and representative district may elect an additional representative, and where any town has not a sufficient number of polls to elect a representative each year then how many years within the ten years, such town may elect a representative, and the same shall be done once in ten years thereafter by the governor and council, and the number of ratable polls in each decennial census of polls, shall determine the number of representatives, which each city, town and representative district may elect as aforesaid, and when the number of representatives to be elected by each city, town or representative district is ascertained and determined as aforesaid, the governor shall cause the same to be published forthwith for the information of the people and that number shall remain fixed and unalterable for the period of ten years.

The governor and council to determine the number of representatives to which each town is entitled.

New apportionment to be made once in every ten years.

All the provisions of the existing constitution inconsistent with the provisions herein contained, are hereby wholly annulled.

Inconsistent provisions annulled.

ART. XIII. A census of the inhabitants of each city and town, on the first day of May, shall be taken; and returned into the secretary's office, on or before the last day of June, of the year one thousand eight hundred and forty, and of every tenth year thereafter, which census shall determine the apportionment of senators and representatives for the term of ten years.

Census of inhabitants to be taken in 1840, and decennially thereafter, for basis of apportionment of senators and representatives.

The several senatorial districts now existing, shall be permanent. The senate shall consist of forty members; and in the year one thousand eight hundred and forty, and every tenth year thereafter, the governor and council shall assign the number of senators to be chosen in each district, according to the number of inhabitants in the same. But, in all cases, at least one senator shall be assigned to each district.

Senatorial districts declared permanent. See amendments, Art. XXII.

The members of the house of representatives shall be apportioned in the following manner: Every town or city containing twelve hundred inhabitants, may elect one representative; and two thousand four hun-

House of representatives, how apportioned. See amend-

ments, Art. XXI.

Small towns, how represented.

Towns may unite into representative districts.

Basis of representation, and ratio of increase.

The governor and council to apportion the number of representatives of each town once in every ten years.

Councillors to be chosen from the people at large. See amendments, Art. XVI.

Qualifications of councillors.

Freehold as a qualification for a seat in general court or council not required. Elections by the people to be by plurality of votes.

Time of annual election of governor and legislature.

Eight councillors to be chosen by the people.

dred inhabitants shall be the mean increasing number which shall entitle it to an additional representative.

Every town containing less than twelve hundred inhabitants, shall be entitled to elect a representative as many times, within ten years, as the number one hundred and sixty is contained in the number of the inhabitants of said town. Such towns may also elect one representative for the year in which the valuation of estates within the commonwealth, shall be settled.

Any two or more of the several towns may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, and held before the first day of August, in the year one thousand eight hundred and forty, and every tenth year thereafter, form themselves into a representative district, to continue for the term of ten years; and such district shall have all the rights in regard to representation, which would belong to a town containing the same number of inhabitants.

The number of inhabitants which shall entitle a town to elect one representative, and the mean increasing number, which shall entitle a town or city to elect more than one, and also the number by which the population of towns, not entitled to a representative every year is to be divided, shall be increased respectively, by one-tenth of the numbers above mentioned, whenever the population of the commonwealth shall have increased to seven hundred and seventy thousand, and for every additional increase of seventy thousand inhabitants, the same addition of one-tenth shall be made respectively to the said numbers above mentioned.

In the year of each decennial census, the governor and council shall, before the first day of September, apportion the number of representatives which each city, town, and representative district is entitled to elect, and ascertain how many years within ten years, any town may elect a representative, which is not entitled to elect one every year; and the governor shall cause the same to be published forthwith.

Nine councillors shall be annually chosen from among the people at large, on the first Wednesday of January, or as soon thereafter as may be, by the joint ballot of the senators and representatives assembled in one room, who shall, as soon as may be, in like manner, fill up any vacancies that may happen in the council, by death, resignation or otherwise. No person shall be elected a councillor, who has not been an inhabitant of this commonwealth for the term of five years immediately preceding his election; and not more than one councillor shall be chosen from any one senatorial district in the commonwealth.

No possession of a freehold or of any other estate shall be required as a qualification for holding a seat in either branch of the general court, or in the executive council.

ART. XIV. In all elections of civil officers by the people of this commonwealth, whose election is provided for by the constitution, the person having the highest number of votes shall be deemed and declared to be elected.

ART. XV. The meeting for the choice of governor, lieutenant-governor, senators and representatives, shall be held on the Tuesday next after the first Monday in November, annually; but in case of a failure to elect representatives on that day, a second meeting shall be holden for that purpose on the fourth Monday of the same month of November.

ART. XVI. Eight councillors shall be annually chosen by the inhabitants of this commonwealth, qualified to vote for governor. The election of councillors shall be determined by the same rule that is required in the election of governor. The legislature, at its first session after this amendment shall have been adopted, and at its first session after the next state census shall have been taken, and at its first session after each decennial state census thereafter, shall divide the common-



wealth into eight districts of contiguous territory, each containing a number of inhabitants as nearly equal as practicable, without dividing any town or ward of a city, and each entitled to elect one councillor: *provided, however*, that if, at any time, the constitution shall provide for the division of the commonwealth into forty senatorial districts, then the legislature shall so arrange the councillor districts that each district shall consist of five contiguous senatorial districts, as they shall be, from time to time, established by the legislature. No person shall be eligible to the office of councillor who has not been an inhabitant of the commonwealth for the term of five years immediately preceding his election. The day and manner of the election, the return of the votes, and the declaration of the said elections, shall be the same as are required in the election of governor. Whenever there shall be a failure to elect the full number of councillors, the vacancies shall be filled in the same manner as is required for filling vacancies in the senate; and vacancies occasioned by death, removal from the state, or otherwise, shall be filled in like manner, as soon as may be after such vacancies shall have happened. And that there may be no delay in the organization of the government on the first Wednesday of January, the governor, with at least five councillors for the time being, shall, as soon as may be, examine the returned copies of the records for the election of governor, lieutenant-governor, and councillors; and ten days before the said first Wednesday in January he shall issue his summons to such persons as appear to be chosen, to attend on that day to be qualified accordingly; and the secretary shall lay the returns before the senate and house of representatives on the said first Wednesday in January, to be by them examined; and in case of the election of either of said officers, the choice shall be by them declared and published; but in case there shall be no election of either of said officers, the legislature shall proceed to fill such vacancies in the manner provided in the constitution for the choice of such officers.

Legislature to district state.

Day and manner of election, &c.

Vacancies, how filled.

Organization of the government.

ART. XVII. The secretary, treasurer and receiver-general, auditor, and attorney-general, shall be chosen annually, on the day in November prescribed for the choice of governor; and each person then chosen as such, duly qualified in other respects, shall hold his office for the term of one year from the third Wednesday in January next thereafter, and until another is chosen and qualified in his stead. The qualification of the voters, the manner of the election, the return of the votes, and the declaration of the election, shall be such as are required in the election of governor. In case of a failure to elect either of said officers on the day in November aforesaid, or in case of the decease in the mean time of the person elected as such, such officer shall be chosen on or before the third Wednesday in January next thereafter from the two persons who had the highest number of votes for said offices on the day in November aforesaid, by joint ballot of the senators and representatives in one room; and in case the office of secretary, or treasurer and receiver-general, or auditor, or attorney-general, shall become vacant from any cause during an annual or special session of the general court, such vacancy shall in like manner be filled by choice from the people at large; but if such vacancy shall occur at any other time, it shall be supplied by the governor by appointment, with the advice and consent of the council. The person so chosen or appointed, duly qualified in other respects, shall hold his office until his successor is chosen and duly qualified in his stead. In case any person chosen or appointed to either of the offices aforesaid, shall neglect, for the space of ten days after he could otherwise enter upon his duties, to qualify himself in all respects to enter upon the discharge of such duties, the office to which he has been elected or appointed shall be deemed vacant. No person shall be eligible to either of said offices unless he shall have been an inhabitant of this commonwealth five years next preceding his election or appointment.

Election of secretary, treasurer, auditor and attorney-general by the people.

Vacancies, how filled.

To qualify within 10 days, otherwise office to be deemed vacant.

Qualifications requisite.

School moneys not to be applied for sectarian schools.

ART. XVIII. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance exclusively of its own school.

Legislature to prescribe for the election of sheriffs, registers of probate, &c.  
8 Gray, 1.

ART. XIX. The legislature shall prescribe, by general law, for the election of sheriffs, registers of probate, commissioners of insolvency, and clerks of the courts, by the people of the several counties, and that district-attorneys shall be chosen by the people of the several districts, for such term of office as the legislature shall prescribe.

Reading constitution in English and writing, necessary qualifications of voters.  
Proviso.

ART. XX. No person shall have the right to vote, or be eligible to office under the constitution of this commonwealth, who shall not be able to read the constitution in the English language, and write his name: *provided, however*, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any persons who shall be sixty years of age or upwards at the time this amendment shall take effect.

Census of legal voters and of inhabitants, when taken, &c.  
See Gen. Stat. ch. 20.

ART. XXI. A census of the legal voters of each city and town, on the first day of May, shall be taken and returned into the office of the secretary of the commonwealth, on or before the last day of June, in the year one thousand eight hundred and fifty-seven; and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five, and of every tenth year thereafter. In the census aforesaid, a special enumeration shall be made of the legal voters; and in each city, said enumeration shall specify the number of such legal voters aforesaid, residing in each ward of such city. The enumeration aforesaid shall determine the apportionment of representatives for the periods between the taking of the census.

House of representatives to consist of 240 members.  
Legislature to apportion, &c.

The house of representatives shall consist of two hundred and forty members, which shall be apportioned, by the legislature, at its first session after the return of each enumeration as aforesaid, to the several counties of the commonwealth, equally, as nearly as may be, according to their relative numbers of legal voters, as ascertained by the next preceding special enumeration; and the town of Cohasset, in the county of Norfolk, shall, for this purpose, as well as in the formation of districts, as hereinafter provided, be considered a part of the county of Plymouth; and it shall be the duty of the secretary of the commonwealth, to certify, as soon as may be after it is determined by the legislature, the number of representatives to which each county shall be entitled, to the board authorized to divide each county into representative districts. The mayor and aldermen of the city of Boston, the county commissioners of other counties than Suffolk, — or in lieu of the mayor and aldermen of the city of Boston, or of the county commissioners in each county other than Suffolk, such board of special commissioners in each county, to be elected by the people of the county, or of the towns therein, as may for that purpose be provided by law, — shall, on the first Tuesday of August next after each assignment of representatives to each county, assemble at a shire town of their respective counties, and proceed, as soon as may be, to divide the same into representative districts of contiguous territory, so as to apportion the representation assigned to each county equally, as nearly as may be, according to the relative number of legal voters in the several districts of each county; and such districts shall be so formed that no town or ward of a city shall be divided therefor, nor shall any district be made which shall be entitled to elect more than three representatives. Every representative, for one year at least

Qualifications



next preceding his election, shall have been an inhabitant of the district for which he is chosen, and shall cease to represent such district when he shall cease to be an inhabitant of the commonwealth. The districts in each county shall be numbered by the board creating the same, and a description of each, with the numbers thereof and the number of legal voters therein, shall be returned by the board, to the secretary of the commonwealth, the county treasurer of each county, and to the clerk of every town in each district, to be filed and kept in their respective offices. The manner of calling and conducting the meetings for the choice of representatives, and of ascertaining their election, shall be prescribed by law. Not less than one hundred members of the house of representatives shall constitute a quorum for doing business; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.

of representa-  
tives.

One hundred  
members a quo-  
rum.

ART. XXII. A census of the legal voters of each city and town, on the first day of May, shall be taken and returned into the office of the secretary of the commonwealth, on or before the last day of June, in the year one thousand eight hundred and fifty-seven; and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five, and of every tenth year thereafter. In the census aforesaid, a special enumeration shall be made of the legal voters, and in each city said enumeration shall specify the number of such legal voters aforesaid, residing in each ward of such city. The enumeration aforesaid shall determine the apportionment of senators for the periods between the taking of the census. The senate shall consist of forty members. The general court shall, at its first session after each next preceding special enumeration, divide the commonwealth into forty districts of adjacent territory, each district to contain, as nearly as may be, an equal number of legal voters, according to the enumeration aforesaid: *provided, however*, that no town or ward of a city shall be divided therefor; and such districts shall be formed, as nearly as may be, without uniting two counties, or parts of two or more counties, into one district. Each district shall elect one senator, who shall have been an inhabitant of this commonwealth five years at least immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen; and he shall cease to represent such senatorial district when he shall cease to be an inhabitant of the commonwealth. Not less than sixteen senators shall constitute a quorum for doing business; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.

Census, &c.  
See Gen. Stat.  
ch. 20.

Senate to consist of 40 members.  
Senatorial districts, &c.

Proviso.

Qualifications of senators.

Sixteen members a quorum.

ART. XXIII. No person of foreign birth shall be entitled to vote, or shall be eligible to office, unless he shall have resided within the jurisdiction of the United States for two years subsequent to his naturalization, and shall be otherwise qualified, according to the constitution and laws of this commonwealth: *provided*, that this amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption thereof; and *provided, further*, that it shall not affect the rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom.

Residence of two years required of naturalized citizens, to entitle to suffrage or make eligible to office.

[NOTE.—The Constitution of Massachusetts was agreed upon by delegates of the people, in convention, begun and held at Cambridge, on the first day of September, 1779, and continued by adjournments to the second day of March, 1780, when the convention adjourned to meet on the first Wednesday of the ensuing June. In the meantime the constitution was submitted to the people, to be adopted by them, provided two-thirds of the votes given should be in the affirmative. When the convention assembled, it was found that the constitution had been adopted by the requisite number of votes, and the convention accordingly *Resolved*, “That the said Constitution or Frame of Government shall take place on the last Wednesday of October next; and not before, for any purpose, save only for that of making elections, agreeable to this resolution.” The first legislature assembled at Boston, on the twenty-fifth day of October, 1780.

The first nine Articles of Amendment were submitted, by delegates in convention assembled, November 15, 1820, to the people, and by them ratified and adopted, April 9, 1821.

The tenth Article of Amendment was adopted by the legislatures of the political years 1829-30, and 1830-31, respectively, and was approved and ratified by the people, May 11, 1831.

The eleventh Article of Amendment was adopted by the legislatures of the political years 1832 and 1833, respectively, and was approved and ratified by the people, November 11, 1833.

The twelfth Article of Amendment was adopted by the legislatures of the political years 1835 and 1836, respectively, and was approved and ratified by the people, the fourteenth day of November, 1836.

The thirteenth Article of Amendment was adopted by the legislatures of the political years 1839 and 1840, respectively, and was approved and ratified by the people, the sixth day of April, 1840.

The fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth Articles of Amendment were adopted by the legislatures of the political years 1854 and 1855, respectively, and ratified by the people, the twenty-third day of May, 1855.

The twentieth, twenty-first, and twenty-second Articles of Amendment were adopted by the legislatures of the political years 1856 and 1857, respectively, and ratified by the people on the first day of May, 1857.

The twenty-third Article of Amendment was adopted by the legislatures of the political years 1858 and 1859, respectively, and ratified by the people on the ninth day of May, 1859.]



GENERAL STATUTES

OF THE

COMMONWEALTH OF MASSACHUSETTS.

COMMONWEALTH OF MASSACHUSETTS.

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IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND FIFTY-NINE.

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AN ACT

FOR

REVISING AND CONSOLIDATING

THE

GENERAL STATUTES

OF THE

COMMONWEALTH.

---

*Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, in manner following, that is to say :*

# PART I.

## OF THE INTERNAL ADMINISTRATION OF THE GOVERNMENT.

### TITLE I.

#### OF THE JURISDICTION OF THE COMMONWEALTH, LEGISLATURE, STATUTES, PUBLIC REPORTS, AND DOCUMENTS, STATE LIBRARY, AND OTHER PUBLIC PROPERTY.

CHAPTER 1. — Of the Jurisdiction of the Commonwealth and places ceded to the United States.

CHAPTER 2. — Of the Legislature.

CHAPTER 3. — Of the Statutes.

CHAPTER 4. — Of Public Reports and Documents.

CHAPTER 5. — Of the State Library and other Public Property.

### CHAPTER 1.

#### OF THE JURISDICTION OF THE COMMONWEALTH AND PLACES CEDED TO THE UNITED STATES.

##### SECTION

1. Territorial limits of the commonwealth, and counties.
2. Jurisdiction of the commonwealth.
3. Places ceded to the United States and subject to concurrent jurisdiction.
4. Officers of the coast survey may enter upon lands, erect stations, &c.

##### SECTION

5. County commissioners to assess damages on petition of either party.
6. Commissioners to file report, &c. Appeal Trial.
7. Tender, and costs after refusal.
8. Costs, how taxed.
9. Penalty for injuring signals, &c.

SECTION 1. The territorial limits of this commonwealth extend one marine league from its sea-shore at low-water mark. When an inlet or arm of the sea does not exceed two marine leagues in width, between its headlands, a straight line from one headland to the other is equivalent to the shore line. The boundaries of counties bordering on the sea extend to the line of the state as above defined. The jurisdiction of counties separated by waters within the jurisdiction of the state is concurrent upon and over such waters.

Territorial limits of the commonwealth and counties. 1859, 289.

SECT. 2. The sovereignty and jurisdiction of the commonwealth extend to all places within the boundaries thereof; subject to the rights of concurrent jurisdiction granted over places ceded to the United States.

Jurisdiction of the commonwealth. R. S. 1, § 1.

SECT. 3. The several places ceded to the United States for forts, arsenals, dock-yards, light-houses, hospitals, or other purposes, and over which concurrent jurisdiction has been granted to the United States,

Places ceded to the United States and subject to concurrent

rent jurisdiction.  
R. S. 1, § 2.  
8 Mass. 72.  
17 Pick. 298.  
1 Met. 580.  
1790, 4.

shall continue to be subject to such concurrent jurisdiction, according to the tenor and effect of the respective laws by which they were ceded, that is to say:—

The several public light-houses with the lands and tenements thereunto belonging: the light-house on Light-House Island in the harbor of Boston; the two light-houses on Thacher's Island in the county of Essex; the two light-houses on the north end of Plumb Island in the county of Essex; the light-house on the Gurnet Head in the county of Plymouth; the light-house on Sandy Point in the county of Nantucket; also, the four buoys at the mouth of Merrimack River, namely— one on the Hum Sands, one on the Sunken Rocks, one on the Ganway Rock, and one on the Half-Tide Rocks; also the beacon on the spit of sand near the light-house in the harbor of Boston:

1795, 18.

The light-house situate near the entrance of the harbor of Nantucket:

1796, 25.

The several tracts of land for the light-houses authorized by congress to be erected upon Baker's Island and Cape Cod:

1798, 13.  
1807, 125.  
1846, 16.  
1798, 60.

Castle Island, Governor's Island, George's Island, and Lovel's Island, in the harbor of Boston; and a tract of land in Springfield:

A tract of land for a light-house at that part of Martha's Vineyard called Gay-Head:

1800, 7.  
1831, 45.

A tract of land for light-houses on Wigwam Point and Eastern Point in Gloucester:

1800, 17.

A tract of land for a light-house at the end of Clarke's Point in New Bedford:

1800, 26.  
1825, 8.  
1800, 70.  
1838, 138.  
1803, 65.

A tract of land for a navy-yard in Charlestown:

Tracts of land for light-houses at Cape Poge:

A tract of land on Martha's Vineyard and the building erected thereon as a hospital:

1806, 21, § 79.

A tract of land for light-houses at or near the entrance of Chatham harbor on Cape Cod:

1810, 54.

A tract of land for a light-house at the entrance of the harbor of Scituate:

1816, 1.

The rocks and flats under the piers in Merrimack River called the Half-Tide Rocks and North Rocks:

1816, 15.

A tract of land in Watertown for erecting forts, magazines, arsenals, dock-yards, and other needful buildings:

1816, 47.  
1817, 7.

Tracts of land for light-houses on Race Point in Provincetown, at or near Tarpaulin Cove on Nashaun Island, and on Point Gammon in Yarmouth:

1817, 2.

A tract of land for a light-house on the West Chop of Holmes' Hole on the island of Martha's Vineyard:

1819, 69.

Half-Way Rock in Boston Bay for a beacon; also Bird Island in Buzzard's Bay for a light-house; and a tract of land for a light-house on Long Island Head in Boston harbor:

1820, 3.  
1821, 35.

Ten Pound Island in the harbor of Gloucester for a light-house:

A part of Tinker's Island, Marblehead Rock, and the East Rock of Cat Island:

1822, 23.  
1823, 12.

A tract of land for a light-house on the Island of Kutta-Hunk:

A tract of land for a light-house on Monamoy Point in the county of Barnstable:

1825, 181.  
1827, 66.  
1848, 167.  
1826, 38.

Tracts of land in Chelsea for hospitals and a depot of ordnance stores:

Tracts of land for light-houses on Long Point in Provincetown; and on Sandy Neck in Barnstable:

1828, 63.

Dumpling Rock in Buzzard's Bay, and tracts of land on Nobsque Point in Falmouth and at the entrance of Edgartown Harbor; for light-houses:

1828, 30.

A tract of land near the mouth of the Merrimack River, in Newbury, for a pier or breakwater:



- A tract of land for a light-house on West Chop in Tisbury on Martha's Vineyard : 1830, 111.
- The place called Nix's Mate in the harbor of Boston for a beacon : 1832, 41.  
1834, 39.
- A tract of land, not exceeding four acres at the Neck in Marblehead ; 1835, 98.
- for a light-house :
- Straitsmouth Island in the harbor of Gloucester for a light-house : 1835, 151.
- Tracts of land for light-houses in Nantucket and at Nid's Point in Rochester : 1838, 138.
- Tracts of land for light-houses on Ipswich Beach in Ipswich, and near Nauset Beach in Eastham, and on Mayo's Beach in Wellfleet : 1838, 164.
- The place called Minot's Rock or Ledge in Massachusetts Bay for a light-house : 1847, 109.
- A tract of land not exceeding one-quarter of an acre, above high-water mark, near the Old Fort in Fairhaven, and one of the Elizabeth Islands called the Sow and Pigs lying off the south-west side of the Island of Kutta-Hunk : 1847, 235.
- A tract of land for a light-house, not exceeding two acres, on Palmer's Island in the harbor of New Bedford : and a tract of land for a light-house, not exceeding six acres, on Wing's Neck in Sandwich : 1849, 14.
- A tract of land for a light-house in Truro : 1849, 40.
- A tract of land on Great Brewster Island in the harbor of Boston : 1849, 45.
- A tract of land for a light-house at Hyannis in Barnstable ; 1849, 67.
- A tract of land for a light-house at Sancoty Head in Nantucket : 1849, 100.
- Three tracts of land, not exceeding one acre each, at the head of Holmes' Hole harbor in Tisbury, for light-houses. 1853, 72.
- A tract of land for a light-house at Bass River in the county of Barnstable : 1853, 288.
- Such tracts of land in Provincetown and Truro as may be used and improved for the preservation of Cape Cod harbor : 1853, 296, 396.
- Such tracts of land in Falmouth as may be necessary for the construction and maintenance of a sea wall in the harbor of Great Woods Hole : 1853, 306.
- Egg Rock Island near Nahant ; and a site for a light-house in Truro : 1855, 17.
- Sites for light-houses on or near the Point of Rocks in Westport ; and at the Spit in the harbor of Boston : 1855, 17.
- A site for a beacon on Point Alderton Bar in the harbor of Boston : 1855, 17.
- A tract of land in Gloucester for a custom-house : 1855, 21.
- A tract of land in Barnstable for a custom-house : 1855, 127.
- Egg Island Shoal in the harbor of New Bedford ; and such tracts of land on Clarke's Point in New Bedford as the United States deem needful for the purposes of military defence, and over the contiguous shores, flats, and waters, within four hundred yards from low-water mark : 1856, 100.  
1857, 119.
- A tract of land not exceeding six acres on Billingsgate Island for a light-house : *provided*, the United States make and file in the office of the secretary of the commonwealth a suitable plan of said land within one year from the purchase of the same : 1857, 116.  
1822, 1.
- Such tract of land as the United States shall purchase in Cohasset for a light-keeper's house, warehouse, and wharf, for the convenience of Minot's Ledge Light : 1858, 42.
- A tract of land, not exceeding three acres, for a light-house and keeper's house on Point of Rocks at the entrance of Westport harbor : 1858, 53.
- A lot of land in Boston with the buildings thereon, known as the "Masonic Temple," with land adjacent thereto not exceeding twenty-five thousand feet, for a court-house. 1858, 157.
- SECT. 4. Persons employed under an act of the congress of the United States passed the tenth day of February in the year eighteen hundred and seven, and the supplement thereto, may enter upon lands within this state for any purpose which may be necessary to effect the objects of said act, and may erect works, stations, buildings, or appendages, requisite for that purpose, doing no unnecessary injury. Officers of coast survey may enter upon lands, &c. 1845, 192, § 1. U. S. statutes, 1807, 8. 1818, 58. 1832, 191, § 2.

County commissioners to assess damages on petition of either party. 1845, 192, §§ 2, 3.

Commissioners to file report, &c. Appeal. Trial. 1845, 192, § 4. 1855, 449. 1859, 196.

Tender, and costs after refusal. 1845, 192, § 5.

Costs, how taxed. 1845, 192, § 6.

Penalty for injuring signals, &c. 1845, 192, § 7. 1852, 312.

SECT. 5. If the parties interested cannot agree upon the amount to be paid for damages caused thereby, either of them may petition the commissioners having jurisdiction in the county in which the land lies, who shall appoint a time for a hearing as soon as may be and order at least fourteen days' notice to all persons interested, and, with or without a view of the premises as they may determine, hear the parties and assess the damages.

SECT. 6. The commissioners shall file in the office of the clerk of the courts, or, in the county of Suffolk, in the office of the clerk of the superior court for civil business, a report of their doings, which shall be conclusive unless one of the parties within thirty days after the term of the superior court held next after the filing of the report files a petition for trial; in which case, after notice to the opposite party, a trial shall be had in said court in the manner in which other civil cases are tried.

SECT. 7. The person so entering upon land may tender to the party injured amends therefor, and if the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs; otherwise the prevailing party shall recover costs.

SECT. 8. Costs shall be taxed and allowed as if the proceedings were an appeal from the decision of the commissioners, in the same manner as they are taxed on appeals from judgments of justices of the peace.

SECT. 9. Whoever wilfully injures, defaces, or removes, any signal, monument, building, or appendage thereto, erected, used, or constructed, under said acts of congress, shall forfeit the sum of fifty dollars for each offence; and shall be liable for damages sustained by the United States, to be recovered in an action of tort.

## CHAPTER 2.

### OF THE LEGISLATURE.

#### ORGANIZATION OF THE HOUSE OF REPRESENTATIVES.

##### SECTION

1. Secretary to make and deliver to sergeant-at-arms lists of persons returned.
2. Who are to be admitted to take seats as members.
3. When, and by whom, house to be called to order; and who shall preside.
4. Persons having certificates, &c., but not on list to present credentials to presiding officer.
5. Clerk to act until successor is chosen.
6. Clerk may appoint a deputy and assistant.
7. Oath of clerk, deputy and assistant.

##### APPLICATIONS TO THE LEGISLATURE.

8. Notice on petitions affecting individuals or private corporations, how given.
9. on petitions affecting cities and towns.
10. in case of persons applying for act of incorporation, &c.
11. to specify amount of capital stock applied for.
12. Proof of publication of notices, how made.

#### COMPENSATION OF MEMBERS AND OFFICERS.

##### SECTION

13. Compensation of senators and representatives, when and how paid.
14. \$3 a day to be deducted from the pay of members absent without excuse.
15. Compensation of president and speaker.
16. Books, &c., not to be ordered for members at the charge of the commonwealth.
17. Salaries of clerks.
18. of chaplains and preacher of election sermon.
19. Compensation of door-keepers, messengers, and pages, when and how paid.

##### MISCELLANEOUS PROVISIONS.

20. Members of committees may administer oaths.
21. Journals of the two houses to be in the custody of the clerks.
22. Secretary to cause bills and resolves to be engrossed on parchment: acts and resolves to be bound, &c.
23. Members of legislature not eligible to certain offices.
24. General court to suspend business on certain days.

ORGANIZATION OF THE HOUSE OF REPRESENTATIVES.

SECTION 1. The secretary of the commonwealth shall receive and examine the certificates of the election of representatives to the general court returned into his office, and shall make a list of the persons therein named. On the Tuesday next preceding the first Wednesday of January annually he shall deliver to the sergeant-at-arms a list of the persons then returned, and upon receiving any further certificates before the house is called to order he shall immediately make and deliver to the sergeant-at-arms a like list. He shall also transmit the certificates, with a list of all persons returned, to the house of representatives as soon as the members are called to order.

Secretary to make and deliver to sergeant-at-arms, &c., lists of persons returned. 1844, 143, §§ 4, 6. See Ch. 8, § 19.

SECT. 2. The persons whose names are borne on the lists delivered to the sergeant-at-arms, shall be admitted by him to take seats as members in the representatives' chamber on said first Wednesday of January, or at any time afterwards.

Who may take seats as members. 1844, 143, § 5. See Ch. 8, § 19.

SECT. 3. On the first Wednesday of January in each year, between the hours of ten in the forenoon and twelve at noon, the persons so returned and admitted as members into the representatives' chamber shall be called to order by the eldest senior member present; and such member shall be the presiding officer of the house until a speaker is chosen, or the house otherwise direct.

When, and by whom, house to be called to order; and who shall preside. 1844, 143, § 7. See Ch. 8, § 19.

SECT. 4. Any person having a certificate or other documentary evidence of his election as a representative, whose name is not on said list, may after the house is called to order present the same to the presiding officer or speaker, if one is chosen, who shall communicate the same to the house for their order thereon; but such person shall not take a seat as a member until permitted so to do by the house.

Persons having certificates, &c., but not on list, to present credentials to presiding officer. 1844, 143, § 8. See Ch. 8, § 19.

SECT. 5. The clerk of the house for any year, shall act as clerk of the next succeeding house until a clerk thereof is chosen and sworn.

Clerk to act until successor is chosen. 1844, 143, § 9.

SECT. 6. The clerk or acting clerk may in writing appoint a deputy for three days only, in case of sickness, or necessary detention, or of leave of absence from the house. He may also appoint an assistant, if necessary, subject to the approval of the house.

Clerk may appoint a deputy and assistant. 1844, 143, § 10.

SECT. 7. The clerk, deputy-clerk, and assistant, shall take the oath of office prescribed by the constitution.

Oath of clerk, &c. Const. Ch. 6. Art. 1. 1844, 143, § 11.

APPLICATIONS TO THE LEGISLATURE.

SECT. 8. Whoever intends to present to the general court a petition affecting the rights and interests of individuals or private corporations, shall give notice thereof by publishing a copy of the petition four weeks successively in some newspaper published in the counties where such individuals reside or in which such corporations are established; the last of said publications to be at least fourteen days before such session of the general court. Such newspaper shall be designated by the petitioners and approved by the secretary of the commonwealth.

Notice on petitions affecting individuals or private corporations, how given. 1857, 261, § 1.

SECT. 9. Whoever intends to present a petition affecting the rights of a city or town, shall cause a copy to be served upon the city or town by a person not a party to or interested in said petition, and shall give notice thereof in the manner provided in the preceding section, the service of the copy to be at least fourteen days before the Tuesday next after the first Monday in the month of November preceding the session at which the petition is to be presented.

on petitions affecting cities and towns. 1857, 261, § 2.

SECT. 10. Persons intending to apply for an act of incorporation and corporations intending to apply for an alteration or extension of their charter, shall give notice of such intended application by an advertisement, at least four weeks immediately preceding the session at which the application is to be made, in some newspaper printed in the county

in case of persons applying for act of incorporation, &c. 1857, 261, § 3.



where such corporations are, or are intended to be, established; such newspaper shall be designated and approved as provided in section eight.

to specify amount of capital stock applied for.  
1857, 261, § 4.

SECT. 11. The notice of an application for an act of incorporation shall specify the amount of capital stock required; and if the notice is for an alteration or extension of any charter already granted, it shall specifically state the same.

Proof of publication of notices, how made.  
1857, 261, § 5.

SECT. 12. Proof of the publication and service of the notice required in the preceding sections may be made by the affidavit of the printer or publisher of the newspaper in which such publication is made and of the person making such service respectively; which affidavits and the petitions to which they relate shall be presented to the general court within the first ten days of the session.

#### COMPENSATION OF MEMBERS AND OFFICERS.

Compensation of senators and representatives.

when and how paid.  
1858, 2, § 1,  
1861, Ch. 160.

SECT. 13. Each member of the senate and house of representatives shall receive three hundred dollars for the regular annual session for which he is elected, and one dollar for every five miles travel once in each session from his place of abode to the place of the sitting of the general court, to be paid as follows: on the first day of the session, he shall receive his mileage, on the first day of each month thereafter he shall receive two dollars a day until the sum of three hundred dollars shall have been paid him, and on the last day of the session he shall receive the balance due him.

\$3 a day to be deducted from the pay of members absent without excuse.  
1858, 2, § 2.

SECT. 14. The treasurer or other officer charged with the payment of the members shall deduct from the compensation of each member three dollars for each day that he has been absent, unless his absence shall have been excused by the house of which he is a member; and the respective clerks of the senate and house upon the written statement of members shall certify to the treasurer or such other officer the number of days of each member's attendance, which statements shall be preserved in the office of the treasurer.

Compensation of president and speaker.  
1858, 2, § 3.

SECT. 15. The president of the senate and speaker of the house shall receive double the compensation provided for senators and representatives, to be paid in the same manner.

Books, &c., not to be ordered, &c.  
1858, 2, § 4.

SECT. 16. No periodicals, publications, or books, other than those printed for the use of the legislature, shall be ordered for members at the charge of the commonwealth.

Salaries of clerks.  
1858, 2, § 5.

SECT. 17. The clerks of the senate and house shall each receive an annual salary of two thousand dollars, to be paid quarterly, in full for all the duties required of and performed by said clerks and their assistants, including the preparation of an index and duplicate copy of the journals.

of chaplains and preacher of election sermon.  
1858, 2, § 6.  
Resolves 1859, 50.

SECT. 18. The chaplains of the senate and house shall each receive an annual salary of two hundred dollars, to be paid in monthly payments on the first day of each month during the session, at the rate of two dollars a day, and any remaining balance on the last day of the session. The preacher of the election sermon shall receive one hundred dollars.

Compensation of door-keepers, messengers, and pages, when and how paid.  
1858, 2, § 7.

SECT. 19. Each door-keeper and messenger of the senate and house shall receive the sum of three hundred dollars, and each page of the senate and house the sum of two hundred dollars, in full for all services required of them at the regular annual session of the legislature. Such sums shall be paid monthly, at the rate of two dollars a day for each door-keeper or messenger and one dollar and fifty cents a day for each page until said sums of three hundred dollars and two hundred dollars, have been paid; and on the last day of the session he shall receive the balance due him.



MISCELLANEOUS PROVISIONS.

SECT. 20. Senators and representatives acting as members of a committee of the legislature may administer oaths to persons examined before the committee.

Members of committees may administer oaths.  
R. S. 2, § 10.  
Journals of the two houses to be in the custody of the clerks.  
1844, 153.

SECT. 21. The journals, files, papers, and documents, appertaining to the senate and house of representatives and their proceedings, shall be in the custody of their respective clerks; and copies certified by them shall be evidence in like manner as the originals.

SECT. 22. All bills and resolves passed to be engrossed shall, under the direction of the secretary of the commonwealth, be fairly engrossed on parchment in a plain and legible hand-writing without interlineation, and with a margin of not less than one and a half inches wide on each side; each sheet on which bills are engrossed to be twenty-two inches long and sixteen inches wide; and each sheet on which resolves are engrossed to be sixteen inches long and eleven inches wide. After every session of the general court the secretary shall cause the acts and resolves of the session to be neatly and strongly bound, in separate volumes of convenient size, lettered on the back, with a designation of the contents and legislative year.

Secretary to cause bills and resolves to be engrossed on parchment; — acts and resolves to be bound, &c.  
R. S. 13, § 6.  
1836, 24.

SECT. 23. No senator or representative shall, during the term for which he is elected, be eligible to any office under the authority of this commonwealth, created during such term, except an office to be filled by vote of the people.

Members of legislature not eligible to certain offices.  
1837, 191.

SECT. 24. The general court shall hold no session for the transaction of ordinary business on Thanksgiving, Fast, or Christmas days, the twenty-second day of February, the fourth day of July, nor on the following day when either of the two days last mentioned occurs on Sunday, and the public offices shall be closed on said days.

General court to suspend business on certain days.  
1856, 113, § 1.

CHAPTER 3.

OF THE STATUTES.

PROMULGATION OF THE LAWS.

SECTION

1. Laws, how promulgated.
2. how distributed.
3. Secretary to publish, apportion, and distribute, copies of the general laws and resolves in a pamphlet form.
4. Publication of laws, &c., in newspapers.
5. Acts of incorporation deemed public acts.
6. Statutes, when to take effect.

CONSTRUCTION OF STATUTES.

7. Rules for construing statutes: —
  - 1st, Words and phrases to be construed according to usage, unless technical, &c.
  - 2d, Singular and plural number, masculine gender, &c.
  - 3d, Joint authority to be exercised by majorities.

- 4th, "Annual meeting."
- 5th, "Grantor" and "grantee."
- 6th, "Highway."
- 7th, "Inhabitant."
- 8th, "Insane person," "lunatic," and "spendthrift."
- 9th, "Issue."
- 10th, "Land," "lands," and "real estate."
- 11th, "Month" and "year."
- 12th, "Oath" and "sworn."
- 13th, "Person."
- 14th, "Preceding" and "following."
- 15th, "Seal."
- 16th, "State" and "United States."
- 17th, "Town."
- 18th, "Place."
- 19th, "Will."
- 20th, "Written" and "in writing."
- 21st, "By-law" and "ordinance."
- 22d. "Sworn," as applied to public officers.

PROMULGATION OF THE LAWS.

SECTION 1. The secretary of the commonwealth at the close of each session of the general court shall collate and cause to be printed in one

Laws, how promulgated.  
Const. ch. 6, art. 11.

R. S. 2, § 1.  
1851, 256, § 4.  
Resolves  
1812, 76.  
1839, 83.

Laws, how  
distributed.  
R. S. 2, § 2.

volume, in style and arrangement as heretofore, all the acts and resolves passed during such session, with the governor's address and messages, the constitution of the commonwealth, a list of names changed and returned during the preceding year by the probate courts, and a list of the officers of the civil government, with an index.

SECT. 2. The secretary shall deposit in his office one copy of the volumes so published; and immediately after their publication, distribute copies as follows:

To the clerk of the senate, for the use of the senate, twelve copies:

To the clerk of the house of representatives, for the use of the house, twenty-four copies:

To the librarian of the state library, for the use of the library, five copies:

To the following officers and persons, one copy each:

The governor; the lieutenant-governor; each member of the council, senate, and house of representatives; the attorney-general; the auditor of accounts; the treasurer and receiver-general; the adjutant-general; the masters in chancery; the judges, clerks, and registers, of the judicial courts; the district-attorneys; the county commissioners; the sheriffs and keepers of jails; the registers of deeds; the keepers of the houses of correction; the warden of the state prison; the county treasurers; the several clerks of cities and towns, for the use of such places; Harvard University, for the law library; Harvard University; Williams College; Amherst College; Tufts College; Historic-Genealogical Society; trustees of the Museum of Comparative Zoölogy; the American Academy of Arts and Sciences; the Massachusetts Historical Society; the Boston Athenæum; the American Antiquarian Society, in Worcester; the Pilgrim Society, in Plymouth; the Old Colony Historical Society, in Taunton; the Law Library Societies in each county; the judges of the supreme court of the United States; the judge of the district court of the United States for the district of Massachusetts; the clerk of the courts of the United States for the district of Massachusetts:

The secretary of state of the United States, four copies:

The secretary of each state of the Union, for the use of the state, three copies:

To the library of congress, three copies.

Secretary to  
publish and dis-  
tribute general  
laws, &c.  
Resolves of  
1847, 88.  
1850, 89.

SECT. 3. The secretary shall immediately after the close of each session cause to be published in a pamphlet form such number of copies of the general laws and resolves as will supply each family in the commonwealth with one copy, or one copy to each eight inhabitants, and the secretary shall cause the same to be apportioned according to the census and sent to the clerks of the several cities and towns for distribution.

Publication of  
laws, &c., in  
newspapers.  
Resolves of  
1857, 24.

SECT. 4. The secretary shall publish the general laws and other official information intended for the public in such newspaper in the commonwealth as he may select, but the annual expense thereof shall not exceed three hundred dollars.

Acts of incorpo-  
ration deemed  
public acts.  
R. S. 2, § 3.  
4 Met. 215.  
Statutes when  
to take effect.  
R. S. 2, §§ 4, 5.  
10 Mass. 290.  
3 Gray, 606.  
6 Gray, 316.

SECT. 5. All acts of incorporation shall be deemed public acts, and, as such, may be declared on and given in evidence.

SECT. 6. Every statute shall take effect at the same time throughout the state, and, if it does not expressly prescribe the time when it shall go into operation, shall take effect on the thirtieth day next after the day on which it is approved by the governor, or otherwise passed and approved conformably to the provisions of the constitution.

#### CONSTRUCTION OF STATUTES.

Rules for con-  
struing stat-  
utes.  
R. S. 2, § 6.

SECT. 7. In the construction of statutes the following rules shall be observed, unless such construction would be inconsistent with the mani-

fest intent of the legislature or repugnant to the context of the same statute, that is to say:

First. Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

Words and phrases to be construed according to usage, unless technical, &c.

Second. Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular, and words importing the masculine gender may be applied to females.

Singular and plural number, masculine gender, &c.

Third. Words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or persons.

Joint authority, how exercised.  
6 Met. 343.  
5 Cush. 272.  
7 Gray, 131  
"Annual meeting."  
1837, 52.

Fourth. The words "annual meeting," when applied to towns, shall mean the annual meeting required by law to be held in the months of February, March, or April.

Fifth. The word "grantor" may include every person from or by whom a freehold estate or interest passes in or by any deed; and the word "grantee" may include every person to whom such estate or interest passes in like manner.

"Grantor" and "grantee."  
R. S. 60, § 32.

Sixth. The word "highway" may include county bridges; and shall be equivalent to the words "county way," "county road," and "common road."

"Highway."

Seventh. The word "inhabitant" may be construed to mean a resident in any city or town.

"Inhabitant."

Eighth. The words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, insane, and distracted person; and the word "spendthrift" shall include every one who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery.

"Insane person," "lunatic," and "spendthrift."  
R. S. 79, § 34.

Ninth. The word "issue," as applied to the descent of estates, shall include all the lawful lineal descendants of the ancestor.

"Issue."  
R. S. 61, § 13.

Tenth. The words "land" or "lands" and the words "real estate" shall include lands; tenements, hereditaments, and all rights thereto and interests therein.

"Land," "lands," and "real estate."  
R. S. 60, § 32.

Eleventh. The word "month" shall mean a calendar month; and the word "year" a calendar year, unless otherwise expressed; and the word "year" alone shall be equivalent to the expression "year of our Lord."

"Month" and "year."

Twelfth. The word "oath" shall include "affirmations" in cases where by law an affirmation may be substituted for an oath, and in like cases the word "sworn" shall include the word "affirm."

"Oath" and "sworn."

Thirteenth. The word "person" may extend and be applied to bodies politic and corporate.

"Person."  
3 Cush. 45.  
4 Cush. 589.

Fourteenth. The words "preceding" and "following," when used by way of reference to any section of these statutes, shall mean the section next preceding or next following; unless some other section is expressly designated in such reference.

"Preceding" and "following."

Fifteenth. When the seal of a court, public office, or corporation, is required by law to be affixed to any paper, the word "seal" shall include an impression of the official seal made upon the paper alone as well as an impression made by means of a wafer or of wax affixed thereto.

"Seal."  
1855, 223.

Sixteenth. The word "state," when applied to the different parts of the United States, shall extend to and include the district of Columbia and the several territories so called; and the words "United States" shall be construed to include said district and territories.

"State" and "United States."

Seventeenth. The word "town" may be construed to include cities and districts, unless such construction would be repugnant to the provision of any statute specially relating to such cities or districts.

"Town."



- "Place." Eighteenth. The word "place" may mean city and town unless some other meaning is implied by the context.
- "Will." Nineteenth. The term "will" shall include codicils.
- "Written" and "in writing." Twentieth. The words "written" and "in writing," may include printing, engraving, lithographing, and any other mode of representing words and letters; but when the written signature of a person is required by law, it shall always be the proper hand-writing of such person or, in case he is unable to write, his proper mark.
- "By-law" and "ordinance." Twenty-first. The word "ordinance," as applied to cities, is synonymous with the word "by-law."
- "Sworn," as applied to public officers. Const., ch. 6, art. 1. Amend. const. art. 6. Twenty-second. The word "sworn" when applied to public officers who are required by the constitution to take the oaths therein prescribed, shall be construed as referring to those oaths; and when applied to other officers it shall be construed to mean sworn to the faithful discharge of the duties of their offices, before a justice of the peace, unless other provision is specially made.

## CHAPTER 4.

### OF PUBLIC REPORTS AND DOCUMENTS.

**SECTION**

1. Annual reports of public officers, &c., when made.
2. Certain reports to be laid before legislature in printed form, &c.
3. Special reports.
4. Number to be printed.
5. Distribution of reports.
6. Railroad reports to be furnished members

**SECTION**

- of the legislature and railroad corporations.
7. "Public series" to be furnished under certain acts, &c.
8. to be furnished to towns.
9. Penalty for neglect under this chapter.
10. Treasurer, auditor, &c., may require their reports to be put in type.

Annual reports of public officers, &c., when made.  
1857, 40, §§ 1, 3, 4, 5, 8.  
1858, 46, §§ 1, 2.

**SECTION 1.** The annual reports of public officers, boards, and institutions, which are required by law or custom to be made to the governor and council, the legislature, the secretary of the commonwealth, or to the governor to be by him transmitted to the legislature, (except the address of the governor, the annual reports of the treasurer, auditor, attorney-general, adjutant-general, board of education, board of agriculture, board of insurance commissioners, railroad corporations, the annual statement of the expenses of the offices of the secretary, treasurer, auditor, and adjutant-general, and the returns relating to births, marriages, and deaths,) shall include the year ending on the thirtieth day of September, and shall be submitted to the secretary of the commonwealth on or before the fifteenth day of October annually; and all commissions shall make reports at the same time and in the same manner.

Certain reports to be laid before legislature in printed form, &c.  
1857, 40, §§ 1, 2, 5.  
1858, 46, §§ 3, 8.

**SECT. 2.** The secretary shall cause such reports and the reports of the auditor of accounts, the boards of education and agriculture, and other reports which the senate and house by concurrent order direct, and the annual abstracts prepared in the secretary's office, to be laid before the legislature in a printed form on the first Wednesday of January annually; but he shall with the advice and consent of the governor and council omit all unnecessary and improper portions of such reports, so as to reduce the printed report to a reasonable length and proper form. Such documents shall be styled the "public" series of documents, and be numbered separately from the "senate" and "house" series.

Special reports.  
1857, 40, § 11.

**SECT. 3.** Public officers and boards and managers of public institutions shall in addition to their annual reports make special reports when the public interest requires.

SECT. 4. There shall be printed eight thousand copies of the report of the board of education, ten thousand copies of the report of the board of agriculture, and two thousand copies of each of the other documents of such public series. If the public interest requires a larger number of any document, the secretary may by special order direct additional copies to the number of one thousand; and he shall include in the annual statement of the expenses of his office a list of the documents thus ordered.

Number to be printed.  
1858, 46, §§ 4, 6.  
1859, 22.

SECT. 5. Twelve hundred copies of the reports of the boards of education and agriculture shall be delivered to the secretary of the commonwealth, and the remainder distributed as said boards respectively shall direct; and not more than three hundred copies of a public document shall be placed by the secretary at the disposal of the officer, board, or institution, whose report it is.

Distribution of reports.  
1858, 46, §§ 4, 5, 6.

SECT. 6. The annual reports of railroad corporations shall be filed in separate complete sets, and a complete set, thus filed, shall be furnished to each member of the legislature within ten days after the beginning of the session; and one copy of each of said reports shall be furnished by the secretary of the commonwealth to every railroad corporation established in this state.

Railroad reports, to whom furnished.  
1858, 7.  
1858, 46, § 8.

SECT. 7. Documents to be furnished to any person, library, association, or corporation, under any act or resolve passed previous to the second day of May one thousand eight hundred and fifty-seven, shall include only the "public series." All other documents printed by order of either or both branches of the legislature shall be distributed as prescribed by their rules and orders.

"Public series" to be furnished under certain acts, &c.  
1858, 46, § 7.

SECT. 8. The secretary shall furnish annually a complete set of the public series in a bound volume to each city and town in the commonwealth, to be preserved in some public place therein, which volume shall have a title page bearing the date of the year, and a brief index to the titles of the several documents.

to be furnished to towns.  
1857, 40, § 9.  
1858, 46, § 10.

SECT. 9. Whoever wilfully neglects any duty required by this chapter shall forfeit ten dollars for each day such neglect continues.

Penalty for neglect.  
1858, 46, § 9.  
Treasurer, auditor, &c., may require their reports to be put in type.  
1857, 40, § 4.

SECT. 10. The treasurer, auditor, attorney-general, adjutant-general, board of education, and board of agriculture, may require any portion of their reports to be put in type previous to the first Wednesday in January annually, when the same can be done consistently with the public advantage. The governor may also require his annual address so to be put in type.

## CHAPTER 5.

### OF THE STATE LIBRARY AND OTHER PUBLIC PROPERTY.

SECTION	STATE LIBRARY.	SECTION	OTHER PUBLIC PROPERTY.
1.	State library to be in the state house—when to be open.	10.	Charge of certain property of the commonwealth.
2.	Three trustees to be appointed by governor and council.	11.	Trustees, &c., of certain institutions to make inventories of stock, &c., annually.
3.	Duties of trustees.	12.	Custody of magazines, &c. Entrenching tools, &c., to be marked.
4.	Librarian and assistant.	13.	Penalty for purchasing, &c., tools, &c., branded.
5.	Trustees and librarian may employ assistance.	14.	for defacing, &c., buildings, &c., belonging to state.
6.	Books, &c., belonging to state to be placed in library.		
7.	Annual appropriation for the library.		
8.	Librarian to make report to legislature, annually.		
9.	Committee to report necessary repairs, &c., upon state house.		
			CONVEYANCES OF PUBLIC LANDS.
		15.	Conveyances to be approved by governor and council.

## STATE LIBRARY.

State library to be in state house — when open.  
R. S. 11, § 9.  
1849, 155, § 2.

SECTION 1. There shall be in the state house a state library for the use of the governor, lieutenant-governor, council, senate, house of representatives, and such officers of the government, and other persons, as may be permitted to use the same, to be kept open every day except Sundays and public holidays.

Three trustees appointed by governor, &c.  
1850, 182, § 1.

SECT. 2. The library shall be under the management and control of three trustees appointed by the governor by and with the advice and consent of the council, who shall hold their offices for three years unless sooner removed. The trustees now in office shall hold their offices according to the tenor of their commissions unless sooner removed.

Duties of trustees.  
R. S. 11, § 11.  
1850, 182, §§ 1, 2.  
1850, 315.

SECT. 3. The trustees shall superintend the library, sell or otherwise dispose of such books belonging thereto as they deem unsuitable for its purposes, see that its apartments are properly prepared for the accommodation of persons permitted to use the same; and make and enforce such rules for its regulation as they think proper.

Librarian and assistant.  
1849, 155, § 1.  
1859, 64.

SECT. 4. The secretary of the board of education shall be librarian. He may appoint an assistant, who as assistant librarian and clerk of the board of education shall receive an annual salary of fifteen hundred dollars payable quarterly out of the treasury of the commonwealth.

Trustees and librarian may employ assistance.  
Resolves,  
1857, 49, § 2.

SECT. 5. The trustees and librarian, at an expense not exceeding five hundred dollars, may employ such assistance as is necessary for the accommodation of visitors, for the protection and care of the library, and for the performance of any labor the librarian may require.

Books, &c., belonging to state to be placed in library.  
R. S. 11, § 10.  
1849, 155, § 2.

SECT. 6. All books, laws, maps, documents, and other publications belonging to the state and for public use, except such as by order of the respective departments of the government are now retained in the senate chamber, in the hall of the house of representatives, and in the department of the secretary of the commonwealth, shall be deposited and suitably arranged in the library, and shall be under the care of the librarian.

Annual appropriation for library.  
R. S. 11, § 12.  
1850, 182, § 1.  
Resolves,  
1857, 49, § 1.  
1858, 2.

SECT. 7. Twenty-three hundred dollars shall be annually appropriated for the library, and expended under the direction of the trustees and librarian in purchasing or otherwise procuring such books, maps, charts, and works, as they deem most useful, in binding and keeping in good condition the works therein, and in purchasing furniture and other necessary conveniences therefor.

Librarian to report to legislature.  
1849, 155, § 3.  
See Ch. 4.

SECT. 8. The librarian shall annually report to the legislature the receipts and expenditures on account of the library, with a list of books, maps, and charts, lost, missing, or acquired, since the last report, specifying those obtained by exchange, donation, or purchase; and shall in his report make suggestions for the improvement of the library.

## OTHER PUBLIC PROPERTY.

Committee on state house, &c.  
1857, 65, § 1.

SECT. 9. There shall be annually appointed by the senate and house of representatives, a joint standing committee on the state house, consisting of two members of the senate and five of the house, who shall report to the legislature what repairs and improvements are necessary to be made in and upon the state house and the grounds connected therewith, together with an estimate of the expenses.

Charge of state property.  
R. S. 11, §§ 1-3.  
1839, 72.  
1852, 275.  
1853, 318.  
1855, 442.  
1856, 247.  
Resolves  
1838, 70.

SECT. 10. The state house and lands appurtenant in Boston, the state arsenal at Cambridge, the state prison at Charlestown, the state lunatic hospitals at Worcester, Taunton, and Northampton, the hospital at Rainsford Island, the state reform school at Westborough, the industrial school for girls at Lancaster, the state almshouses at Monson, Tewksbury, and Bridgewater, the state normal schools at Framingham, Westfield, Bridgewater, and Salem, and other property of the common-



wealth, shall continue in charge of the persons designated by the several laws in relation thereto.

1853, 49.  
1854, 52.

SECT. 11. The trustees or inspectors of each state lunatic hospital, state almshouse, the hospital at Rainsford Island, reform school for boys, and industrial school for girls, shall annually on the thirtieth day of September, cause to be made an accurate inventory of the stock and supplies on hand, and the value and amount thereof, at such institution, under the following heads:

Trustees, &c., of certain institutions to make inventories &c. 1859, 177, § 2. See Ch. 71, §§ 29, 54. Ch. 73, § 6. Ch. 75, § 25. Ch. 76, § 7.

Live stock on the farm; produce of the farm on hand; carriages and agricultural implements; machinery and mechanical fixtures; beds and bedding in the inmates' department; other furniture in the inmates' department; personal property of the state in the superintendent's department; ready-made clothing; dry goods; provisions and groceries; drugs and medicines; fuel; library.

SECT. 12. Public magazines, munitions of war, entrenching tools, and all other implements of war belonging to the commonwealth, shall, when not in actual use, be in the custody of the adjutant-general; he shall at the public expense also provide suitable places for their safe keeping, and shall have the care and management of all lands held by the commonwealth for military uses. Such tools and implements shall be designated as the property of the commonwealth by suitable permanent brands or marks on each of them.

Custody of magazines, &c. Tools, &c., to be marked. R. S. 11, §§ 6, 7.

SECT. 13. Whoever purchases, retains, or has in his possession, any tool or implement so marked or branded, and not delivered to him by a person thereto authorized, shall be punished by fine not exceeding ten times the value of such tool or implement.

Penalty for purchasing, &c., tools, &c., branded. R. S. 11, § 7.

SECT. 14. Whoever wilfully defaces, mars, or injures, the walls, wainscoting, or any other part, of the state house, or other building, or the appurtenances thereof, belonging to the commonwealth, by cutting, writing, or in any other manner, shall for each offence forfeit a sum not less than five dollars.

for defacing, &c., buildings, &c., of the state. R. S. 11, § 8. See Ch. 14, § 53.

CONVEYANCES OF PUBLIC LANDS.

SECT. 15. All conveyances of land or flats of the commonwealth shall be subject to the approval of the governor and council.

Conveyances, how approved. 1859, 223.

TITLE II.

OF ELECTIONS.

CHAPTER 6.—Of the Qualifications of Electors.

CHAPTER 7.—Of the manner of conducting Elections and returning Votes.

CHAPTER 8.—Of the Election of Governor and other State Officers.

CHAPTER 9.—Of the Election of Representatives in Congress and Electors of President and Vice President.

CHAPTER 10.—Of the Election of District and County Officers.

## CHAPTER 6.

## OF THE QUALIFICATIONS OF ELECTORS.

## SECTION

1. Qualifications of voters at town, county, and other elections.
2. Collectors of taxes to keep a list of persons who have paid their taxes, and upon request to give receipts.
3. Collectors to return lists to selectmen twice a year.
4. Penalty for neglect, and for a false return.
5. Mayor and aldermen and selectmen to make and post up lists of voters.
6. to be in session for receiving evidence of qualifications, and to give notice thereof.

## SECTION

7. Sessions of mayor and aldermen and selectmen in places where voters exceed one thousand.
8. Provisions as to correcting lists of voters.
9. Naturalization papers to be produced for inspection.
10. Penalty for giving false answers.
11. Mayor and aldermen and selectmen, when not answerable for omissions.
12. Penalty for wilful neglect by city or town officers.

Qualifications of voters at town, county, and other elections.

Amend. const. art. 3, 20, 23.  
R. S. 3, § 1.  
11 Pick. 538.  
5 Met. 162, 298, 591.  
7 Gray, 299.  
1801. Ch. 145

Collectors of taxes to keep list of persons who have paid taxes, and to give receipt.  
R. S. 3, § 2.

Collectors to return lists to selectmen twice a year.  
Amend. const. art. 15.  
R. S. 3, § 3.  
City charters. 4 Pick. 118.  
7 Pick. 286.

Penalty for neglect and for false return.  
R. S. 3, § 4.

Mayor and aldermen and selectmen to make and post up lists of voters.  
Amend. const. art. 15.  
R. S. 3, § 5.

to be in session for receiving evidence of qualifications, and to give notice thereof.  
R. S. 3, § 6.  
10 Cush. 143.

SECTION 1. Every male citizen of twenty-one years of age and upwards, (except paupers, persons under guardianship, and persons excluded by articles twenty and twenty-three of the amendments to the constitution,) who has resided within the state one year, and within the city or town in which he claims a right to vote six months next preceding any election of city, town, county, or state officers, or of representatives to congress, or electors of president and vice-president, and who has paid, by himself, his parent, master, or guardian, a state or county tax assessed upon him in this state within two years next preceding such election, and every citizen exempted from taxation but otherwise qualified, shall have a right to vote in all such elections; and no other person shall have such right to vote.

SECT. 2. The collectors of state and county taxes in each city and town shall keep an accurate account of the names of all persons from whom they receive payment of any state or county tax, and of the time of such payment; and upon request shall deliver to the person paying the same a receipt specifying his name and time of payment; and such receipt shall be admitted as presumptive evidence thereof.

SECT. 3. The collectors, whether the time for which they were chosen has expired or not, shall twice in each year, namely, once not more than twenty nor less than fifteen days before the annual city or town elections, and once not more than twenty nor less than fifteen days before the Tuesday next after the first Monday in November, return to the mayor and aldermen and selectmen of their respective cities and towns, an accurate list of all persons from whom they have received payment of any state or county tax subsequently to the time appointed for making their last preceding return.

SECT. 4. Every collector neglecting to make such return shall forfeit one hundred dollars for each neglect; and twenty dollars for every name in respect to which he makes a false return.

SECT. 5. The mayor and aldermen and selectmen of cities and towns shall, at least ten days before the annual city and town elections and at least ten days before the Tuesday next after the first Monday in November annually, make correct alphabetical lists of all the persons qualified to vote for the several officers to be elected at those periods, and shall at least ten days before said elections cause such lists to be posted up in two or more public places in their respective cities and towns.

SECT. 6. The mayor and aldermen and selectmen shall be in session at some convenient place for a reasonable time, within forty-eight hours next preceding all meetings for the elections of the officers aforesaid, for the purpose of receiving evidence of the qualifications of persons claiming a right to vote in such elections, and of correcting the lists of voters. Such session shall be holden for one hour at least before the

opening of the meeting on the day of the election, and notice of the time and place of holding the sessions shall be given by the mayor and aldermen and selectmen upon the lists posted up as aforesaid.

SECT. 7. In every place where the number of qualified voters exceeds one thousand, a like session of the mayor and aldermen or selectmen shall be holden on the day immediately preceding the meeting, and for as much longer time previous to said day as they judge necessary for the purpose aforesaid. When the day immediately preceding such meeting is Sunday, such session shall be holden on the Saturday preceding.

SECT. 8. The selectmen shall also enter on such lists the name of any person known to them to be qualified to vote, and shall erase therefrom the name of any person known to them not to be qualified.

SECT. 9. The mayor and aldermen and selectmen before entering upon the lists the name of a naturalized citizen, shall require him to produce for their inspection his papers of naturalization and be satisfied that he has been legally naturalized; but they need not require the production of such papers after they have once examined and passed upon them.

SECT. 10. Whoever gives a false name or a false answer to the mayor and aldermen or selectmen when in session for the purposes aforesaid, shall forfeit the sum of thirty dollars for each offence.

SECT. 11. The mayor and aldermen and selectmen, if they have duly entered on said lists the names of all persons returned to them by the collectors, shall not be answerable for any omissions therefrom.

SECT. 12. A city or town officer who wilfully neglects or refuses to perform any duty required of him by the provisions of this chapter, shall for each offence forfeit a sum not exceeding two hundred dollars.

Sessions in places where voters exceed one thousand. R. S. 3, § 7.

Correcting lists of voters. 1839, 42, § 4. 1839, 165, § 3.

Naturalization papers to be produced &c. Amend. const., art. 23. 1855, 416.

Penalty for giving false answers. R. S. 3, § 8.

Selectmen, &c., when not answerable. R. S. 3, § 9.

Penalty for neglect, &c., by town officers. R. S. 4, § 11. 1839, 42, § 6. 7 Greenl. 411. 1 East 563. 11 Johns. 114. 1 N. H. 88. 11 S. & R. 35. 11 Mass. 350.

## CHAPTER 7.

### OF THE MANNER OF CONDUCTING ELECTIONS AND RETURNING VOTES.

#### SECTION

1. Elections not to be held on days designated by law for military duty.
2. Meetings, when to be opened. Selectmen, &c., to decide whether officers shall be voted for on one or on separate ballots.
3. Meetings, how called, time to be kept open.
4. Secretary of commonwealth to provide envelopes.
5. City and town clerks to procure envelopes from secretary.
6. Selectmen and ward officers to provide envelopes at polls on the day of election.
7. Persons fraudulently obtaining envelopes liable to a fine.
8. Selectmen to preside at elections.
9. Presiding officers at elections to have a list of voters and check names.
10. Selectmen when not answerable for refusing to receive votes.
11. Moderator shall receive votes of all persons on lists, and may refuse all others.
12. Manner of depositing votes, &c.
13. Votes when to be rejected, &c.
14. Results of elections, how determined. No choice in certain cases.
15. Selectmen and ward officers to count votes.
16. Mayor and aldermen and clerk to examine returns, and if faulty require new returns. Other regulations.
17. City and town clerks to make returns of votes to secretary, &c.

#### SECTION

18. Returns by mail.
19. When return is unsealed, secretary to give notice to returning officers, who shall transmit a sealed copy.
20. Secretary to furnish blanks, &c., to cities and towns.
21. to record date of receiving returns, &c.
22. Votes for governor, &c., by whom examined.
23. Governor to certify examination of returns for governor, &c.
24. Envelopes and returns to be preserved, and with certificate, &c., laid before legislature.
25. Votes for county commissioners, by whom examined. Penalty for neglect.
26. Board to file copies in clerk's office. Penalty for neglect.
27. Votes for county treasurer and register of deeds, by whom examined.
28. Penalty for voting if not qualified.
29. for giving more than one ballot.
30. for giving false answers.
31. for attempting to influence voters by bribery or threats.
32. for aiding unqualified persons to vote.
33. for disorderly conduct at elections.
34. on town or city officers for neglect of duty.
35. on clerks neglecting to return votes.
36. Elections in cities.



Elections not to be held on days designated for military duty. R. S. 4, § 1.  
Meetings, when to be opened. Officers to be voted for on one or on separate ballots. 1841, 70.

Meetings, how called, time to be kept open. R. S. 15, § 19.  
City charters. 1839, 42, § 2.  
1839, 165, § 3.  
1857, 311.  
See Ch. 9, § 10.  
1860 Ch. 138.

Secretary of commonwealth to provide envelopes, 1851, 226, § 2.  
1853, 36, § 2.

Clerks to procure envelopes from secretary. 1851, 226, § 3.  
1853, 36, § 2.

Selectmen &c. to provide envelopes at polls. 1851, 226, § 3.  
1853, 36, § 2.  
1856, 173, § 10.

Fraudulently obtaining envelopes. 1851, 226, § 7.

Selectmen to preside. Const., 1, § 2, art. 2; 2, § 1, art. 3; 2, § 2, art. 1.  
Amend. const. art. 16, 17. R. S. 5, § 6.—6, § 16.—15, § 26.  
1857, 171, 211.  
Presiding officers to have list &c. R. S. 4, § 3.  
1839, 42, § 5.  
12 Pick. 485.  
Selectmen when not answerable for refusing votes. R. S. 3, § 9.  
5 Met. 298.  
Votes, what shall be received. R. S. 3, § 10.

how deposited.

SECTION 1. No meeting for the election of national, state, district, county, city, or town officers shall be held on a day upon which the militia of the commonwealth are by law required to do military duty.

SECT. 2. Meetings for the election of national, state, district, and county officers may be opened as early as nine o'clock in the forenoon, and shall be opened as early as two o'clock in the afternoon of the election day; and the mayor and aldermen and selectmen shall decide whether such officers shall be voted for on one ballot or at the same time on separate ballots, and shall give notice thereof in the warrant calling the meeting.

SECT. 3. Such meetings in towns shall be called by the selectmen in the manner ordered by the towns, and in cities according to the provisions of the acts establishing them and the acts in addition thereto; and the warrant for notifying such meetings shall specify the time when the polls for the choice of the several officers shall be opened, and the same shall be kept open at least two hours, and in towns for such longer time as a majority of the voters present shall by vote direct; but in no case shall the polls be kept open after the hour of sunset.

SECT. 4. The secretary of the commonwealth shall provide and keep constantly in his office a sufficient number of self-sealing envelopes to supply all the voters in the commonwealth, and shall furnish the same to the clerks of the several cities and towns when applied for. Such envelopes shall be of uniform size and color and bear the arms of the commonwealth, and no other envelopes shall be used at the polls.

SECT. 5. The city and town clerks shall obtain from the secretary such number of envelopes as may be sufficient to meet the wants of the voters of their respective cities and towns, and keep the same subject to the order of the selectmen of towns, or the wardens and inspectors of cities.

SECT. 6. The ward officers in each city and the selectmen of each town shall obtain from the city or town clerks and provide at the polls on the day of election a sufficient number of such envelopes, and supply each person claiming to be a voter in said city or town, on his personal application, with such number as the pending election may require, and return to the clerk all envelopes not used.

SECT. 7. Whoever wilfully claims to be a voter, knowing that he is not a voter where the claim is made, and by reason thereof fraudulently obtains an envelope from the persons having the custody of the same on the day of the election, shall be liable to a fine of not less than ten nor more than fifty dollars.

SECT. 8. At town meetings for the election of national, state, district, and county officers, the selectmen shall preside; and shall have all the powers which are vested in moderators.

SECT. 9. The presiding officers at meetings held for the election of town or other officers, shall be provided with a complete list of the persons qualified to vote at such election; and no person shall vote at an election whose name has not been previously placed on such list, nor until the presiding officers find and check his name thereon.

SECT. 10. The selectmen shall not be answerable for refusing the vote of any person whose name is not on the list of voters, unless such person before offering his vote furnishes them with sufficient evidence of his having the legal qualifications of a voter at such meeting, and requests them to insert his name on said list.

SECT. 11. The moderator of a town meeting shall receive the votes of all persons whose names are borne on the list of voters as certified by the selectmen; and shall not be answerable for refusing the vote of a person whose name is not on said list.

SECT. 12. No vote shall be received by the presiding officers at any election provided for in this chapter, unless presented for deposit in the

ballot box by the voter in person in a sealed envelope, or open and unfolded, and so that such officers can know but one ballot is presented.

SECT. 13. Votes for different persons for the same office found in one envelope shall not be counted, and if more than one vote for the same person for the same office is found in one envelope, but one such vote shall be counted, and no vote shall be counted which does not clearly indicate in writing the office for which the person voted for is designed, except when but one officer is voted for.

SECT. 14. In all elections of civil officers by the people, the person or persons having the highest number of votes shall be deemed and declared to be elected; but no persons receiving the same number of votes shall be deemed to be elected, if thereby a greater number would be elected than required by law.

SECT. 15. The votes in elections for national, state, county, and district officers, shall be received, sorted, and counted, by the selectmen, and by the ward officers, and public declaration made thereof in open town and ward meetings. The names of persons voted for, the number of votes received for each person, and the title of the office for which he is proposed, shall be entered in words at length by the town and ward clerks in their records. The ward clerks shall forthwith deliver to the city clerks certified copies of such records, who shall forthwith enter the same in the city records.

SECT. 16. The mayor and aldermen and the clerk of each city shall forthwith after an election examine the returns made by the returning officers of each ward in such city, and if any error appears therein they shall forthwith notify said ward officers thereof, who shall forthwith make a new and additional return, under oath, in conformity to truth, which additional return, whether made upon notice or by such officers without notice, shall be received by the mayor and aldermen or city clerk at any time before the expiration of the day preceding that on which by law they are required to make their returns or to declare the results of the election in said city; and all original and additional returns so made shall be examined by the mayor and aldermen and made part of their returns of the results of such election. In counting the votes in an election no returns shall be rejected when the votes given for each candidate can be ascertained.

SECT. 17. City and town clerks shall within ten days from the day of an election for governor, lieutenant-governor, councillors, senators, secretary, treasurer and receiver-general, auditor, attorney-general, representatives in congress, commissioners of insolvency, sheriffs, registers of probate and insolvency, district-attorneys, or clerks of the courts, transmit copies of the records of the votes, attested by them, certified by the mayor and aldermen or selectmen, and sealed up, to the secretary of the commonwealth; they shall in like manner within ten days after an election for county treasurer or register of deeds, transmit such copies of the records of the votes to the county commissioners of their several counties; and within seven days after an election for county commissioners, transmit such copies of the records of the votes to the clerks of the courts for their several counties; but in Suffolk the return of votes for register of deeds shall be made to the board of aldermen of Boston, and in Chelsea, North Chelsea, and Winthrop, the returns of votes for county commissioners shall be made to the clerk of the courts for the county of Middlesex. Or within three days after such elections, such clerks may deliver such copies, sealed up, to the sheriffs of their several counties, who within seven days after receiving them shall transmit them to the office of the secretary, and to the county commissioners, board of aldermen, and clerks of courts, as severally above designated.

SECT. 18. Proof that a return of votes was properly directed to the person to whom it was required to be transmitted or delivered, and

R. S. 4, § 4.  
1839, 42, § 5.  
1851, 226, § 6.  
1853, 36, § 1.  
23 Pick. 308.  
Votes when to be rejected, &c.  
1853, 36, § 1.  
1854, 59, § 1.

Results of elections, how determined.  
Amend. const. art. 14.  
1856, 157, §§ 1, 2.  
1857, 185.

Selectmen and ward officers to count votes.  
1857, 171, §§ 1, 2.  
1857, 311.  
See Ch. 9, §§ 4, 12.

Mayor and aldermen and clerk to examine returns and, if faulty, require new returns.  
Other regulations.  
1852, 209, § 1.  
See Ch. 9, § 12.

City and town clerks to make returns of votes to secretary, &c.  
R. S. 14, §§ 17, 44, 101, 107.  
1850, 299, § 2.  
1852, 53.  
1855, 92, § 2.  
1856, 118.  
1857, 171, §§ 1, 2.  
1857, 311.  
1858, 93, §§ 4, 12.  
See Ch. 9, § 12.

Returns by mail.  
1855, 255, § 2.



mailed within forty-eight hours after closing the polls, shall be a bar to any complaint for delinquency.

When return is unsealed, secretary to give notice to returning officers, who shall transmit a sealed copy.  
1852, 209, § 2.

SECT. 19. When a return of votes from a city or town is received at the office of the secretary of the commonwealth not sealed up as by law required, he shall forthwith give notice thereof to the returning officers; who upon the receipt of such notice shall make a copy of their record of the votes at said election and transmit the same, certified by them under oath to be correct, to the secretary, sealed up as required by law in the case of original returns. If such copy is received by the secretary before the day on which by law the returns are to be opened and the votes counted, and if upon opening said copy by the governor and council, the legislature, or any person authorized so to do, the original return is found in substantial conformity therewith, it shall not be rejected because of informality.

Secretary to furnish blanks, &c., to cities and towns.  
1857, 295, § 1.  
Resolves, 1807, 1.

SECT. 20. The secretary shall annually furnish to the several clerks of the cities and towns blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelopes as he deems necessary for the guidance and direction of such officers in making the returns according to law.

to record date of receiving returns, &c.  
1857, 295, § 2.

SECT. 21. A memorandum of the date of the reception of all returns of votes at the secretary's office shall be made at said office on the envelopes containing them; and if a return required to be sealed up is received unsealed, the secretary shall make a memorandum of such fact upon said return.

Votes for governor, &c., by whom examined.  
Constitution, 1, § 2, art. 3.  
Amend. const. art. 16, 17, 19.  
R. S. 5, § 1.  
R. S. 6, § 5.  
1856, 173, §§ 4, 10.

SECT. 22. The secretary upon receiving such returned copies shall transmit them as received with their seals unbroken to the governor and council; and the governor with five at least of the council shall as soon as may be, examine them; and he shall issue his summons to such persons as appear to be chosen to the offices of governor, lieutenant-governor, councillors, secretary, treasurer and receiver-general, auditor, attorney-general, and senators; and to such persons as appear to be chosen members of congress, commissioners of insolvency, sheriffs, registers of probate and insolvency, district-attorneys, and clerks of the courts, he shall forthwith transmit a certificate of such choice signed by the governor and countersigned by the secretary.

how certified.  
Amend. const. art. 16.  
1857, 295, § 3.

SECT. 23. The governor shall in the presence of at least five councillors make and subscribe a certificate of the examination of the returns of votes for governor, lieutenant-governor, and councillors, required by article sixteen of the amendments of the constitution, and of the result of said examination.

Envelopes, &c., to be preserved and laid before legislature, &c.  
Amend. const. art. 16.  
1857, 295, § 4.  
1859, 27.

SECT. 24. After such examination, the returns shall be replaced in their respective envelopes, which with the returns and such certificate the governor shall deliver to the secretary, and the secretary on the first Wednesday of January shall lay the same, together with schedules showing the number of ballots which appear to have been cast for each person voted for, before the senate and house of representatives.

Votes for county commissioners, by whom examined. Penalty for neglect.  
R. S. 14, §§ 17, 18, 28.  
1855, 3.  
13 Gray, 83.

SECT. 25. On the first Wednesday of the month succeeding an election for county commissioner, the board of examiners for the county for which the election was held shall meet; and the clerk of the courts shall present the returned copies of votes at such election; and the board shall open and examine them and notify the person chosen of his election. If such board or clerk wilfully neglects to perform any duty required of them under this section, each of them so neglecting shall forfeit a sum not exceeding two hundred dollars.

Board to file copies in clerk's office. Penalty for neglect.  
1851, 16.

SECT. 26. The board shall within three days after such examination file such copies in the office of the clerk; and any one of them wilfully detaining in his custody such a copy three days after the time for filing it has expired shall forfeit fifty dollars and the same sum for each succeeding day of such detention; and the clerk shall notify the attorney-general of every neglect so to file, and every such detention.



SECT. 27. County commissioners shall, on the first Wednesday of January after an election for county treasurer or register of deeds in their county, open and examine the returned copies of votes at such election, and notify the person chosen of his election; but in Suffolk the board of aldermen of Boston, within ten days after an election for register of deeds for said county, shall so open and examine the votes of such election, and notify the person chosen.

SECT. 28. Whoever knowing that he is not a qualified voter at an election wilfully votes for any officers to be then chosen, shall forfeit a sum not exceeding one hundred dollars for each offence.

SECT. 29. If a voter knowingly gives more than one ballot at one time of balloting at an election, he shall forfeit a sum not exceeding one hundred dollars.

SECT. 30. Whoever wilfully gives a false answer to the selectmen or moderator presiding at an election, shall forfeit for each offence a sum not exceeding one hundred dollars.

SECT. 31. Whoever by bribery, or threatening to discharge from his employment, or to reduce the wages of, or by a promise to give employment or higher wages to, a person, attempts to influence a qualified voter to give or withhold his vote in an election, shall be punished by fine not exceeding three hundred dollars or by imprisonment in the county jail or house of correction for a term not exceeding one year, or both, at the discretion of court.

SECT. 32. Whoever wilfully aids or abets any one, not legally qualified, in voting or attempting to vote at an election, shall forfeit a sum not exceeding fifty dollars for every such offence.

SECT. 33. Whoever is disorderly in a meeting held for an election mentioned in this chapter, shall forfeit a sum not exceeding twenty dollars.

SECT. 34. If a city or town officer wilfully neglects or refuses to perform the duties required of him respecting elections by the provisions of this chapter, he shall for each offence forfeit a sum not exceeding two hundred dollars.

SECT. 35. The clerk of any city or town who fails to make return of the votes given therein in conformity with the provisions of law, shall be liable to a fine of not less than five and not more than fifty dollars.

SECT. 36. Elections in cities shall be conducted according to the provisions of the acts establishing them and of the several acts in addition thereto, so far as they are not inconsistent with the provisions of this chapter

Notes for county treasurer and register of deeds, how examined.  
 R. S. 14, §§ 44, 101.  
 R. S. Act of Amend. § 3. 1856, 92, § 3. 1856, 118, § 4. 2 Gray, 370.  
 Penalty for voting, if not qualified.  
 R. S. 4, § 6. 9 Met. 268.  
 for giving more than one ballot.  
 R. S. 4, § 7. for giving false answers.  
 R. S. 4, § 8. 7 Met. 52.  
 for attempting to influence voters by bribes or threats.  
 1852, 321.

for aiding unqualified persons to vote.  
 R. S. 4, § 9.  
 for disorderly conduct.  
 R. S. 4, § 10. 16 Mass. 385.  
 on town officers for neglect of duty.  
 See Ch. 6, § 12.  
 on clerks.  
 1856, 255, § 1.  
 Elections in cities.  
 R. S. 4, § 12.

## CHAPTER 8.

### OF THE ELECTION OF GOVERNOR AND OTHER STATE OFFICERS.

SECTION	GOVERNOR, &C.
1.	Election of governor and other state officers.
	COUNCILLORS.
2.	Division of commonwealth into councillor districts.
3.	Districts, how constituted.
	SENATORS.
4.	Division of commonwealth into senatorial districts.
5.	Districts, how constituted.
6.	Apportionment of representatives.

SECTION	REPRESENTATIVES IN THE GENERAL COURT.
7.	Warrants for meeting to state number of representatives to be voted for.
8.	In a town constituting a district, repeated ballotings may be had on same day.
9.	Proceedings in case of failure to elect in district contained in one town or city.
10.	Selectmen and town clerks, &c., in composite districts to prepare, &c., transcript of record of votes.
11.	Officers apportioning representation to designate place for clerks to meet and ascertain result of election.

## SECTION

12. Clerks of towns, &c., in composite districts to meet and ascertain result of election.
13. Clerks to return and record votes of district.
14. Proceedings in case of failure to elect in composite districts.
15. Certificates of election in single districts.
16. in composite districts.
17. Form and return of certificate of election.

## SECTION

18. Proceedings in case of vacancy.
19. Secretary to furnish blanks.
20. Penalty on officers refusing to perform duties.
21. on selectmen, giving false certificate.
22. on clerks for signing false certificate.
23. Compensation of city and town officers.
24. Appointment of clerk, *pro tempore*.

## GOVERNOR, &amp;C.

Election of governor and other state officers.

Constitution :  
1, § 2, art. 1.  
1, § 3, art. 1, 2, 3.  
2, § 1, art. 2, 3.  
2, § 2, art. 1.  
Amend. const.  
art. 15, 16, 17,  
21, 22.

Division of commonwealth into councillor districts.  
Amend. const.  
art. 16.

1856, 307, § 1.  
1857, 310.  
Districts, how constituted.  
1857, 310.

District No. 1.  
District No. 2.  
District No. 3.

District No. 4.

District No. 5.

District No. 6.

District No. 7.

District No. 8.

SECTION 1. The governor, lieutenant-governor, councillors, secretary, treasurer and receiver-general, auditor, attorney-general, and senators and representatives in the general court, shall be elected annually on the Tuesday next after the first Monday of November, as prescribed in the constitution.

## COUNCILLORS.

SECT. 2. For the choice of councillors the commonwealth is divided into eight districts, as provided in the following section, each of which shall in the manner prescribed by the constitution and laws elect one councillor.

SECT. 3. The five senatorial districts in the county of Suffolk constitute District Number One.

The five senatorial districts in the county of Essex constitute District Number Two.

The first, second, fourth, fifth, and sixth senatorial districts in the county of Middlesex, constitute District Number Three.

The Franklin senatorial district, the Hampshire and Franklin district, and the central, north-east, and north-west districts in the county of Worcester, constitute District Number Four.

The two senatorial districts in the county of Hampden, the two senatorial districts in the county of Berkshire, and the Hampshire district, constitute District Number Five.

The north Norfolk senatorial district, the third Middlesex district, and the east, south-east, and south-west districts in the county of Worcester, constitute District Number Six.

The west and east Norfolk senatorial districts and the three senatorial districts in the county of Bristol, constitute District Number Seven.

The three senatorial districts in the county of Plymouth, the Cape district, and the Island district, constitute District Number Eight.

## SENATORS.

SECT. 4. For the choice of senators the commonwealth is divided into forty districts, as provided in the following section, each of which shall in the manner prescribed by the constitution and laws elect one senator.

SECT. 5. The city of Chelsea, the towns of North Chelsea and Winthrop, and the ward numbered two in the city of Boston, constitute the First Suffolk District.

The wards numbered one, three, and five, in the city of Boston, constitute the Second Suffolk District.

The wards numbered four, six, and seven, in the city of Boston, constitute the Third Suffolk District.

The wards numbered eight, nine, and ten, in the city of Boston, constitute the Fourth Suffolk District.

The wards numbered eleven and twelve in the city of Boston, constitute the Fifth Suffolk District.

Division of commonwealth into senatorial districts.

Amend const.,  
art. 22.  
1857, 309, § 1.  
Districts, how constituted.  
1857, 309, §§ 2-13.  
First Suffolk.  
Second Suffolk.

Third Suffolk.

Fourth Suffolk.

Fifth Suffolk.

No new divisions of wards shall be made in the city of Boston, previous to the next apportionment of senators and representatives.	Wards in Boston, no new division until, &c.
The city of Lynn, and the towns of Lynnfield, Marblehead, Nahant, Saugus, and Swampscott, constitute the First Essex District.	First Essex.
The city of Salem, and the towns of Danvers, Hamilton, Middleton, South Danvers, Topsfield, and Wenham, constitute the Second Essex District.	Second Essex.
The city of Lawrence, and the towns of Andover, Boxford, Haverhill, Methuen, and North Andover, constitute the Third Essex District.	Third Essex.
The city of Newburyport, and the towns of Amesbury, Bradford, Georgetown, Groveland, Newbury, Salisbury, and West Newbury, constitute the Fourth Essex District.	Fourth Essex.
The towns of Beverly, Essex, Gloucester, Ipswich, Manchester, Rockport, and Rowley, constitute the Fifth Essex District.	Fifth Essex.
The city of Charlestown, and the towns of Somerville, Melrose, and Malden, constitute the First Middlesex District.	First Middlesex.
The city of Cambridge, and the towns of Waltham, West Cambridge, Watertown, Belmont, and Brighton, constitute the Second Middlesex District.	Second Middlesex. 1859, 109.
The towns of Ashland, Framingham, Holliston, Hopkinton, Natick, Newton, Sherborn, Sudbury, Wayland, and Weston, constitute the Third Middlesex District.	Third Middlesex.
The towns of Aeton, Ashby, Boxborough, Carlisle, Chelmsford, Concord, Dunstable, Groton, Lincoln, Littleton, Marlborough, Pepperell, Shirley, Stow, Townsend, Tyngsborough, and Westford, constitute the Fourth Middlesex District.	Fourth Middlesex.
The towns of Bedford, Billerica, Burlington, Lexington, Medford, North Reading, Reading, South Reading, Stoneham, Wilmington, Winchester, and Woburn, constitute the Fifth Middlesex District.	Fifth Middlesex.
The city of Lowell, and the towns of Dracut, and Tewksbury, constitute the Sixth Middlesex District.	Sixth Middlesex.
The city of Worcester, and the towns of Holden, Paxton, and Rutland, constitute the Central Worcester District.	Central Worcester.
The towns of Blackstone, Douglas, Mendon, Milford, Northbridge, Sutton, and Uxbridge, constitute the South-east Worcester District.	South-east Worcester.
The towns of Auburn, Brookfield, Charlton, Dudley, Leicester, Oxford, Southbridge, Spencer, Sturbridge, Warren, Webster, and West Brookfield, constitute the South-west Worcester District.	South-west Worcester.
The towns of Athol, Barre, Dana, Hardwick, Hubbardston, New Braintree, North Brookfield, Oakham, Petersham, Phillipston, Royalston, Templeton, and Winchendon, constitute the North-west Worcester District.	North-west Worcester.
The towns of Ashburnham, Fitchburg, Gardner, Harvard, Lancaster, Leominster, Lunenburg, Princeton, Sterling, and Westminster, constitute the North-east Worcester District.	North-east Worcester.
The towns of Berlin, Bolton, Boylston, Clinton, Grafton, Millbury, Northborough, Shrewsbury, Southborough, Upton, Westborough, and West Boylston, constitute the East Worcester District.	East Worcester.
The towns of Agawam, Blandford, Chester, Chicopee, Granville, Holyoke, Ludlow, Montgomery, Russell, Southwick, Tolland, West-Springfield, and Westfield, constitute the West Hampden District.	West Hampden.
The city of Springfield, and the towns of Brimfield, Holland, Longmeadow, Monson, Palmer, Wales, and Wilbraham, constitute the East Hampden District.	East Hampden.
The towns of Chesterfield, Cummington, Easthampton, Goshen, Hadley, Hatfield, Huntington, Middlefield, Northampton, Plainfield, South Hadley, Southampton, Westhampton, Williamsburg, and Worthington, constitute the Hampshire District.	Hampshire.
The towns of Ashfield, Bernardston, Buckland, Charlemont, Colrain,	Franklin.



- Conway, Deerfield, Gill, Greenfield, Hawley, Heath, Leyden, Monroe, Northfield, Rowe, Shelburne, and Whately, constitute the Franklin District.
- Hampshire and Franklin.** The towns of Amherst, Belehertown, Enfield, Granby, Greenwich, Pelham, Prescott, Ware, Erving, Leverett, Montague, New Salem, Orange, Shutesbury, Sunderland, Warwick, and Wendell, constitute the Hampshire and Franklin District.
- North Berkshire.** The towns of Adams, Cheshire, Clarksburg, Dalton, Florida, Hancock, Hinsdale, New Ashford, Lanesborough, Peru, Pittsfield, Savoy, Williamstown, and Windsor, constitute the North Berkshire District.
- South Berkshire.** The towns of Alford, Becket, Egremont, Great Barrington, Lee, Lenox, Monterey, Mount Washington, New Marlborough, Otis, Richmond, Sandisfield, Sheffield, Stockbridge, Tyringham, Washington, and West Stockbridge, constitute the South Berkshire District.
- North Norfolk.** The city of Roxbury, and the towns of Brookline, Dorechester, and West Roxbury, constitute the North Norfolk District.
- East Norfolk.** The towns of Braintree, Milton, Quincy, Randolph, Stoughton, and Weymouth, constitute the East Norfolk District.
- West Norfolk.** The towns of Bellingham, Canton, Dedham, Dover, Foxborough, Franklin, Medfield, Medway, Needham, Sharon, Walpole, and Wrentham, constitute the West Norfolk District.
- North Bristol.** The towns of Attleborough, Easton, Raynham, Mansfield, Norton, and Taunton, constitute the North Bristol District.
- South Bristol.** The city of New Bedford, and the town of Dartmouth, constitute the South Bristol District.
- West Bristol.** The towns of Berkley, Dighton, Fall River, Freetown, Pawtucket, Rehoboth, Seekonk, Somerset, Swanzey, and Westport, constitute the West Bristol District.
- North Plymouth.** The towns of Abington, Cohasset, Hanover, Hingham, Hull, North Bridgewater, Scituate, and South Scituate, constitute the North Plymouth District.
- South Plymouth.** The towns of Bridgewater, Carver, Fairhaven, Lakeville, Mattapoisett, Marion, Middleborough, Rochester, and Wareham, constitute the South Plymouth District.
- Middle Plymouth.** The towns of Duxbury, East Bridgewater, Halifax, Hanson, Kingston, Marshfield, Pembroke, Plymouth, Plympton, and West Bridgewater, constitute the Middle Plymouth District.
- Cape District.** The towns of Brewster, Chatham, Dennis, Eastham, Harwich, Orleans, Provincetown, Truro, Wellfleet, and Yarmouth, constitute the Cape District.
- Island District.** The towns of Barnstable, Falmouth, and Sandwich, with the counties of Dukes County and Nantucket, constitute the Island District.

## REPRESENTATIVES IN THE GENERAL COURT.

- Apportionment of representatives.** **SECT. 6.** The two hundred and forty representatives are apportioned to the several counties, as follows:—  
**Amend. const. art. 21. 1857, 303.** Barnstable, nine; Berkshire, eleven; Bristol, twenty; Dukes county, one; Essex, thirty-two; Franklin, eight; Hampden, twelve; Hampshire, eight; Middlesex, thirty-nine; Nantucket, two; Norfolk, (excluding the town of Cohasset,) twenty; Plymouth, and the town of Cohasset, sixteen; Suffolk, twenty-eight; Worcester, thirty-four.
- Warrants for meeting to state number of representatives to be voted for. 1857, 311, § 2.** **SECT. 7.** Warrants for meetings for the election of representatives shall direct that the voters in towns, cities, and wards, be notified to bring in their votes on one ballot for the representatives to which their several districts are entitled, and shall specify the number thereof. And such elections shall be conducted and the results thereof determined as provided in chapter seven except as hereinafter provided.
- In certain towns repeated** **SECT. 8.** When a town constituting a district fails on the first ballot

to make choice of the representatives to which it is entitled, other ballotings may be had on the same day, but the polls for such ballotings shall not be opened after five o'clock in the afternoon.

ballotings may be had on same day, &c. 1844, 78. 1857, 311, § 1. Proceedings in case of failure to elect in district contained in one town or city. 1857, 311, § 1.

SECT. 9. When a town, city, or the wards of a city, constituting a representative district, at the election held on the Tuesday next after the first Monday of November fail to elect the number of representatives to which such district is entitled, the proper officers of such city or town shall issue their warrant for a new election in such district, to be held on the fourth Monday of said November, to fill the vacancy, and the number to be elected shall be specified in the warrant, and similar proceedings shall be had thereupon as in the original election of such representatives.

SECT. 10. In towns, cities, and wards, composing a part of a representative district, the selectmen and town clerks and ward officers, in open town and ward meetings, and the mayor and aldermen and city clerks, shall forthwith upon the vote for representative being recorded make out under their hands and seal up and deliver to their respective clerks a true transcript of such record.

Selectmen, &c., in composite districts to prepare, &c., transcript of record of votes. 1857, 311, § 5.

SECT. 11. The county commissioners, mayor and aldermen, or board of aldermen, or such special commissioners as are authorized to apportion the representation assigned to the several counties, at their meeting for such purpose, shall designate a place in each representative district, not contained in or consisting of one town or city, at which the clerks of towns, cities, and wards, composing such district, shall assemble for the purpose of ascertaining the result of elections. Due notice of such appointment shall be given by said commissioners or mayor and aldermen to every town, city, and ward, in the district. Such place of meeting may be changed once in two years by the same authority, after a hearing on the petition of two of such clerks.

Officers apportioning representation to designate place for clerks to meet and ascertain result of election. 1857, 311, § 8.

SECT. 12. The clerks of cities, towns, and wards, composing such districts, shall meet at noon on the day following an election for representatives, at the place so designated, and shall examine and compare such transcripts and ascertain what persons have been elected. If any error appears in a transcript or return, the clerks shall forthwith give notice thereof to the officers required to make the return, and such officers shall forthwith in conformity with the truth and under oath, make a new return, which, whether made with or without such notice, shall be received and examined by said clerks within two days after the time appointed for the meeting; and for that purpose the meeting may be adjourned not exceeding two days. No return shall be rejected when the number of votes given for each candidate can be ascertained.

Clerks of towns, &c., in composite districts to meet and ascertain result of election. 1857, 311, §§ 3, 5, 7. 1859, 321, §§ 1, 2.

SECT. 13. Such clerks shall at such meeting make out under their hands a complete return of all the votes cast for representatives in the district, the names of all persons for whom such votes were given, and the number of votes for each person, and a record of the return shall be made in the book of records of their respective cities, towns, and wards, within four days after the day of the meeting.

to return and record votes of the district. 1857, 311, § 3.

SECT. 14. If upon such examination and comparison of transcripts it appears to such clerks that their district has failed to elect the number of representatives to which it is entitled, such fact shall be certified by such ward and city clerks to the mayor and aldermen of their city, and by such town clerks to the selectmen of their several towns, and such mayor and aldermen and selectmen shall forthwith issue their warrants for another meeting for the election of representatives, to fill such vacancy, to be held on the fourth Monday of the same November, and similar proceedings shall be had thereupon as at the first election.

Proceedings in case of failure to elect in composite district. 1857, 311, § 7.

SECT. 15. When it is ascertained who is elected representative in a district, composed of one town, or city, or one or more wards of a city, the selectmen or mayor and aldermen shall make out duplicate certifi-

Certificates of election in single districts. R. S. 5, § 8.



1844, 143, §§ 2, 3.  
1857, 311, § 1.  
See § 19.

in composite  
districts.  
1857, 311, § 5.  
See § 19.

Form and re-  
turn of certi-  
ficate of election.  
1857, 311, § 3.

Proceedings in  
case of vacancy.  
1858, 6, § 1.

Secretary to  
furnish blanks.  
1844, 143, §§ 1, 2,  
12.  
1857, 311, § 10.  
1859, 121, § 4.

Penalty on offi-  
cers refusing to  
perform duties.  
1857, 311, § 9.

on selectmen  
giving false cer-  
tificates.  
1852, 282.

on clerks for  
signing false  
certificate.  
1859, 121, § 3.

Compensation  
of city and town  
officers.  
1857, 311, § 5.  
Appointment of  
clerk *pro tem-  
pore*.  
1857, 311, § 11.

ates thereof, one of which they shall transmit to the office of the secretary of the commonwealth on or before the first Wednesday in January following, and the other by a constable or other authorized officer to the person elected, within ten days after the day of election.

SECT. 16. When the clerks of cities, towns, and wards, composing a district, at their meeting for the purpose, ascertain that a representative is elected in their district, they or a majority of them shall make out duplicate certificates thereof, one of which they shall deliver into the office of the secretary of the commonwealth, on or before the first day of January following, and the other by a constable or other authorized officer transmit to the person elected, within ten days after the day of election.

SECT. 17. Such certificates of election shall be in substance as follows:—

Commonwealth of Massachusetts, county of \_\_\_\_\_ Pursuant to a law of this commonwealth, the qualified voters of Representative District Number \_\_\_\_\_, in their several meetings on the \_\_\_\_\_ day of November instant, for the choice of representatives in general court, did elect \_\_\_\_\_, being inhabitants of said district, to represent them in the general court to be holden on the first Wednesday of January next.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_

Such certificate shall have a return thereon, signed by the officer authorized to give such notice, and stating that notice of the choice was given to the persons therein mentioned, and that said persons were summoned to attend the general court accordingly.

SECT. 18. When a vacancy occurs in a representative district, the speaker of the house of representatives shall in the precept which he may issue by order of the house giving notice of such vacancy, appoint a time for an election to fill the same. Upon the reception of such precept, the mayor and aldermen of a city and the selectmen of the towns comprising the district, shall issue their warrants for an election on the day named in the precept; and similar proceedings shall be had in filling such vacancy as in the original election of representatives.

SECT. 19. The secretary of the commonwealth shall furnish to cities and towns blank forms for certificates, transcripts, and returns, required under this chapter. Such blanks for returns shall have printed thereon sections fifteen, sixteen, and nineteen, of this chapter, and the first four sections of chapter two.

SECT. 20. City or town officers wilfully neglecting or refusing to perform the duties required of them under this chapter, shall for each offence forfeit a sum not exceeding two hundred dollars.

SECT. 21. Selectmen giving a certificate of election to a person voted for as representative to the general court, not in accordance with the declaration of the vote in open town meeting at the time of the election, shall forfeit three hundred dollars.

SECT. 22. Clerks wilfully signing a certificate not in conformity with the result of an election, as apparent by the transcripts and returns, shall forfeit a sum not exceeding three hundred dollars.

SECT. 23. Towns and cities may provide suitable compensation to clerks and selectmen for services performed by them under the requirements of this chapter.

SECT. 24. In case of a vacancy in the office of town, city, or ward clerk, or any disability in such clerk to perform the duties required by this chapter, the selectmen, mayor and aldermen, or board of aldermen, or warden, may appoint a clerk *pro tempore*, who shall be sworn and perform such duties.



CHAPTER 9.

OF THE ELECTION OF REPRESENTATIVES IN CONGRESS AND ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

- REPRESENTATIVES IN CONGRESS.
- SECTION
1. Division of commonwealth into congressional districts.
  2. Towns forming the several districts.
  3. Representatives in congress when to be chosen.
  4. Return of votes.
  5. Proceedings in case of no choice.
  6. Proceedings in case of vacancies.
  7. Sheriffs to transmit precepts to selectmen.
  8. Penalty for neglect of city and town officers.
- ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES.
9. Electors of president and vice-president to be chosen.

- SECTION
10. Choice of electors, when to take place.
  11. Names of electors to be on one ballot.
  12. Return of votes.
  13. Governor and council to count votes and notify persons elected.
  14. If a majority are not chosen, residue to be chosen by general court.
  15. Time and place of meeting of electors; vacancies, how filled.
  16. Electors to vote, and certify and transmit their votes to seat of government.
  17. Compensation of electors.
  18. Duties of sheriffs and town officers in election of governor, &c., to be observed in election of electors. Penalties.

REPRESENTATIVES IN CONGRESS.

SECTION 1. For the purpose of electing representatives in the congress of the United States, the state is divided into eleven districts, each of which shall elect one representative, being an inhabitant of the same district.

Division of commonwealth into congressional districts. 1852, 143.

SECT. 2. The districts are as follows, to wit:—

The several towns in the counties of Barnstable, Dukes county, and Nantucket, with the city of New Bedford, and the towns of Dartmouth, Fairhaven, Carver, Kingston, Marion, Mattapoisett, Plymouth, Lymp-ton, Rochester, and Wareham, form District Number One.

Towns forming the several districts. District No. 1. 1852, 225. 1857, 202.

The city of Fall River, and the towns of Attleborough, Berkley, Digh-ton, Easton, Freetown, Mansfield, Norton, Pawtucket, Raynham, Rehoboth, Seekonk, Somerset, Swanzey, Taunton, Westport, Abington, Bridge-water, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hing-ham, Hull, Lakeville, Marshfield, Middleborough, North Bridgewater, Pembroke, Scituate, South Scituate, West Bridgewater, and Cohasset, form District Number Two.

District No. 2. 1853, 338.

The towns of Bellingham, Braintree, Canton, Dedham, Dorchester, Dover, Foxborough, Franklin, Medfield, Medway, Milton, Needham, Quincy, Randolph, Sharon, Stoughton, Walpole, West Roxbury, Wey-mouth, Wrentham, Blackstone, Mendon, Milford, Northbridge, Upton, Uxbridge, Brighton, Holliston, Newton, Sherborn, and Watertown, form District Number Three.

District No. 3.

The city of Roxbury, the town of Brookline, and the wards numbered seven, eight, nine, ten, eleven, and twelve, in the city of Boston, form District Number Four.

District No. 4.

The wards numbered one, two, three, four, five, and six, in the city of Boston, the cities of Cambridge and Chelsea, and the towns of North Chelsea and Winthrop, form District Number Five.

District No. 5.

The cities of Lynn, Newburyport, and Salem, and the towns of Amesbury, Beverly, Essex, Georgetown, Gloucester, Groveland, Hamil-ton, Ipswich, Manchester, Marblehead, Nahant, Newbury, Rockport, Rowley, Salisbury, Swampscott, Wenham, and West Newbury, form District Number Six.

District No. 6. 1852, 310. 1853, 114.

The cities of Charlestown and Lawrence, and the towns of Andover, Boxford, Bradford, Danvers, Haverhill, Lynnfield, Methuen, Middleton, North Andover, Saugus, South Danvers, Topsfield, Burlington, Lexing-ton, Malden, Medford, Melrose, North Reading, Reading, Somerville,

District No. 7. 1853, 71. 1855, 150. 1855, 385.

South Reading, Stoneham, Waltham, West Cambridge, Wilmington, Winchester, and Woburn, form District Number Seven.

District No. 8. The city of Lowell, and the towns of Acton, Ashby, Ashland, Bedford, Billerica, Boxborough, Carlisle, Chelmsford, Concord, Dracut, Dunstable, Framingham, Groton, Hopkinton, Lincoln, Littleton, Marlborough, Natick, Pepperell, Shirley, Stow, Sudbury, Tewksbury, Townsend, Tyngsborough, Wayland, Westford, Weston, Berlin, Bolton, Harvard, Lunenburg, Northborough, Southborough, and Westborough, form District Number Eight.

District No. 9. The towns of Ashburnham, Auburn, Barre, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, Fitchburg, Gardner, Grafton, Holden, Hubbardston, Lancaster, Leicester, Leominster, Millbury, New-Braintree, North Brookfield, Oakham, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Templeton, Webster, West Boylston, Westminster, and Winchendon, and the city of Worcester, form District Number Nine.

District No. 10. 1855, 365. The towns of Athol, Dana, Hardwick, Petersham, Phillipston, Royals-ton, Warren, West Brookfield, Erving, Leverett, Montague, New Sa-lem, Northfield, Orange, Shutesbury, Sunderland, Warwick, Wendell, Whately, Amherst, Belchertown, Easthampton, Enfield, Granby, Green-wich, Hadley, Hatfield, Northampton, Pelham, Prescott, South Hadley, Ware, Agawan, Brimfield, Chicopee, Holland, Holyoke, Longmeadow, Ludlow, Monson, Palmer, Wales, West Springfield, Wilbraham, and the city of Springfield, form District Number Ten.

District No. 11. 1855, 35. The towns of Ashfield, Bernardston, Buckland, Charlemont, Colrain, Conway, Deerfield, Gill, Greenfield, Hawley, Heath, Leyden, Monroe, Rowe, Shelburne, Chesterfield, Cummington, Goshen, Huntington, Mid-dlefield, Plainfield, Southampton, Westhampton, Williamsburg, Worth-ington, Blandford, Chester, Granville, Montgomery, Russell, Southwick, Tolland, and Westfield, and the several towns in the county of Berk-shire, form District Number Eleven.

Representa-  
tives in con-  
gress when to  
be chosen.  
R. S. 6, § 3.  
1856, 224.  
11 Mass. 424.

SECT. 3. The mayor and aldermen and selectmen of the several cities and towns shall as provided in chapter seven call meetings to be held on the Tuesday next after the first Monday in November in the year one thousand eight hundred and sixty, and thence afterwards, biennially, on the Tuesday next after the first Monday in November, for the voters to give their votes for representatives in congress.

Return of  
votes.  
R. S. 6, § 4.  
1857, 171, §§ 1, 2.  
1857, 295, § 1.

SECT. 4. The clerks in making their returns of votes for representa-tives to congress under section fifteen of chapter seven, shall transmit them in envelopes expressing on the outside the district in which the votes were given.

Proceedings in  
case of no  
choice.  
R. S. 6, § 6.

SECT. 5. In case of no choice in a congressional district, the gov-ernor shall cause precepts to issue to the mayor and aldermen and select-men of the several cities and towns in the district, directing them to call a new meeting on the day appointed in such precept, for the voters to give their votes for a representative in congress. The precept shall be accompanied with a list of all the persons voted for in the district who received fifty votes or more according to the next preceding return, and shall show the number of votes for each of such persons; sim-ilar proceedings shall be had thereon and the same returns made as in an original election; and the like proceedings shall be repeated as often as occasion may require.

Proceedings in  
case of vacan-  
cies.  
R. S. 6, § 7.

SECT. 6. When a vacancy happens in the representation of this com-monwealth in congress, the governor shall cause precepts to issue for a new election in the district where the vacancy exists; and similar pro-ceedings shall be had thereon as in an original election.

Sheriffs to  
transmit pre-  
cepts to select-  
men.  
R. S. 6, § 8.

SECT. 7. The several sheriffs, upon receiving precepts from the gov-ernor for the election of a representative in congress, shall seasonably transmit them to the officers of the towns or cities within their respec-tive counties to whom they are directed.



SECT. 8. If any city or town officer wilfully neglects or refuses to perform any duty required of him in this chapter, he shall forfeit for each offence a sum not exceeding two hundred, nor less than thirty dollars.

Penalty for neglect of city and town officers.  
R. S. 6, § 12.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES.

SECT. 9. In each year when the election of president and vice-president of the United States takes place, there shall be chosen as many electors of president and vice-president as the commonwealth is at such time entitled to.

Electors of president and vice-president to be chosen.  
R. S. 6, § 13.

SECT. 10. The mayor and aldermen and selectmen of the several cities and towns, shall, in the manner provided in section three of chapter seven, call meetings to be held on the Tuesday next after the first Monday in November of such year, for the voters to give their votes for the whole number of electors to which the commonwealth is entitled.

Choice of electors, when to take place.  
1848, 35, § 1.

SECT. 11. The names of all the electors shall be chosen shall be written on each ballot; and each ballot shall contain the name of at least one inhabitant of each congressional district into which the commonwealth shall be then divided; and shall designate the congressional district to which he belongs.

Names of electors to be on one ballot.  
R. S. 6, § 15.

SECT. 12. Votes for electors shall be counted, recorded, certified, sealed, and transmitted, to the secretary of the commonwealth, as provided in sections fifteen, sixteen, and seventeen of chapter seven.

Return of votes.  
1844, 167, § 1.  
1852, 209, § 2.  
1857, 171, §§ 1, 2.  
Governor, &c., to count votes, and notify persons elected.  
1851, 40, § 2.

SECT. 13. The governor and council shall open and examine such returns and count the votes, and the several persons who have received the highest number of votes so returned shall be declared elected, and the governor shall forthwith transmit to each person so chosen a certificate of his election.

SECT. 14. If upon examination of the votes it appears that a majority of the whole number of electors are not chosen, the governor shall forthwith by proclamation, call the legislature together, which shall, by joint ballot of the senators and representatives assembled in one room, choose as many electors as are necessary to complete the full number.

If a majority are not chosen, residue to be chosen by general court.  
1851, 40, § 3.

SECT. 15. The electors shall convene at the state house in Boston on the Tuesday preceding the first Wednesday of December following their election, at three o'clock in the afternoon. In case of the death or absence of an elector, or in case the number of electors is deficient, the electors present shall forthwith elect from the citizens of the commonwealth so many persons as shall supply the deficiency.

Time and place of meeting of electors.  
Vacancies, how filled.  
R. S. 6, § 21.

SECT. 16. The electors so convened shall on said first Wednesday of December vote by ballot for one person for president and one person for vice-president of the United States; one of whom at least shall not be an inhabitant of this commonwealth. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president and vice-president and of the number of votes given for each; which lists they shall sign, and certify, and transmit, sealed up, to the seat of the government of the United States, directed to the president of the senate; and they shall in all respects proceed conformably to the constitution and laws of the United States.

Electors to vote, and certify, and transmit their votes to seat of government.  
R. S. 6, § 22.

SECT. 17. Each elector shall receive three dollars a day for attendance, and the same compensation for travel as is allowed to a member of the general court.

Compensation.  
R. S. 6, § 23.  
1858, § 2.

SECT. 18. All laws in relation to the duties of sheriffs, city and town officers, and voters, in the election of civil officers, shall, as far as the same may be applicable, apply to the meetings and elections held respecting the choice of electors of president and vice-president of the United States; and like penalties shall be incurred for the violation thereof.

Duties of sheriffs and town officers in election of electors.  
R. S. 6, § 24.



## CHAPTER 10.

## OF THE ELECTION OF DISTRICT AND COUNTY OFFICERS.

## SECTION

1. Election of district and county officers.
2. district attorneys.
3. clerks of courts.
4. registers of probate and insolvency.
5. sheriffs and commissioners of insolvency.
6. county commissioners.
7. special commissioners.
8. Not more than one commissioner to be chosen from the same place.
9. Election of county treasurers and registers of deeds.

## FAILURES TO ELECT.

10. In case of failures to elect district attor-

## SECTION

- neys, clerks of courts, registers of probate and insolvency, &c.
11. commissioners and special commissioners.
12. county treasurers and registers of deeds.

## VACANCIES.

13. Vacancies in the office of district-attorney, &c., how filled.
14. commissioner and special commissioner.
15. county treasurer or register of deeds.
16. Penalty on selectmen, &c., for neglect of duty.

Election of district and county officers.  
Amend. const. art. 19.  
R. S. 14, § 16.  
1854, 77, §§ 1, 5.  
1855, 92, §§ 1, 5.  
1856, 173, §§ 1, 2, 5.  
1858, 93, §§ 4, 5.

SECTION 1. District-attorneys, clerks of the courts, registers of probate and insolvency, sheriffs, commissioners of insolvency, county commissioners, special commissioners, county treasurers, and registers of deeds, shall be chosen by ballot on the Tuesday next after the first Monday of November in the years in which said officers are respectively to be elected except as hereinafter provided. Those persons now holding said offices shall continue to hold the same during the terms for which they are elected, unless sooner removed as provided by law.

## DISTRICT-ATTORNEYS.

district attorneys.  
R. S. 13, § 37.  
1856, 173, §§ 1, 5.

SECT. 2. In the year eighteen hundred and sixty-two and every third year thereafter, there shall be elected by the voters in each of the districts into which the commonwealth is divided for the administration of the criminal law, a district-attorney, who shall be a resident within the district. The officers so elected shall hold their offices for three years from the first Wednesday in January following their election.

## CLERKS OF THE COURTS.

clerks of courts.  
1856, 173, §§ 2, 6, 7.  
1857, 1.  
1859, 196, § 9.

SECT. 3. In the year eighteen hundred and sixty-one and every fifth year thereafter, there shall be elected by the voters in the county of Suffolk, a clerk of the supreme judicial court for said county, and two clerks of the superior court for said county, one for the civil, and one for the criminal, business, and by the voters in each of the other counties a clerk of the courts for the county, who shall act as clerk of the supreme judicial court, the superior court, and the county commissioners. Such clerks shall hold their offices for five years from the first Wednesday of January following their election, unless sooner removed as provided by law.

## REGISTERS OF PROBATE AND INSOLVENCY.

registers of probate and insolvency.  
1858, 93, § 4.

SECT. 4. In the year eighteen hundred and sixty-three and every fifth year thereafter, there shall be elected by the voters in each county a register of probate and insolvency for the county, who shall hold his office for five years from the first Wednesday of January following his election.

## SHERIFFS AND COMMISSIONERS OF INSOLVENCY.

sheriffs and

SECT. 5. In the year eighteen hundred and sixty-two and every

third year thereafter, there shall be elected by the voters in each county a sheriff for the county, and in the county of Worcester four commissioners of insolvency, and in each of the other counties three commissioners of insolvency. Each of said officers shall hold his office for three years from the first Wednesday in January following his election.

commissioners of insolvency.  
1848, 304, § 1.  
1851, 322.  
1852, 112.  
1856, 173, §§ 1, 5.

COUNTY COMMISSIONERS AND SPECIAL COMMISSIONERS.

SECT. 6. The voters in the county of Middlesex with those of the city of Chelsea and the towns of North Chelsea and Winthrop, and the voters in each of the other counties except Suffolk and Nantucket shall annually elect one county commissioner for the county, who shall hold his office for three years and until his successor is elected and qualified. There shall be three county commissioners in each county except Suffolk and Nantucket.

Election of county commissioners.  
R. S. 14, §§ 16, 24.  
1850, 299, § 2.  
1852, 53.  
1854, 77, § 3.  
3 Gray, 126.

SECT. 7. In the year eighteen hundred and sixty-two and every third year thereafter, there shall be elected by the voters in the county of Middlesex with those of the city of Chelsea and the towns of North Chelsea and Winthrop, and by the voters in each of the other counties except Suffolk and Nantucket, two special commissioners for the county, who shall hold their offices for three years and until their successors are elected and qualified.

special commissioners.  
R. S. 14, §§ 21, 24.  
1850, 299, § 2.  
1852, 53.  
1854, 77, § 6.

SECT. 8. Not more than one of the county commissioners and special commissioners in each county, except the county of Dukes County, shall be chosen from the same city or town. When at any election, except in the county of Dukes County, two persons residing in the same city or town have a plurality of votes, whereby one would otherwise be elected county commissioner and the other special commissioner, or both, to either of those offices, the one who has the highest number of votes shall be elected, and when both have an equal number neither of them shall be deemed elected. When a person residing in a city or town in which a county commissioner or special commissioner who is to remain in office resides, has a plurality of the votes, he shall not be elected.

Not more than one commissioner to be chosen from the same place.  
R. S. 14, § 23.  
1854, 77, §§ 3, 6, 7.

COUNTY TREASURERS AND REGISTERS OF DEEDS.

SECT. 9. In the year eighteen hundred and sixty-one and every third year thereafter, there shall be elected by the voters in each county, except Suffolk and Nantucket, a suitable person residing therein, to be treasurer of the county, who shall hold his office for three years and until his successor is elected and qualified. At the same times there shall be elected by the voters in each district for the registry of deeds, and in each county not divided into such districts, a suitable person residing therein to be register of deeds for such district or county, who shall hold his office for three years and until his successor is elected and qualified, unless sooner removed as provided by law.

Election of county treasurer and register of deeds.  
R. S. 14, §§ 101, 111, 112, 113, 114.  
1837, 186.  
1855, 79.  
1858, 92, §§ 1, 3.  
1856, 118.  
2 Gray, 370.

FAILURES TO ELECT.

SECT. 10. If on the days aforesaid there is a failure to elect a district-attorney, clerk of the courts, register of probate and insolvency, sheriff, or commissioner of insolvency, in any district or county, the governor shall by proclamation declare such failure and order a new election to be had on such day as he shall appoint, and shall continue so to order such elections until a choice is effected.

In case of failures to elect district attorney, clerk of courts, register of probate and insolvency, &c.  
1856, 173, § 4.  
1858, 93, § 12.

SECT. 11. If on said days there is a failure to elect a county commissioner or special commissioner for any county, the board of examiners shall forthwith issue their warrant to the mayor and aldermen and selectmen of the cities and towns in such county, or in the county of Middlesex, to the mayor and aldermen and selectmen of the cities and

commissioners and special commissioners.  
R. S. 14, §§ 19, 20.

towns in said county, and of Chelsea, North Chelsea, and Winthrop, requiring them on a day mentioned in their warrant, which shall be within twenty days after issuing the same, to call meetings of the voters in their respective places for completing such elections, and they shall continue so to issue their warrants until a choice is effected. At each election the examiners shall furnish the mayor and aldermen and selectmen with a list of the persons not elected, who at the preceding election received more than twenty-five votes.

In case of failure to elect county treasurer and register of deeds.  
R. S. 14, §§ 107, 108, 109.  
R. S. act of amend. § 3.  
1856, 118.  
See § 16.

SECT. 12. If on said days there is a failure to elect a county treasurer or register of deeds for any county or district, the county commissioners shall forthwith issue their warrant to the mayor and aldermen and selectmen of the several cities and towns in such county or district, requiring them on a day mentioned in the warrant to call meetings of the voters in their respective places for completing such elections, and they shall continue so to issue their warrants until a choice is effected. The commissioners shall in such cases meet and count the votes at such times as they shall adjourn to, for that purpose.

#### VACANCIES.

Vacancies in office of clerk, &c., how filled.  
1856, 173, §§ 8, 9.  
See § 16.  
Ch. 17, § 81.  
Ch. 119, § 13.

SECT. 13. If a person elected to either of the offices mentioned in section ten is removed therefrom, or otherwise vacates the same, an election to fill such office for the remainder of his term shall be ordered by the governor, and shall be had on the Tuesday next after the first Monday of November.

commissioner and special commissioner.  
R. S. 14, § 22.  
1850, 299, § 2.  
1852, 53.  
See § 16.

SECT. 14. A vacancy in the office of county commissioner or special commissioner of any county may be filled at any time when the board of examiners think it expedient; and they shall issue their warrant therefor to the mayor and aldermen and selectmen of the cities and towns of such county, or in the county of Middlesex to the mayor and aldermen and selectmen of the cities and towns therein, and of Chelsea, North Chelsea, and Winthrop, and the person chosen shall fill the office for the remainder of the term.

county treasurer or register of deeds.  
R. S. 14, § 107.  
R. S. act of amend. § 3.  
1856, 118.  
See § 16.  
Ch. 17, § 87.  
Penalty on selectmen, &c., for neglect.  
R. S. 14, § 28.  
1839, 135.

SECT. 15. If a person elected county treasurer or register of deeds resigns or otherwise vacates the office, an election to fill the same for the remainder of the term shall be had on the Tuesday next after the first Monday of November upon the order of the county commissioners, who shall issue their warrant therefor as in the case of failure to elect.

SECT. 16. If the mayor and aldermen or selectmen of any place wilfully neglect to comply with a warrant or order issued under either of the six preceding sections, each of them so neglecting shall forfeit a sum not exceeding two hundred dollars.



# TITLE III.

## OF THE ASSESSMENT AND COLLECTION OF TAXES.

CHAPTER 11.—Of the Assessment of Taxes.  
 CHAPTER 12.—Of the Collection of Taxes.

### CHAPTER 11.

#### OF THE ASSESSMENT OF TAXES.

PERSONS AND PROPERTY SUBJECT TO TAXATION.

SECTION

1. Persons subject to a poll tax.
2. Property subject to taxation.
3. Real estate.
4. Personal estate.

PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

5. Property and polls exempted: 1st, property of the United States; 2d, of the commonwealth, except; 3d, of certain institutions; 4th, of school districts; 5th, Bunker Hill Monument; 6th, household furniture, &c.; 7th, churches; 8th, cemeteries, &c.; 9th, estate of agricultural societies; 10th, of certain females to amount of five hundred dollars; 11th, cattle, &c.; 12th, Indians; 13th, polls and estates of persons unable to pay.

WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

6. Poll tax, where assessed.
7. Person to be taxed where he designates his place of residence to be.
8. Real estate, where and to whom taxed.
9. Tenant may recover of landlord taxes paid, unless, &c.
10. Real estate of person deceased may be assessed to heirs, &c. One liable for whole with right to contribution.
11. or to estate of deceased where title is in dispute.
12. Personal estate, taxed where owner resides. Except — stock in trade, &c., employed in other towns.  
 machinery, &c.  
 horses, &c.  
 of persons under guardianship.  
 personal property held in trust, &c.  
 deposited to accumulate.  
 of deceased persons.
13. Property held as a ministerial fund.
14. Personal property mortgaged, &c.
15. Partners may be jointly taxed for stock in trade.

MANNER OF ASSESSING TAXES.

SECTION

16. Ships of copartners assessed where owners reside.
17. State treasurer to send tax warrants to sheriffs.
18. By what rules all taxes to be assessed.
19. Penalty if assessors refuse to obey warrant. In such case commissioners to appoint.
20. Town, &c., liable for state or county tax not assessed.
21. Keepers of taverns, &c., to give names of persons taxable. Penalty.
22. Assessors to give notice, to bring in lists of polls and property.
23. may verify lists by oath of party.
24. to make a fair cash valuation.
25. to receive lists as true, unless, &c.
26. Penalty for agreement to assessment on limited amount, &c., with view to residence.
27. Assessors shall make an estimate when lists are not brought in.
28. Estimate conclusive, unless, &c.
29. State, county and town taxes in one assessment.
30. County and city taxes in Boston. Chelsea, &c., exempt.
31. Proportions to be assessed on polls, and property.
32. Assessors may add five per cent. for convenience of apportionment.
33. to deposit copy of valuation in office.
34. What shall be contained in valuation: estates of inhabitants; estates of non-residents.
35. Form of tax list for collectors.
36. Valuation list to be sworn to by assessors.
37. Penalty on assessor omitting to take oath, &c.
38. Assessors to commit lists to collectors, &c.
39. Contents and form of warrant.
40. If warrant is lost, &c., new one may issue.
41. Discounts may be allowed.
42. rates of, to be posted up.
43. Abatements.
44. Costs before abatement, &c.

## SECTION

45. If assessors refuse to abate taxes, &c.  
 46. No abatement allowed unless, &c.  
 47. To be applied for within six months.  
 48. If tax is paid, amount of abatement to be paid out of town treasury.  
 49. Party entitled to certificate of his abatement.  
 50. Assessors to assess persons applying seven days before an election.

## SECTION

51. Assessors to be responsible only for fidelity, &c.  
 52. Pay of assessors.  
 REASSESSMENT OF TAXES.  
 53. Taxes, invalid, &c., except poll taxes, may be reassessed.  
 ILLEGAL ASSESSMENTS.  
 54. to be void to extent of illegal excess.

## PERSONS AND PROPERTY SUBJECT TO TAXATION.

SECTION 1. A poll tax shall be assessed in the manner hereinafter provided, on every male inhabitant of the commonwealth above the age of twenty years, whether a citizen of the United States or an alien.

SECT. 2. All property, real and personal, of the inhabitants of this state, not expressly exempted by law, shall be subject to taxation as hereinafter provided.

SECT. 3. Real estate, for the purposes of taxation, shall include all lands within this state, and all buildings and other things erected on or affixed to the same.

SECT. 4. Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are, ships and vessels at home or abroad, money at interest, and other debts due the persons to be taxed more than they are indebted or pay interest for, public stocks and securities, stocks in turnpikes, bridges, and moneyed corporations, within or without the state, the income from an annuity, and so much of the income from a profession, trade, or employment, as exceeds the sum of six hundred dollars a year; but no income shall be taxed which is derived from property subject to taxation.

## PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

SECT. 5. The following property and polls shall be exempted from taxation:—

First. The property of the United States.

Second. The property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage for condition broken.

Third. The personal property of literary, benevolent, charitable, and scientific institutions incorporated within this commonwealth, and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated.

Fourth. All property belonging to common school districts, the income of which is appropriated to the purposes of education.

Fifth. The Bunker Hill Monument.

Sixth. The household furniture of every person, not exceeding one thousand dollars in value, his wearing apparel, farming utensils, and mechanics' tools necessary for carrying on his business.

Seventh. Houses of religious worship, and the pews and furniture (except for parochial purposes); but portions of such houses appropriated for purposes other than religious worship shall be taxed at the value thereof to the owners of the houses.

Eighth. Cemeteries, tombs, and rights of burial, so long as the same shall be dedicated for the burial of the dead.

Ninth. The estate, both real and personal, of incorporated agricultural societies.

Tenth. The property to the amount of five hundred dollars of a widow or unmarried female, and of any female minor whose father is deceased, if her whole estate real and personal not otherwise exempted

Poll tax.

R. S. 7, § 1.

1843, 87.

1844, 145.

7 Mass. 523.

4 Met. 181.

5 Met. 594.

Property tax.

R. S. 7, § 2.

4 Met. 534.

4 Cush. 12.

8 Cush. 237.

4 Gray, 500.

Real.

R. S. 7, § 3.

10 Cush. 514.

Personal.

R. S. 7, § 4.

1839, 139, § 2.

1849, 149.

16 Pet. 435.

6 Pick. 98.

16 Pick. 572.

9 Met. 73, 199.

7 Cush. 600.

10 Cush. 123.

Exempted.

R. S. 7, § 5.

See Ch. 13, § 75.

Property of the

United States.

of the state.

1853, 122.

4 Met. 564.

8 Cush. 237.

4 Gray, 500.

certain insti-

tutions.

2 Cush. 611.

school dis-

tricts.

1843, 85.

Bunker Hill

Monument.

Household fur-

niture, &c.

Churches.

1841, 127.

1 Met. 538.

Cemeteries, &c.

1841, 114, § 7.

Estate of agri-

cultural socie-

ties.

1851, 215.

of certain fe-

males to

amount of five

from taxation does not exceed in value the sum of one thousand dollars.

Eleventh. Mules, horses, and neat cattle, less than one year old; and swine and sheep less than six months old.

hundred dollars.  
1858, 43, § 1.  
Cattle, &c.

Indians.

Twelfth. The polls and estates of Indians.

Thirteenth. The polls and any portion of the estates of persons who by reason of age, infirmity, and poverty, are in the judgment of the assessors unable to contribute fully towards the public charges.

Polls and estates of persons unable to pay.

WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

SECT. 6. The poll tax shall be assessed upon each taxable person, in the place where he is an inhabitant on the first day of May in each year, except in cases otherwise provided for by law. The poll tax of minors liable to taxation shall be assessed to, and in the places of the residence of, the parents, masters, or guardians, having control of the persons of such minors; but if a minor has no parent, master, or guardian, within this state, he shall be personally taxed for his poll, as if he were of full age. The poll tax of every other person under guardianship shall be assessed to his guardian in the place where the guardian is taxed for his own poll.

Poll tax, where assessed.  
R. S. 7, § 6.  
1 Met. 242, 250.  
4 Met. 181.  
11 Cush. 302.  
2 Gray, 484.  
12 Cush. 44, 52, 54.

SECT. 7. A taxable person in a city or town on the first day of May who, when inquired of by the assessors thereof, refuses to state where he considers his legal residence to be, shall for the purpose of taxation be deemed an inhabitant of such place. If when so inquired of he designates another place as his legal residence, said assessors shall notify the assessors of such place, who, upon receiving the notice, shall tax such person as an inhabitant of their city or town. But such person shall not be exempt from the payment of a tax legally assessed upon him in the city or town of his legal domicile.

Person to be taxed where he designates his place of residence to be.  
1850, 276.

SECT. 8. Taxes on real estate shall be assessed in the city or town where the estate lies, to the person who is either the owner or in possession thereof on the first day of May. Mortgagors of real estate shall, for the purposes of taxation, be deemed owners until the mortgagee takes possession, after which the mortgagee shall be deemed the owner.

Real estate, where taxed.  
R. S. 7, § 7  
1 Cush. 142  
4 Cush. 260.  
2 Gray, 185.  
7 Gray, 127, 277.

SECT. 9. When a tenant paying rent for real estate is taxed therefor, he may retain out of his rent the taxes paid by him, or may recover the same in an action against his landlord, unless there is an agreement to the contrary.

Tenant may recover of landlord, taxes paid, unless, &c.  
R. S. 7, § 8.

SECT. 10. The undivided real estate of a deceased person may be assessed to his heirs or devisees without designating any of them by name, until they have given notice to the assessors of the division of the estate and the names of the several heirs or devisees; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective portions thereof.

Real estate of person deceased may be assessed to heirs, &c.  
One liable for whole, with right to contribution.  
R. S. 7, § 12.

SECT. 11. The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased, or the validity thereof, may be assessed in general terms to the estate of the deceased; and said tax shall constitute a lien upon the land so assessed, and may be enforced by the sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate.

or to estate of deceased where title is in dispute.  
1847, 226.  
Personal estate, taxed where owner resides.  
R. S. 7, §§ 9, 10.  
1839, 139, § 2.  
6 Pick. 98.  
1 Met. 242, 250.  
4 Cush. 543.  
11 Cush. 302.  
3 Gray, 494.  
7 Gray, 277.

SECT. 12. All personal estate within or without this state, shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May, except as follows:

First. All goods, wares, merchandise, and other stock in trade, (except ships or vessels owned by a copartnership,) including stock employed in the business of manufacturing or of the mechanic arts, in cities or towns

except stock in trade, &c., employed in other towns.



1839, 139, § 1.  
1859, 114.  
4 Met. 186.  
4 Cush. 543.  
10 Cush. 65.  
6 Gray, 579.

Machinery,  
where taxed,  
&c.,  
1837, 86.

Horses, &c.  
1857, 301, § 1.

Property of  
persons under  
guardianship.  
1855, 106.  
1859, 258.  
2 Gray, 494.

Trust property,  
&c.  
5 Cush. 93.  
6 Gray, 132.

Property de-  
posited to accu-  
mulate.

of deceased  
persons.  
1848, 235.  
1852, 234.  
5 Pick. 236.  
4 Cush. 1.

Property held  
as a ministerial  
fund.  
R. S. 7, § 10.  
19 Pick. 542.

Personal prop-  
erty, mort-  
gaged, &c.  
R. S. 7, § 11.  
10 Met. 334.  
Partners may  
be jointly taxed  
for stock in  
trade.

within the state, other than where the owners reside, whether such owners reside within or without this state, shall be taxed in those places where the owners hire or occupy manufactories, stores, shops, or wharves, whether such property is within said places or elsewhere on the first day of May of the year when the tax is made.

Second. All machinery employed in any branch of manufactures, and belonging to a person or corporation, shall be assessed where such machinery is situated or employed; and, in assessing the stockholders for their shares in any manufacturing corporation, there shall first be deducted from the value thereof, the value of the machinery and real estate belonging to such corporation.

Third. Horses, mules, neat cattle, sheep, and swine, kept throughout the year in places other than those where the owners reside, whether such owners reside within or without this state, and horses employed in stages or other vehicles for the transportation of passengers for hire, shall be assessed to the owners in the places where they are kept.

Fourth. Personal property belonging to persons under guardianship, shall be assessed to the guardian in the place where the ward is an inhabitant, unless the ward resides and has his home without the state, in which case it shall be taxed to the guardian in the place where he is an inhabitant.

Fifth. Personal property held in trust by an executor, administrator, or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator, or trustee, in the place where such other person resides, if within the state, and if he resides out of the state it shall be assessed in the place where the executor, administrator, or trustee, resides, and if there are two or more executors, administrators, or trustees, residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator, or trustee, is not an inhabitant of this state, it shall be assessed to the person to whom the income is payable, in the place where he resides.

Sixth. Personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of heirs or other persons, shall be assessed to such heirs or persons, if within the state, otherwise to the person so placing it or his executors or administrators until a trustee is appointed to take charge of such property, or the income thereof.

Seventh. The personal estate of deceased persons shall be assessed in the place where the deceased last dwelt. After the appointment of an executor or administrator, it shall be assessed to such executor or administrator until he gives notice to the assessors that the estate has been distributed and paid over to the parties interested therein. Before such appointment it shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed in like manner as though assessed to him.

SECT. 13. Property held by a religious society as a ministerial fund shall be assessed to the treasurer of the society. If such property consists of real estate, it shall be taxed in the town where it lies; if it consists of personal property, it shall be taxed in the town where such society usually hold their meetings.

SECT. 14. Personal property mortgaged or pledged shall, for the purposes of taxation, be deemed the property of the party who has the possession.

SECT. 15. Partners in mercantile or other business, whether residing in the same or different places, may be jointly taxed under their partnership name in the place where their business is carried on, for all the personal property employed in such business, except ships or vessels.

If they have places of business in two or more towns, they shall be taxed in each of such places for the proportion of property employed therein. When so jointly taxed each partner shall be liable for the whole tax.

R. S. 7, § 13.  
1859, 114.  
9 Cush. 298.  
7 Gray, 132.

SECT. 16. Ships or vessels owned by a copartnership shall be assessed to the several partners in their places of residence, proportionally to their interests therein.

Ships of copartners assessed where owners reside. 1859, 114.

MANNER OF ASSESSING TAXES.

SECT. 17. When a state tax is to be assessed, the treasurer shall send his warrants for the assessing thereof, to the sheriffs of the several counties, who shall immediately transmit them to the assessors to whom they are directed.

State treasurer to send tax warrants to sheriffs. R. S. 7, § 14.

SECT. 18. The assessors shall assess state taxes for which they receive warrants from the treasurer, according to the rules prescribed in this chapter. They shall in like manner assess all county taxes which are duly certified to them, all city or town taxes voted by their places, and all taxes duly voted and certified by school districts therein.

By what rules all taxes to be assessed. R. S. 7, § 16. 12 Met. 178.

SECT. 19. If the assessors of a city or town neglect to obey a warrant so received from the treasurer, or to assess such a county, town, or district tax, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars; and the commissioners in the respective counties shall forthwith appoint other suitable persons to assess such tax, according to the warrant of the treasurer. The persons so appointed shall take the same oath, perform the same duties, and be liable to the same penalties, as are provided in the case of assessors of towns.

Penalty if assessors refuse to obey warrant. In such case commissioners to appoint. R. S. 7, §§ 17, 18.

SECT. 20. If within five months after the receipt of a warrant from the state treasurer, or a certificate from the county commissioners requiring the assessment of a tax, the same is not assessed and certified as the law requires, the amount of the tax may be recovered of the city or town where the neglect occurs, in an action of contract by the treasurer of the state or county respectively.

Town, &c., liable for state or county tax not assessed. R. S. 8, § 37. 1852, 312.

SECT. 21. Keepers of taverns and boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of an assessor in the place where their house is situated, give information of the names of all persons residing therein and liable to be assessed for taxes. Every such keeper, master, or mistress, refusing to give such information or knowingly giving false information, shall forfeit twenty dollars for each offence.

Keepers of taverns, &c., to give names of persons taxable. Penalty. 1837, 174. 1839, 135.

SECT. 22. Before proceeding to make an assessment, the assessors shall give reasonable notice thereof to the inhabitants of their respective places, at any of their meetings, or by posting up in their city or town one or more notifications in some public place or places, or by some other sufficient manner. Such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and estates, both real and personal, not exempted from taxation.

Assessors to give notice to bring in lists of polls and property. R. S. 7, § 19. 12 Met. 211. 5 Cush. 97. 8 Cush. 55.

SECT. 23. The assessors shall in all cases require a person bringing in such a list, to make oath that the same is true; which oath may be administered by either of the assessors.

may verify lists by oath of the party. R. S. 7, § 20.

SECT. 24. The assessors of each place shall at the time appointed make a fair cash valuation of all the estate real and personal, subject to taxation therein.

to make cash valuation. R. S. 7, § 21. 1853, 319, § 1. 4 Gray, 254.

SECT. 25. They shall receive as true the list brought in by each individual according to the provisions of this chapter, unless on being thereto required by the assessors, he refuses to answer on oath all necessary inquiries as to the nature and amount of his property.

to receive lists as true, unless, &c. R. S. 7, § 22. 12 Met. 211. 8 Cush. 64.

SECT. 26. Any person who in any way directly or indirectly pro-

Penalty for agreeing to assessment on limited amount, &c., with view to residence, &c.

Assessors shall make an estimate, when lists are not brought in.  
R. S. 7, § 23.  
8 Cush. 63.

To be conclusive, unless, &c.  
R. S. 7, § 24.  
5 Cush. 97.  
8 Cush. 63.

State, county, and town taxes in one assessment.

R. S. 7, § 25.  
County and city taxes in Boston, how assessed.  
Chelsea, &c., exempt.  
R. S. 7, § 26.  
R. S. 14, § 34.  
21 Pick. 64.

Proportions to be assessed on polls and property.  
R. S. 7, § 27.  
1539, 157.

Assessors may add five per cent. for convenience of apportionment.

R. S. 7, § 28.  
to deposit a copy of valuation in office.  
R. S. 7, § 29.  
2 Gray, 298.

What shall be contained in valuation.  
R. S. 7, § 30.  
estates of inhabitants.  
21 Pick. 64.

estates of non-residents.

poses or agrees to an assessment on any specific or limited amount less than he is liable by law to be taxed for, with a view or as an inducement to make any particular place his residence for the purpose of taxation, shall be punished by fine of one thousand dollars; and any assessor guilty of making or assenting to any such proposal shall be subject to a like penalty.

SECT. 27. They [the assessors] shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person who has not brought in such list, and make an estimate thereof at its just value, according to their best information and belief.

SECT. 28. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons who have not seasonably brought in lists of their estates, unless they can show a reasonable excuse for the omission.

SECT. 29. The assessors, when they think it convenient, may include in the same assessment their state, county, and town taxes, or any two of them.

SECT. 30. In the city of Boston, all taxes assessed for city or county purposes may be assessed separately, as county taxes and as city taxes, or under the denomination of city taxes only, as the city council from time to time directs. Chelsea, North Chelsea, and Winthrop, shall not be taxed for county purposes.

SECT. 31. The assessors shall assess upon the polls, as nearly as may be, one-sixth part of the whole sum to be raised; but the whole poll tax assessed in one year upon an individual for town, county, and state purposes, except highway taxes separately assessed, shall not exceed one dollar and fifty cents; and the residue of such whole sum shall be apportioned upon property, as provided in this chapter.

SECT. 32. They may add to the amount of a tax to be assessed, such sum, not exceeding five per cent. thereof, as any fractional divisions of the amount may render convenient in the apportionment.

SECT. 33. They shall make a list of the valuation and the assessment thereon, and, before the taxes assessed are committed for collection, shall deposit the same, or an attested copy thereof, in their office, or if there is no office, with their chairman, for public inspection.

SECT. 34. The first part of the list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed; and shall contain in separate columns the following particulars, to wit:—

- The names of the inhabitants assessed; and opposite to their names,
- The number of polls.
- The amount of their poll tax.
- The description of their real estate.
- The true value of their real estate.
- The tax assessed on such real estate.
- The description of their personal property.
- The true value of their personal property.
- The tax on their personal property.
- The sum total of each person's tax.

The second part shall exhibit the valuation and assessment of the estates of non-resident owners; and shall contain in separate columns the following particulars, to wit:—

- The names of the non-resident owners of the property assessed, or such description of them as can be given.
- Their places of abode, if known.
- The description of their estate.
- The true value of such estate.
- The tax thereon.

1861 Ch. 167



SECT. 35. The tax list committed to the collectors shall be in substance, as follows:

Form of tax list for collectors.  
R. S. 7, § 31.  
9 Pick. 97.  
2 Gray, 298.

Names.	No. of Polls.	Poll Tax.	Tax on Real Estate.	Tax on Personal-Property.	Total.	Time when paid.
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NON-RESIDENTS.

Names.	Places of abode, if known.	Tax.
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SECT. 36. The assessors, or other persons empowered to assess the taxes in a city or town, shall, at the close of said valuation list, subscribe and take the following oath:

Valuation list to be sworn to by assessors.  
1853, 319, § 2.

“We, (the assessors, or mayor and aldermen, as the case may be, of \_\_\_\_\_) do hereby solemnly swear that the foregoing list is a full and true list of the names of all persons known to us, who are liable to taxation in \_\_\_\_\_, (here insert the name of the city or town,) during the present year, and that the real and personal estate contained in said list, and assessed upon each individual in said list, is a full and accurate assessment upon all the property of each individual, liable to taxation, at its full and fair cash value, according to our best knowledge and belief.”

SECT. 37. Any assessor or other person assessing taxes in a city or town, who omits to take and subscribe the oath prescribed in the preceding section, shall be punished by a fine of ten dollars; but the omission to take and subscribe said oath shall not prevent the collection of a tax otherwise legally assessed.

Penalty on assessors omitting to take oath.  
1857, 306, §§ 1, 2.

SECT. 38. The assessors shall, within a reasonable time, commit said tax list with their warrant to the collector, or if no collector is chosen to a constable, or if there is no constable to the sheriff or his deputy, for collection.

Assessors to commit lists to collectors, &c.  
R. S. 7, §§ 32, 34.  
R. S. 8, § 33.  
R. S. 13, § 33.  
13 Met. 85.  
6 Gray, 387, 502.  
Contents and form of warrant.  
R. S. 7, § 33.  
1 Met. 328.  
6 Met. 345.

SECT. 39. The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes, the times when and the persons to whom he shall pay them in, shall be substantially in the form heretofore used, and need not be under seal.

SECT. 40. When a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant.

If warrant is lost, &c., new one may issue.  
R. S. 8, § 51.  
R. S. act of amend. § 1.  
Discounts.  
R. S. 7, § 35.

SECT. 41. Towns, at their annual meeting, and city councils of cities may allow a discount of such sums as they think expedient to persons making voluntary payment of their taxes within such periods of time as they prescribe. In such case the collectors shall make such discount accordingly.

SECT. 42. When such discount is allowed, the assessors, at the time of committing their warrant to the collector, shall post up in one or more public places within the city or town, notice of the rates of discount.

rates to be posted up.  
R. S. 7, § 36.

SECT. 43. A person aggrieved by the taxes assessed upon him, may apply to the assessors for an abatement thereof; and, if he makes it appear that he is taxed at more than his just proportion, they shall make a reasonable abatement.

Abatements.  
R. S. 7, § 37.  
9 Met. 265.  
5 Cush. 93.  
7 Cush. 273.  
8 Cush. 55, 66.  
Costs before abatement, &c.  
R. S. 7, § 38.  
See § 48.

SECT. 44. If legal costs have accrued before making such abatement, the person applying for the abatement shall pay the same.

SECT. 45. If the assessors refuse to make an abatement to a person, he may, within one month thereafter, make complaint thereof to the county commissioners by filing the same with their clerk, and if upon a hearing it appears that the complainant is overrated, the commissioners shall make such an abatement as they deem reasonable.

If assessors refuse to abate, &c.  
R. S. 7, § 39.  
6 Pick. 98.  
7 Cush. 273.  
8 Cush. 55.

SECT. 46. No person shall have an abatement unless he has filed with the assessors a list subscribed by him of his estate liable to taxation, and made oath that it is full and accurate according to his best knowledge and belief. When such list is not filed within the time

No abatement unless, &c.  
R. S. 7, § 40.  
1853, 319, § 3.  
1857, 306, § 3.  
4 Pick. 399.

5 Pick. 451, 498.  
 7 Pick. 106.  
 21 Pick. 382.  
 4 Met. 599.  
 11 Met. 339.  
 5 Cush. 97.  
 6 Cush. 477.  
 8 Cush. 63.  
 5 Gray, 365.  
 To be applied  
 for within six  
 months.  
 R. S. 7, § 41.  
 If tax is paid,  
 amount of  
 abatement to be  
 paid out of  
 town treasury.  
 R. S. 7, § 42.  
 Party entitled  
 to certificate.  
 R. S. 7, § 43.  
 Assessors to  
 assess persons  
 applying seven  
 days before an  
 election.  
 1832, 109.  
 1858, 107.  
 12 Met. 178.

specified by the assessors for bringing it in, no complaint from the judgment of the assessors shall be sustained by the county commissioners, unless they are satisfied that there was good cause why such list was not seasonably brought in.

SECT. 47. No abatement shall be allowed to a person unless he makes application therefor within six months after the date of his tax bill.

SECT. 48. A person having an abatement made, shall, if his tax has been paid, be reimbursed out of the treasury of the city or town to the amount of the abatement allowed, together with all charges, except the legal costs provided for in section forty-four.

SECT. 49. Every person whose tax is abated, shall be entitled to a certificate thereof from the assessors, or clerk of the commissioners, or other proper officer.

SECT. 50. When a person seven days or more prior to any election gives notice in writing accompanied by satisfactory evidence to the assessors of a city or town, that he was at the time of the last annual assessment of taxes in such place an inhabitant thereof and liable to pay a poll tax, and furnishes under oath a true list of his polls and estate, both real and personal not exempt from taxation, the assessors shall assess him for his polls and estate in the same manner they would have done if such list had been duly brought in; and the assessors shall, five days at least before any election, deposit with the clerk of the place a list of the persons so assessed. The tax thus assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay it over as specified in his warrant.

SECT. 51. The assessors shall not be responsible for the assessment of a tax in a city, town, parish, religious society, or school district, for which they are assessors, when such tax is assessed by them in pursuance of a vote for that purpose, certified to them by the clerk or other proper officer of such city, town, parish, religious society, or school district, except for the want of integrity and fidelity on their own part.

SECT. 52. Each assessor shall be paid by his city or town one dollar and fifty cents a day, for every whole day that he is employed in that service, with such other compensation as the city or town shall allow.

#### REASSESSMENT OF TAXES.

SECT. 53. Every tax, except a poll tax, which is invalid by reason of any error or irregularity in the assessment, and which has not been paid, or which has been recovered back, may be reassessed by the assessors for the time being, to the just amount to which, and upon the estate or to the person to whom, such tax ought at first to have been assessed, whether such person has continued an inhabitant of the same city or town or not.

#### ILLEGAL ASSESSMENTS.

SECT. 54. If through any erroneous or illegal assessment or appointment of taxes, a party is assessed more or less than his due proportion, the tax and assessment shall be void only to the extent of the illegal excess.

to be respon-  
 sible only for  
 fidelity, &c.  
 R. S. 7, § 44.  
 4 Pick. 399.  
 5 Pick. 451, 498.  
 7 Pick. 106.  
 21 Pick. 382.  
 4 Met. 599.  
 11 Met. 339.  
 4 Gray, 42.  
 Pay of assess-  
 ors.  
 R. S. 7, § 45.  
 1855, 224.  
 3 Met. 431.

Taxes, invalid,  
 &c., except poll  
 taxes, may be  
 reassessed.  
 1859, 118, § 1.

to be void to  
 extent of illegal  
 excess.  
 1859, 118, § 4.  
 See ch. 12, § 50.

CHAPTER 12.

OF THE COLLECTION OF TAXES.

SECTION

1. Collectors to collect taxes.
2. to complete collections though term expire.
3. Demand to be made.
4. When credit doubtful, taxes may be collected forthwith.
5. Person claiming abatement must produce certificate. Liable to costs.
6. Errors in names not to defeat collection.
7. Distress and sale to pay taxes, except, &c.
8. Distress, how long kept, how advertised, and sold.
9. Sale may be adjourned once.
10. Seizure of shares, how made.
11. Sales of shares seized, how made.
12. Surplus to be returned to owner.
13. After fourteen days, party may be imprisoned.
14. Copy of warrant, &c., to be left with jailer.
15. Persons imprisoned for non-payment of taxes, how discharged.
16. Collectors, when liable to pay tax, &c
17. may demand aid. Penalty.
18. Persons removing from collector's precinct without paying.
19. Remedy if persons remove, &c., without paying.
20. against executors and administrators.
21. against persons who are not owners of the real estate taxed to them.
22. Taxes to be lien on real estate for two years, &c.
23. reassessed to be a lien, unless, &c.
24. Resident mortgagee of real estate, when to be called upon for taxes.
25. When non-resident appoints attorney, demand how made.
26. When made, collector to wait two months.
27. Affidavit of collector, &c. Evidence of demand on attorney.
28. Sales of real estate, how advertised.
29. Contents of advertisement.
30. Notices, how posted.

SECTION

31. When name of place has been changed.
32. Affidavit of publishing and posting notifications to be evidence, if recorded.
33. Sale by auction, of sufficient, &c.
34. Collector may adjourn sale not exceeding seven days in whole.
35. Deed to be given to purchaser, subject, &c. When to be recorded.
36. Owner may redeem within two years, &c.
37. how redeemed when purchaser cannot be found, &c.
38. Duty of treasurer.
39. Mortgagee may pay taxes on real estate in certain cases.
40. shall pay such taxes upon taking possession. Entitled to deed on tender.
41. entitled to receipt for such taxes paid to collector. May tack same to mortgage.
42. S. J. C. to have equity powers.
43. When tax list, &c., is committed to sheriff, &c.
44. Sheriff's fees for collecting.
45. When treasurers are made collectors, how to proceed.
46. Collectors to exhibit accounts every two months, if required.
47. Penalty.
48. Collectors to be credited with abatements, &c.
49. Deficiency in state or county tax, how supplied.
50. Same, when collectors neglect to pay.
51. Remedy for collector's neglect.
52. If collector becomes insane, &c., selectmen may remove him.
53. Tax list of deceased collector, how to be completed. Temporary collector.
54. If collector dies, list to be delivered to selectmen.
55. Compensation.

RECOVERY OF TAXES COLLECTED.

56. Taxes paid to collector, when recovered back.

SECTION 1. Every collector of taxes, constable, sheriff, or deputy sheriff, receiving a tax list and warrant from the assessors, shall proceed to collect the taxes therein mentioned, according to the warrant.

SECT. 2. The collector shall, unless removed from office as hereinafter provided, complete the collection of taxes committed to him, although his term of office expires before such completion.

SECT. 3. Collectors shall before distraining the goods of a person for his tax, demand payment thereof from such person, either personally or at his usual place of abode, if to be found within their precincts.

SECT. 4. When the credit of a person taxed is considered doubtful by the assessors, they may order the collector forthwith to compel payment by distress or imprisonment, whether the tax is made payable immediately, at a future day, by instalments, or otherwise.

SECT. 5. If a person claims the benefit of an abatement, he shall exhibit to the collector demanding his taxes, a certificate of such abatement, from the assessors or other proper officer, as provided in chapter eleven; and shall be liable to pay all costs and officers' fees incurred before exhibiting such certificate.

Collectors to collect taxes.  
R. S. 7, § 34.  
R. S. 8, §§ 1, 33.

to complete collections though term expire.

R. S. 8, § 2.  
Demand to be made.  
R. S. 8, § 3.  
1 Met. 328.

When credit doubtful, taxes may be collected forthwith.  
R. S. 8, § 12.

Person claiming abatement must produce certificate.  
Liable to costs.  
R. S. 8, § 3.  
9 Met. 504.



Errors in names not to debar collection.  
R. S. 8, § 5.  
6 Met. 474.  
7 Gray, 127.

Distress and sale to pay taxes; except, &c.  
R. S. 8, § 7.  
1846, 195, § 1.  
9 Met. 504.  
11 Cush. 338.  
7 Gray, 133.

Distress, how long kept, how advertised and sold.  
R. S. 8, § 8.  
1 Met. 328.  
13 Met. 85.  
11 Cush. 338.

Sale may be adjourned once.  
R. S. 8, § 9.

Seizure of shares, how made.  
1846, 195, § 2.

Sales of shares seized, how made.  
1846, 195, §§ 3, 4.  
4 Cush. 10.  
11 Cush. 338.

Surplus to be returned to owner.  
R. S. 8, § 10.  
5 Gray, 530.  
After fourteen days, party may be imprisoned.  
R. S. 8, § 11.  
13 Met. 85.  
2 Gray, 298.  
7 Gray, 133.  
13 Gray, 93.  
Copy of warrant, &c., to be left with jailer.  
R. S. 8, § 13.

Persons imprisoned for non-payment of taxes, how discharged.  
1857, 141, § 24.  
See Ch. 124.

Collectors, when liable to pay, &c.

SECT. 6. If, in the assessors' lists or in their warrant and list committed to the collectors, there is an error in the name of a person taxed, the tax assessed to him may be collected of the person intended to be taxed, if he is taxable and can be identified by the assessors.

SECT. 7. If a person refuses or neglects to pay his tax, the collector shall levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this commonwealth, and excepting the following goods:

The tools or implements necessary for his trade or occupation; beasts of the plough necessary for the cultivation of his improved lands; military arms, utensils for house-keeping necessary for upholding life, and bedding and apparel necessary for himself and family.

SECT. 8. The collector shall keep the goods distrained, at the expense of the owner, for four days at least, and shall, within seven days after the seizure, sell the same by public auction, for payment of the tax and charges of keeping and sale, having given notice of the sale by posting up a notification thereof in some public place in the city or town, forty-eight hours at least before the sale.

SECT. 9. The collector may once adjourn such sale for a time not exceeding three days: he shall forthwith give notice of such adjournment, by posting a notification at the place of sale.

SECT. 10. The seizure of a share or other interest in a corporation may be made by leaving with any officer of the corporation, with whom a copy of a writ may by law be left when the share of a stockholder is attached on mesne process, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the tax which the stockholder is to pay, and that, upon his neglect or refusal to pay, the collector has seized such share or interest.

SECT. 11. The sale of such share or interest shall be made in the manner prescribed by law for the sale of goods by collectors of taxes in like cases, and also subject to the provisions of sections forty-six and forty-seven of chapter one hundred and thirty-three, respecting sales on executions.

SECT. 12. If the distress or seizure is sold for more than the tax and charges of keeping and sale, the collector shall return the surplus to the owner, upon demand, with an account in writing of the sale and charges.

SECT. 13. If a person refuses or neglects for fourteen days after demand to pay his tax, and the collector cannot find sufficient goods upon which it may be levied, he may take the body of such person and commit him to prison, there to remain until he pays the tax and charges of commitment and imprisonment, or is discharged by order of law.

SECT. 14. When the collector commits a person to prison, he shall give the keeper thereof an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the sum which such person is to pay as his tax, with the cost of taking and committing him, and that upon his having neglected payment for fourteen days, or otherwise, as the case may be, and for want of goods whereof to make distress, he has taken his body.

SECT. 15. When a person committed to prison for the non-payment of taxes is unable to pay the same, he shall be entitled to his discharge in like manner as persons committed on execution. The notice required in such case to be given to the creditor, may be given to either of the assessors or the collector by whom the party was committed. And the assessors or collector, or any of them, may appear and do all things which a creditor might do in case of arrest on execution.

SECT. 16. If such person is discharged, the collector shall be liable to pay the tax with the charges of imprisonment, unless he arrested and committed the party within one year after the tax was committed to

him to collect, or unless he is exonerated therefrom by the city, town, or parish, to which the tax is due.

R. S. 8, § 50.  
3 Met. 152.

SECT. 17. A collector when resisted or impeded in the exercise of his office, may require any suitable person to aid him therein, and if such person refuses to render such aid, he shall forfeit a sum not exceeding ten dollars.

Collectors may demand aid. Penalty. R. S. 8, § 6.

SECT. 18. When a person, after the assessment of a tax upon him, removes out of the precinct of the collector without paying his tax, the collector may demand payment thereof wherever such person is found; and in default of payment the collector may forthwith proceed to collect the tax by making a distress, or by commitment of such person to the prison of the county where he is found; or the collector may issue his warrant to the sheriff of the county or his deputy, or to any constable of the place, where such person is found, directing them to distrain the property or take the body of such person, and to proceed therein in like manner as required of collectors in like cases.

Persons removing from collector's precinct, without paying. R. S. 8, § 14. 1842, 34.

SECT. 19. When a person taxed removes as aforesaid, or dies, or neglects to pay his tax for one year after it is committed to the collector, or being an unmarried woman, marries, before payment of the tax, the collector may, in his own name, maintain an action of contract therefor in like manner as for his own debt, and he may for that purpose in like manner have a process of foreign attachment against any trustee of such person.

Remedy if persons remove, &c., without paying. R. S. 8, § 15. 1852, 312. 1853, 171. 6 Mass. 44. 23 Pick. 235. 8 Met. 333.

SECT. 20. When a tax is assessed upon the personal estate of a deceased person, the collector may maintain an action of contract therefor in his own name, as for his own debt, against the executor or administrator; and if a tax is so assessed before the appointment of an executor or administrator, he may enforce it against the estate and its representative after such appointment, in like manner as if the assessment had been made subsequently thereto.

against executors and administrators. 1848, 235. 1852, 234. 1852, 312.

SECT. 21. When a person is taxed for real estate in his occupation, but of which he is not the owner, the collector, after demand of payment, may levy the tax by distress and sale of the cattle, sheep, horses, swine, or other stock or produce, of such estate, belonging to the owner thereof, which within nine months after such assessment is committed to him shall be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; but such demand need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months.

against persons who are not owners of the real estate taxed to them. R. S. 8, §§ 16, 17.

SECT. 22. Taxes assessed on real estate shall constitute a lien thereon for two years after they are committed to the collector; and may with all incidental costs and expenses be levied by sale thereof, if the tax is not paid within fourteen days after a demand of payment made either upon the person taxed or upon any person occupying the estate; but the collector may sell real estate for taxes after two years have elapsed, unless the estate has been alienated in the mean time.

Taxes to be lien on real estate for two years, &c. R. S. 8, § 18. 1856, 239, § 1. 7 Pick. 15. 2 Gray, 185.

SECT. 23. Taxes reassessed on real estate shall constitute a lien thereon from the time they are committed to the collector, unless the estate has been alienated between the first and second assessments; and may be levied as provided in the preceding section.

reassessed, to be a lien, unless, &c. 1859, 118, §§ 1, 2.

SECT. 24. If a mortgagee of real estate, situated in the place of his residence, previously to the assessment of a tax, gives written notice to the clerk of such place that he holds a mortgage thereon, with a description of the estate, the collector before proceeding to sell it for non-payment of taxes shall demand payment of said taxes of the mortgagee, as provided in section twenty-two.

Resident mortgagee of real estate, when to be called upon for taxes. 1848, 166, § 1.

SECT. 25. If a mortgagee or non-resident owner of real estate, previously to the assessment of a tax, gives a written authority to some

When non-resident appoints



attorney, demand how made.  
R. S. 8, § 20.  
1848, 166, § 2.

inhabitant of the place as his attorney, to pay the taxes imposed on such estate, and the authority is filed with, or recorded by, the clerk of the place, the demand of payment shall be made upon such attorney before the estate is sold; otherwise, no demand need be made of payment of taxes assessed on the real estate of non-resident owners.

When made, collector to wait two months.  
R. S. 8, § 21.  
Affidavit of collector, &c., evidence of demand on attorney.  
R. S. 8, § 22.

SECT. 26. When a demand is made upon the attorney under the preceding section, the collector shall not advertise the sale of the lands, until two months from the time of such demand.

Sales of real estate, how advertised.  
R. S. 8, § 24.  
13 Gray, 77.

SECT. 27. The affidavit of a disinterested person, or the collector, who makes a sale of land for the payment of taxes, taken before a justice of the peace and recorded by the clerk of the place where the land lies, before a sale is made, and stating the demand of payment of the tax, the person of whom, and the time and manner in which, it was made, shall be competent evidence of the demand.

Contents of advertisement.  
R. S. 8, § 25.  
1848, 166, § 3.  
4 Cush. 265.  
7 Cush. 503.  
Notices, how posted.  
R. S. 8, § 27.  
1848, 166, § 4.

SECT. 28. The collector shall give notice of the time and place of sale of real estate taken for taxes, by an advertisement thereof three weeks successively in some newspaper of the county where the real estate lies, if there is such newspaper, and if not, then in a newspaper printed in an adjacent county; the last publication to be at least one week before the time of sale.

SECT. 29. The advertisement shall contain a substantially accurate description of the several rights, lots, or divisions, of the estate to be sold, the amount of the tax assessed on each, the names of all owners known to the collector, and the taxes assessed on their respective lands.

When name of place has been changed.  
R. S. 8, § 26.

SECT. 30. The collector shall, three weeks before the sale, post a notice similar to that required by the two preceding sections in some convenient and public place in his precinct, and a like notice on the premises by him advertised to be sold, if any part thereof is bounded by a street, lane, court, or highway.

Affidavit of posting and publishing to be evidence, if recorded.  
R. S. 8, § 23.

SECT. 31. When real estate to be sold under the provisions of this chapter, is situated in a place the name of which has been changed by law within three years next preceding the sale, the collector shall in his advertisement and notices of the sale designate such place by its former and present name.

Sale by auction of sufficient, &c.  
R. S. 8, §§ 28, 29.  
13 Gray, 77.

SECT. 32. The affidavit of a disinterested person, taken before a justice of the peace, of the posting and publishing notifications of the sale of real estate by a collector or other officer for payment of taxes, made upon one of the original advertisements, or a copy thereof, and filed and recorded in the registry of deeds of the county or district where the land lies, within six months after the sale, shall be competent evidence of such notice.

Collector may adjourn sale, &c.  
R. S. 8, § 30.

SECT. 33. If the taxes are not paid, the collector, at the time and place appointed for the sale, shall sell by public auction so much of the real estate, or the rents and profits of the whole estate for such term of time, as shall be sufficient to discharge the taxes and necessary intervening charges; or he may at his option sell the whole or any part of the land; and after satisfying the taxes and charges, he shall upon demand pay the residue of the proceeds of the sale, if any, to the owner of the estate.

Deed to be given to purchaser, subject, &c.

SECT. 34. The collector may adjourn his sale from day to day not exceeding seven days in the whole; and he shall give notice of every such adjournment by a public declaration thereof, at the time and place previously appointed for the sale.

SECT. 35. The collector shall execute and deliver to the purchaser a deed of the real estate, or rents and profits sold; which deed shall state the cause of sale, the price for which the estate or rents and profits were sold, the name of the person on whom the demand for the tax was made, the places in the city or town where the notices were posted, the newspaper in which the advertisement of such sale was published, and



the place of residence of the grantee; and if the real estate has been sold, shall convey, subject to the right of redemption provided for in the following section, all the right and interest which the owner had therein at the time when the same was taken for his taxes. Such deed to be valid shall be recorded within thirty days from the day of sale.

When deed to be recorded.  
R. S. 8, § 31.  
1848, 166, § 5.  
2 Gray, 185.

SECT. 36. The owner of real estate sold for payment of taxes, or his heirs or assigns, may within two years from the day of sale, redeem the estate sold, by paying or tendering to the purchaser, or his heirs or assigns, the sum paid by him, with ten per cent. interest and all necessary intervening charges; and when the rents and profits are sold for payment of taxes, the same may be redeemed at any time within two years in the manner provided for the redemption of rents and profits taken on execution. And in the following cases real estate so sold may be redeemed, by any person having such title thereto that he might have recovered the same if no such sale had been made, at any time within two years after he has actual notice of the sale:—

Owner may redeem within two years, &c.  
R. S. 8, § 32.  
1850, 98, §§ 1, 2.  
Sec § 40.

First. When no person is named in the tax list as the owner or occupant of the premises, they being taxed as belonging to persons unknown;

Second. When the person who is named in said list is merely a tenant or occupant of the premises, and not the rightful owner thereof;

Third. When there is any error in the name of the person intended to be taxed;

Fourth. Mortgagees of record.

SECT. 37. If upon reasonable search the purchaser of real estate sold for non-payment of taxes cannot be found in the place of which he is described in the collector's deed as resident, the owner of the estate may redeem it as provided in the preceding section, on paying to the treasurer of the place in which it is situated, the amount which he would be required to pay to the purchaser; and the affidavit of any disinterested person of the making such search, taken before a justice of the peace and filed in the registry of deeds for the district or county in which the land is situated, within ninety days from the completion of the search, shall be competent evidence of the facts therein stated.

how redeemed when purchaser cannot be found, &c.  
1848, 166, §§ 6, 8.

SECT. 38. Such treasurer shall receive the money and give to the person paying it a certificate of such payment, specifying the estate on which the tax was originally assessed. The certificate may be recorded in the registry of deeds, with a note of reference from such record to the collector's deed; and, when so recorded, shall have the effect to release and discharge all right and title acquired under the collector's deed. The treasurer shall hold all money received by him under the preceding section, for the use and benefit of the persons entitled thereto; and shall pay it over on reasonable demand.

Duty of treasurer.  
1848, 166, § 7.

SECT. 39. After proceedings have been commenced for the sale of real estate for a tax assessed thereon, and before the sale is made, the holder of any mortgage thereon may pay such tax with all intervening charges and expenses; and when the owner of real estate for three months after demand has neglected to pay such a tax, and the collector has made demand therefor upon a holder of a mortgage thereon, such holder may in like manner pay such tax, charges, and expenses.

Mortgagee may pay taxes on real estate in certain cases.  
1856, 239, §§ 1-3.  
See § 36.

SECT. 40. The holder of a mortgage, upon taking possession of real estate thereunder, shall be liable to pay all taxes due thereon and the expenses of any sale for taxes that has been commenced or taken place; to be recovered of him in an action of contract by the collector or, when a sale has taken place, by the purchaser; and upon tender by the mortgagee to the purchaser, within the time provided for owners of real estate to make tender in section thirty-six, of the sum paid by him, with ten per cent. interest and all necessary intervening charges, such purchaser shall at the expense of the mortgagee execute and deliver to

shall pay such taxes upon taking possession. Entitled to deed on tender.  
1856, 239, §§ 1-3.  
See § 36.

him a valid deed of assignment of all interest acquired by virtue of the tax sale.

Mortgage entitled to receipt for such taxes paid to collector. May tack same to mortgage.  
1856, 239, §§ 1-3.

SECT. 41. For all sums paid to a collector by the holder of a mortgage under either of the two preceding sections, the collector shall upon demand give him a receipt therefor, duly acknowledged; and such sums shall be added to and constitute part of the principal sum of the mortgage; and the mortgage shall not be redeemed, without the consent in writing of the holder, until such sums and interest thereon are paid; and such receipt recorded in the registry of deeds for the district or county where the land lies, within thirty days from its date, shall be notice to all persons of the payment of such sums and the lien upon the estate therefor.

S. J. Court to have equity powers.  
1856, 239, § 4.  
10 Met. 101.

SECT. 42. In all cases of sale of real estate for the payment of taxes assessed thereon, the supreme judicial court shall have equity powers, if relief is sought within five years from the sale.

When tax list, &c., is committed to sheriff, &c.  
R. S. 8, § 34.

SECT. 43. When the tax list and warrant of the assessors is committed to the sheriff, or his deputy, he shall forthwith post in some public place in the city or town assessed, an attested copy of said list and warrant; and shall make no distress for a tax, till after thirty days from the time of such posting.

Sheriff's fees for collecting.  
R. S. 8, § 35.

SECT. 44. If a person pays his tax on such list within said thirty days, the officer shall receive for his fees five per cent. on the sum assessed; but if a tax remains unpaid after said thirty days, the officer shall proceed to collect the same by distress or imprisonment, in the manner collectors are required to proceed in like cases. The officer may also levy his fees for service and travel, in the collection of each person's tax, as in other cases of distress and commitment.

When treasurers are made collectors, how to proceed.  
R. S. 8, § 36.  
R. S. 15, § 61.

SECT. 45. When the city council of a city or the inhabitants of a town vote to appoint their treasurer a collector, he may issue his warrants to the sheriff of the county, or his deputy, or any of the constables of the city or town, returnable in thirty days, requiring them to collect any or all taxes due; and such warrants shall be in substance the same and confer like powers as warrants issued by assessors to collectors.

Collectors to exhibit accounts every two months if required.  
R. S. 8, § 45.

SECT. 46. Every collector shall once in two months, if required, exhibit to the mayor and aldermen or selectmen, and where there are no such officers, to the assessors, a true account of all moneys received on the taxes committed to him, and produce the treasurer's receipts for all money paid into the treasury by him.

Penalty.  
R. S. 8, § 46.

SECT. 47. If a collector neglects so to exhibit his accounts, he shall forfeit the sum of two and a half per cent. on the sums committed to him for collection.

Collectors to be credited with abatements, &c.  
R. S. 8, § 43.  
9 Met. 503.

SECT. 48. The collector shall be credited with all sums abated according to law, and with the amount of taxes assessed upon any person committed to prison within one year from the receipt of the tax list by the collector, and before paying his tax, and also with any sums which the city or town may see fit to abate to him, due from persons committed after the expiration of a year.

Deficiency in state or county tax, how supplied.  
R. S. 8, § 42.

SECT. 49. If the collector fails to collect a tax, without his own default, and there is a deficiency of the amount due on a state or county tax, such deficiency shall be supplied by him from the proceeds of the collection of city or town taxes, if any in his hands; and, if he have none, by the city or town treasurer, on the written requisition of the collector.

Same, when collectors neglect to pay.  
R. S. 8, § 38.

SECT. 50. If a collector of taxes neglects to pay, within the time required by law, such sums of money as ought by him to be paid to the state or county treasurer, the city or town by which such collector was appointed, shall be liable for such sums, to be recovered in an action of contract by such state or county treasurer respectively.

SECT. 51. If a collector neglects seasonably to pay a state or county tax committed to him, whereby the city or town is compelled to pay the same, or neglects seasonably to account for and pay in a city or town tax committed to him, the city or town may recover the amount thereof, with all damages sustained through such neglect, and interest, by an action of contract, declaring on his official bond if any has been given.

Remedy for collector's neglect. R. S. 8, § 44. 1852, 312.

SECT. 52. If a collector becomes insane, or in the judgment of the selectmen otherwise unable to discharge his duty, or absconds, removes, or in the judgment of the selectmen is about to remove, from the place, or refuses on demand to exhibit to the mayor and aldermen, or selectmen, or assessors, his accounts of collections, as herein provided, the selectmen may remove him from office and appoint another collector as in case of the death of the collector.

If collector becomes insane, &c., selectmen may remove him. R. S. 8, § 40. 7 Gray, 130.

SECT. 53. If a collector dies before completing the collection of a tax committed to him, the selectmen may appoint some suitable person to complete the collection, who shall receive a reasonable compensation, to be paid by the town, and they may commit the same tax list to him, with their warrant, accordingly; and when a temporary collector is appointed by the selectmen, the assessors shall commit the tax list to him with their warrant, and he shall have the same powers and be subject to the same duties and liabilities as other collectors.

Tax list of deceased collector, or, how completed. Temporary collector. R. S. 8, § 39. 1838, 43. 1 Met. 524. 4 Gray, 253.

SECT. 54. In case of the death or removal from office of a collector, his executors or administrators, and all other persons, into whose hands any of his unsettled tax lists may come, shall forthwith deliver the same to the selectmen.

If collector dies, &c., list to be delivered to selectmen. R. S. 8, § 41. 1 Met. 525.

SECT. 55. Collectors shall be paid such compensation for their services as their cities or towns shall determine.

Compensation of collectors. R. S. 8, § 47.

RECOVERY OF TAXES COLLECTED.

SECT. 56. No tax paid to a collector shall be recovered back, unless it appears that it was paid after an arrest of the person paying it, a levy upon his goods, a notice of sale of his real estate, or a protest by him in writing; and the damages awarded in a suit or process based upon any error or illegality in the assessment or apportionment of a tax, shall not be greater than the excess of the tax above the amount for which the plaintiff was liable to be taxed. And no sale, contract, or levy, shall be avoided by reason of any such error or irregularity.

Taxes paid to collector, when recovered back. 1859, 118, §§ 3, 4. See Ch. 11, § 54.



## TITLE IV.

### CHAPTER 13.

#### OF THE MILITIA.

##### SECTION

1. Persons to be enrolled.
2. list of to be prepared by assessors and given to town clerks; and returns to be made to adjutant-general, &c.
3. Penalty for not giving information to assessors.
4. Militia enrolled not liable to active duty, except, &c.
5. how drafted upon order of commander-in-chief.
6. Penalty upon soldiers for not answering summons when drafted.
7. Militia in active service, how organized, &c. To be furnished by state. Exception.
8. Towns to furnish and deposit ammunition.

##### EXEMPTIONS.

9. Absolute exemptions.
10. Exempts by producing certificates.
11. Enginemen, how exempted from duty.
12. Soldiers having bodily infirmity, how exempted from duty.

##### VOLUNTEER MILITIA.

13. Active militia to consist of volunteers.
14. Number of companies, how apportioned and raised. Number of men.
15. Quota, how completed.
16. Term of duty.
17. Election of officers.
18. What constitutes a legal enlistment.
19. To be arranged into divisions, &c., and numbered.
20. Cavalry and artillery companies inconveniently situated.
21. Regiments, &c., of cavalry.
22. Companies attached to divisions, &c., but not to regiments.
23. Regimental and battalion bands.
24. Companies may be disbanded in certain cases.
25. in certain other cases.
26. Discharge of soldiers.

##### OFFICERS, — APPOINTMENT, ELECTION, QUALIFICATION, AND DISCHARGE OF.

27. General staff officers, &c.
28. When office of quartermaster-general, major-general, &c., is vacant, &c.

##### SECTION

29. Companies without officers, how commanded.
30. refusing or neglecting to elect, how commanded.
31. Officers of the line, election of.
32. Staff officers, appointment of.
33. Non-commissioned staff.
34. Duties of clerk, how performed when the office is vacant, or clerk absent, &c. Records, how kept — to be evidence.
35. Officers, how commissioned.
36. Persons ineligible to office, when elected, commander-in-chief to fill vacancy.
37. Rank of officers, how determined. Commission to express date of appointment.
38. Loss of commission, how supplied.
39. Major-general to be notified, &c.
40. to order elections of all commissioned officers.
41. Notice of elections. Penalty.
42. Presiding officer at elections.
43. Who to preside. Record and returns.
44. Who to be deemed elected; elections may be adjourned; not legal unless electors are notified. Roster and rolls to be produced.
45. When electors fail to elect. Returns of elections and refusals. New election ordered, unless, &c.
46. Elections in companies without officers.
47. Acceptance of an office shall vacate one previously held.
48. Commissions, how transmitted.
49. When persons refuse to accept, new election to be ordered.
50. Officers, &c., not to treat with intoxicating liquors.
51. Persons on duty privileged from arrest.
52. Oath of commissioned officers, — how administered and certified. Form of certificate.
53. Clerk's oath. Certificate.
54. Discharge of officers upon their own request.
55. Request for discharge between May and November not to be approved, unless, &c.
56. If officer refuse to approve, commander-in-chief may discharge.
57. Officers not to be discharged, except, &c.
58. Discharge by appointment in U. S. army. Penalty.
59. Staff commissions.
60. Officers under arrest.
61. Non-commissioned officer.

SECTION

ADJUTANT-GENERAL.

- 62. Adjutant-general.
- 63. to give bond.
- 64. salary of. Clerk, &c.
- 65. to distribute general orders, &c., and attend reviews.
- 66. to furnish blank rolls and returns, and blanks for company orders, &c.
- 67. to make abstracts of returns.
- 68. to make annual returns in duplicate.
- 69. to certify rolls, and transmit to towns.
- 70. to submit to auditor, roll of officers entitled to pay.
- 71. to submit account of expenditures.
- 72. to distribute arms, &c.
- 73. Field pieces to remain in possession of towns, &c.

ARMS, EQUIPMENTS, EQUIPAGE, ETC.

- 74. What uniform to be provided.
- 75. Uniform, &c., exempt from attachment.
- 76. Camp equipage to be furnished to commanders of divisions, &c.
- 77. Colors to be furnished. Who responsible.
- 78. Arms and equipments to be furnished.
- 79. Commissioned officers responsible for equipments.
- 80. how relieved from responsibility, in case of discharge, &c.
- 81. Arms, &c., to be received from disbanded company.
- 82. Instruments of music furnished. Commander of brigade to draw order. Who responsible.
- 83. Cannon, ammunition, &c., to be furnished to artillery. When in state of war, &c., powder, &c., furnished. Who to be accountable.
- 84. When company ordered to march out of town, &c. Expenses of battery, how paid.
- 85. Scott's Tactics, &c., to be furnished to officers.
- 86. Military stores may be sold, &c.
- 87. Committee of legislature to visit arsenal and report.

ARMORIES.

- 88. Armories, &c., to be provided by selectmen.
- 89. rent of, &c., to be certified by selectmen, &c.
- 90. Adjutant-general to audit, &c., claims for rent. Payment.
- 91. Penalty for false certificate.
- 92. Armories, &c., how examined.

ORDERS AND NOTIFICATIONS.

- 93. Orders, by whom distributed.
- 94. When companies ordered out, how to be notified.
- 95. Notifications, requisites and times of. Verbal notice on parade. Notifications, how proved.
- 96. Company without officers, how notified. Penalty.
- 97. Orders, &c., to be recorded.

DISCIPLINE, TRAININGS, INSPECTION, AND CAMP DUTY.

- 98. System of discipline, &c.
- 99. Commanders of regiments, &c., to order elementary drills. Penalty for non-attendance.

SECTION

- 100. Encampments. Orders for, how issued. Place of.
- 101. Distance companies to march. Parade of bodies of troops larger than brigade.
- 102. Troops to be exercised, inspected, &c.
- 103. Company roll calls, how made.
- 104. Rank of corps. Senior officer to command.
- 105. Companies without officers, how commanded.
- 106. Brigade-majors to attend reviews, inspect arms, &c.
- 107. Officers and soldiers may drill in camp, &c.
- 108. Bounds of parade may be fixed. Punishment for intrusion.
- 109. Persons not holden to do duty on days of certain elections, except, &c. Liability of officers.
- 110. Commander-in-chief may order out militia for escort, &c. Music.
- 111. Voluntary parades not prohibited. Articles of agreement adopted by company binding. Remedy for breach thereof.
- 112. Penalty for deficiency in arms, &c.
- 113. Loaded arms not to be brought on parade, &c.
- 114. Contempt, disorderly conduct, &c., how punished.
- 115. Quitting guard, &c., how punished.
- 116. Soldiers may be put under guard. Non-commissioned officer may be reduced to ranks.
- 117. Penalties on soldiers in companies without officers.

ROSTERS, ORDERLY BOOKS, ROLLS, AND RETURNS.

- 118. Rosters and orderly book, by whom kept.
- 119. Company rolls, how kept. To be revised and corrected.
- 120. Company orderly book, how kept. Delinquencies, fines, &c., to be recorded.
- 121. Commanders of companies to make duplicate returns in ten days. Returns of divisionary corps, &c., to whom made.
- 122. alphabetical pay rolls of companies within ten days after camp duty.
- 123. Penalty for neglect, or false return, &c.
- 124. Returns by master of regimental or battalion band.
- 125. Commanders of regiments, &c., to make returns of officers. Penalties.
- 126. Brigade-majors to make returns of brigade, and field and staff officers, &c. Penalty.
- 127. Commanders of brigade to make returns to commanders of division. Commanders of division to make returns to adjutant-general. Penalties.
- 128. Commanders of division to make out roll of officers. Penalty.

CALLING OUT THE MILITIA IN CASE OF WAR, INVASION, INSURRECTION, TUMULT, OR RIOT.

- 129. Militia, how called out in case of invasion, &c. When commander of division may order out troops.
- 130. Drafts. Officers detailed.
- 131. If company without officers is called out, officer to be detailed.
- 132. Penalty on soldiers neglecting to appear, &c. Soldiers to take provisions.
- 133. Selectmen, &c., to provide carriages, &c., in certain cases. Penalty. Officer responsible.

## SECTION

134. Troops, how ordered out in case of riot, &c. Form of requisition, &c.  
 135. Penalties for disobedience, &c.  
 136. Troops to appear armed, &c.

## COMPENSATION.

137. Pay of general, field, and staff officers.  
 138. Pay of inspectors, &c.  
 139. of members of companies, and bands, how computed, disbursed, &c.  
 140. forfeited for deficiency in returns. Not to be received unless full duty is performed, except, &c.  
 141. Personal service requisite to compensation. Excuses not to entitle to.  
 142. Inspector-general, expenses.  
 143. Pay for travel in attending elementary drills. How paid.  
 144. of detachment on special duty.  
 145. for travel in attending elections.  
 146. of members of courts martial, &c.  
 147. Relief to soldiers or their families.  
 148. Pay of troops in actual service, &c.  
 149. Military accounts, &c., how examined, certified, and paid.

## EXCUSES.

150. Excuses to be made within twenty days, unless, &c. Clerks to be informed of excuses.  
 151. Deficiencies in equipments.  
 152. Certain conditional exemptions not to be excuses, unless, &c.

## PROSECUTION FOR FINES.

153. Fines of members of volunteer companies.  
 154. Prosecution for fines—form of information—summons to be issued within nine months, giving seven days' notice—form of summons issued by a justice—form of summons by police court—defendant may plead not guilty—what shall be sufficient for complainant to prove—complainant to show certificate of appointment and qualification—to produce roll, and prove enlistment—to produce order to notify meeting—when order is required to be given by superior officer—offence to be proved—burden of proof—secondary evidence, when received—clerk, &c., may be witness—exemptions for infirmity, how proved—certificate of surgeon of regiment, evidence—commanding officer may be witness—execution, when issued—form of execution—amendments—continuance—when complainant is not liable for costs—appeals not allowed, except—complaints by other officer, how prosecuted.  
 155. Imprisonment on execution.  
 156. Money collected for fines, how disposed of.

## COURTS MARTIAL.

157. Complaints on which courts martial are ordered—trial must be within a year—by whom charges to be preferred.  
 158. Respondent to be arrested—copy of charges, &c., to be delivered—court may adjourn.  
 159. Courts martial, of whom to consist—when held—how often—general, by whom appointed, and to try whom—division, by whom appointed, and to try whom—members of, how and by whom detailed—provision in case any officer detailed is unable to serve—no one superior in rank to the president, to be detailed—officers ordered to

## SECTION

- detail, to make return—judge-advocate to attend—when unable to attend—if president does not attend—if sufficient number of members do not attend, or are not qualified—if judge-advocate or marshal is absent—person acting as judge-advocate, to continue during trial—rank of officers—court may adjourn, when.  
 160. Members to be sworn—oath of president and members—oath of judge-advocate—challenges, how and when made, and by whom tried—certain causes of challenge, when waived—if accused is absent, or withdraws—witnesses summoned, must appear—penalty—oath of witnesses—evidence of default in returns—copies of documents, &c., how authenticated—all proceedings and evidence to be in writing—votes, how taken—two-thirds required to convict—sentence—courts martial authorized to preserve order—records, how authenticated and transmitted—approval or disapproval of sentence—pay roll—copies to be furnished—judgment of disqualification may be reversed.  
 161. What offences may be tried by court martial.  
 162. Fines imposed by court martial. How prosecuted. Costs against judge-advocate, how paid.

## BOARDS OF OFFICERS.

163. Boards to settle military questions.

## GENERAL AND DIVISION COURTS OF INQUIRY.

164. Courts of inquiry, how ordered, &c.—vacancies—oath of president and members—oath of judge-advocate—witnesses—judge-advocate to attend courts of inquiry.  
 165. No guard, unless.

## RULES AND ARTICLES FOR GOVERNING THE MILITIA IN ACTUAL SERVICE.

166. Who shall be taken to be soldiers.  
 167. Offences punished by death or otherwise.  
*Art. i.* Sedition.  
 ii. Not suppressing sedition, nor giving information of it.  
 iii. Desertion.  
 iv. Advising desertion.  
 v. Misbehaving before an enemy, &c.  
 vi. Abandoning post, &c.  
 vii. Making known or falsifying watchword.  
 viii. Forcing safeguard.  
 ix. Harboring or relieving an enemy.  
 x. Corresponding with an enemy.  
 xi. Compelling commander to surrender.  
 xii. Sentence of death.  
 168. Offences punished by cashiering, &c.  
*Art. xiii.* Using traitorous words.  
 xiv. Neglecting to march, &c.  
 xv. Disobedience of orders, &c.  
 xvi. Provocation to fight a duel.  
 xvii. Giving or accepting challenge.  
 xviii. Upbraiding, &c.  
 xix. Suffering person to pass guard to fight a duel—not arresting persons about to fight.  
 xx. Drunkenness on duty.  
 xxi. Escaping from arrest.  
 xxii. Behaving scandalously.  
 xxiii. Embezzling, or committing fraud.  
 xxiv. Selling or wasting stores.  
 xxv. Not delivering offender to civil authority.



- SECTION  
169. Offences punished at discretion of court martial.
- Art. xxvi.* Preceding offences when committed by soldiers.
- xxvii. Disrespect to commanding officer.
- xxviii. Disobedience.
- xxix. Violence to an officer.
- xxx. Resisting an officer who attempts to quell a quarrel.
- xxxi. Not keeping order, redressing abuses, protecting citizens.
- xxxii. Being one mile from camp, &c.
- xxxiii. Being absent without leave.
- xxxiv. Not retiring to quarters.
- xxxv. Not repairing to rendezvous, unless, &c.
- xxxvi. Sentinel sleeping, &c.
- xxxvii. Occasioning false alarms.
- xxxviii. Leaving platoon, &c.
- xxxix. Violence to persons bringing provisions.
- xl. Disturbing courts martial.
- xli. Refusing to receive prisoner.
- xlii. Releasing prisoner.
- xliii. Not reporting prisoners.
- xliv. Crimes not capital, and not specified.
- xlv. Officers absent from divine service, &c.
170. Fines.
- Art. xlv.* Soldiers absent, &c., during divine service.
- xlvi. Profanity by officers.
- xlvii. Profanity by soldiers.
- xlviii. Fines by court martial.
1. Fines stopped out of pay.
171. General rules.
- Art. li.* Officer wronged by colonel.
- lii. Officer or soldier wronged by captain.
- liii. Public stores secured.

- SECTION  
General rules.
- liv. Oldest officer to command, without regard to corps.
- lv. Offenders against citizens to be delivered to civil authority.
- lvi. Property of deceased persons secured.
- lvii. Pay and rations.
172. Courts martial in actual service, &c.
- Art. lviii.* Arrests.
- lix. Imprisonment before trial.
- lx. General and division courts martial, by whom ordered.
- lxi. Of whom general court martial shall consist.
- lxii. Division and regimental courts martial.
- lxiii. Power of regimental courts martial.
- lxiv. Post and detachment courts martial.
- lxv. Courts martial in particular corps.
- lxvi. Rank of members.
- lxvii. Time of holding court martial.
- lxviii. Rank in court martial.
- lxix. Judge-advocate.
- lxx. Oath of president and members — oath of judge-advocate.
- lxxi. Witnesses refusing to appear and testify.
- lxxii. Oath of witnesses.
- lxxiii. Votes in court martial, two-thirds necessary to capital sentence.
- lxxiv. Proceedings to be transmitted to commanding officer.
- lxxv. Pay may be suspended.
- lxxvi. Pardon and mitigation of punishment.
173. Construction of the words "soldier" and "battalion."
174. Penalty on civil officers.
175. "Selectmen" to include "mayor and aldermen."

SECTION 1. Every able-bodied white male citizen, resident within this state, of the age of eighteen years, and under the age of forty-five years, excepting persons enlisted into volunteer companies, persons exempted by the following sections, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrolment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him.

SECT. 2. Assessors shall annually in May or June make a list of persons living within their respective limits liable to enrolment, and place a certified copy thereof in the hands of the clerks of their respective places, who shall record it in the records of their city or town, and annually in May, June, or July transmit returns of the militia thus enrolled to the adjutant-general.

SECT. 3. Keepers of taverns or boarding-houses, and masters and mistresses of dwelling-houses shall, upon application of the assessors within whose bounds their houses are situated, or of persons acting under them, give information of the names of persons residing in their houses liable to enrolment or to do military duty: and every such person shall, upon like application, give his name and age; and if such keeper, master, mistress, or person, refuses to give such information, or gives false information, such keeper, master, or mistress shall forfeit and pay twenty dollars, and such person shall forfeit and pay twelve dollars, to be recovered on complaint of either of the assessors.

Persons to be enrolled.  
R. S. 12, §§ 5-10.  
1840, 92, § 1.  
1841, 106, § 7.  
U. S. Statutes,  
1792, 33.  
1 Pick. 194.  
3 Pick. 262, 506.  
15 Pick. 7.  
21 Pick. 330.  
22 Pick. 571.  
23 Pick. 54.  
Assessors to prepare list of, &c., and clerks to make returns, &c.  
1840, 92, §§ 3, 4.  
1842, 93, § 7.

Penalty for not giving information to assessors.  
1840, 92, § 2.  
10 Mass. 36.

Militia enrolled not liable to active duty, except, &c.  
R. S. 12, § 134.  
1840, 92, §§ 5, 11.

SECT. 4. The enrolled militia shall be subject to no active duty except in case of war, invasion, the prevention of invasion, the suppression of riots, and to aid civil officers in the execution of the laws of the commonwealth; in which cases the commander-in-chief shall order out for actual service, by draft or otherwise, as many of the militia as necessity demands.

how drafted upon order of commander-in-chief.  
1840, 92, § 8.

SECT. 5. The order of the commander-in-chief may be directed to the mayor and aldermen of cities or to the selectmen of towns, who shall thereupon appoint a time and place of parade for the militia, in their city or town, and order them to appear at the time and place, either by leaving a written notice, or orally, and then and there proceed to draft as many thereof, or accept as many volunteers, as is required by the order of the commander-in-chief; and shall forthwith notify the commander-in-chief that they have performed such duty.

Penalty upon soldiers for not answering summons when drafted.  
1840, 92, § 9.

SECT. 6. Every soldier ordered out, or who volunteers, or is detached, or drafted, who does not appear at the time and place designated by the mayor and aldermen, or selectmen, or who has not some able-bodied and proper substitute, at such time and place, or does not pay to such mayor and aldermen, or selectmen, for the use of the commonwealth, the sum of seventy-five dollars, within twenty-four hours from such time, shall be taken to be a soldier absent without leave, and dealt with accordingly.

Militia in active service, how organized, &c. To be furnished by state. Exception.  
R. S. 12, §§ 11, 36, 129.  
1836, 4, § 2.  
1840, 92, §§ 5-7.  
11 Mass. 36.  
16 Mass. 523.  
4 Pick. 25.

SECT. 7. When the militia are ordered out or have volunteered for and while they are in actual service, as specified in section four, they shall be organized by the commander-in-chief with the advice of the council, into companies, battalions, regiments, brigades, and divisions, [which companies, battalions, regiments, brigades, and divisions,] shall be numbered and record thereof made in the office of the adjutant-general; and shall be officered, governed, and trained, according to the laws of this state and the United States; and the state shall furnish arms and equipments for each non-commissioned officer and private, and pay them until their term of service expires; and when troops are in the field for such purposes, the senior officer of the troops present shall command until the commander-in-chief or some officer detailed by him takes command. Each commissioned officer shall provide himself with a sword or hanger.

Towns to furnish and deposit ammunition.  
R. S. 12, § 106.  
1837, 240, § 10.

SECT. 8. When the commander-in-chief deems it necessary, he shall require cities and towns to provide, in some suitable place therein, sixty-four pounds of powder, one hundred pounds of musket and rifle balls, and also three copper, iron, or tin camp kettles for every sixty-four soldiers enrolled in said town, and the same proportion for a greater or less number, and to keep the same until such requirement is revoked. Every place neglecting to comply with such requisition shall forfeit and pay not less than twenty nor more than five hundred dollars.

#### EXEMPTIONS.

Absolute exemptions.  
R. S. 12, § 1.  
1838, 138.  
1840, 92, § 1.  
1855, 419.  
1858, 93, § 2.  
1859, 196.  
U. S. Statutes,  
1800, 46, § 4.  
1810, 37, § 33.  
1836, 270, § 34.  
4 Mass. 239.  
13 Mass. 316.  
14 Mass. 394.  
17 Mass. 49.  
1 Pick. 261.  
2 Pick. 597.  
23 Pick. 208.

SECT. 9. In addition to the following persons, absolutely exempted from enrolment in the militia by the laws of the United States, viz. :—

The vice-president of the United States;

The officers, judicial and executive, of the government of the United States;

The members of both houses of congress and their respective officers; custom house officers and their clerks; inspectors of exports; pilots, and mariners employed in the sea-service of a citizen or merchant within the United States;

Postmasters, assistant-postmasters, and their clerks, post officers, post riders, and stage drivers, in the care and conveyance of the mail of the United States; ferrymen employed at any ferry on the post road; the

artificers and workmen in the United States armory at Springfield and the arsenal at Watertown;

The persons hereinafter mentioned, shall also be absolutely exempted from enrolment, viz. :—

Absolute ex-  
empts.

Justices of courts of record; judges and registers of probate and insolvency; registers of deeds and sheriffs;

Officers who have held or may hold, for a period of five years, commissions in the army or navy of the United States;

Officers who have held, for a period of five years, commissions in the militia of this or any other state of the United States; or who have been superseded and discharged; or who held commissions in any corps at the time of its disbandment;

Staff officers heretofore exempted, and whose offices shall become vacant by the provisions of section fifty-nine;

Ministers of the gospel;

The superintendents, officers, and assistants, employed in or about either of the state hospitals, state almshouses, state prison, jails, or houses of correction; keepers of light-houses, and conductors and engine drivers of railroad trains.

SECT. 10. Every person of either of the religious denominations of quakers or shakers, who, on or before the first Tuesday in May, annually, produces to the assessors of the city or town in which he resides, a certificate, signed by two or more of the elders or overseers, (as the case may be,) and countersigned by the clerk, of the society with which he meets for public religious worship, shall be exempted from enrolment. The certificate shall be in form as follows :—

Exempts by  
producing cer-  
tificates.  
R. S. 12, § 2.  
1840, 92, §§ 1, 2.  
1841, 106, § 7.  
12 Mass. 441.  
17 Mass. 351.  
See § 152.

We, the subscribers, of the society of people called ———, in the town of ———, in the county of ——— do hereby certify that ——— ——— is a member of our society, and that he frequently and usually attends religious worship with said society, and we believe he is conscientiously scrupulous of bearing arms.

A. B. } Elders or overseers,  
C. D. } (as the case may be.)

E. F., Clerk.

SECT. 11. Enginemen, or members of the fire department in a city or town, shall be exempted from military duty by forthwith filing with the assessors of the city or town in which they reside, a certificate that they are enginemen or members of the fire department as aforesaid, signed by the mayor and aldermen of such city, or the selectmen of such town; but when a member of a volunteer company is, after his enlistment, appointed an engineman or member of the fire department, it shall not vacate his enlistment, but during its continuance shall exempt him from duty.

Enginemen,  
how exempted  
from duty.  
R. S. 12, § 2.  
R. S. 18, § 17.  
14 Mass. 374.  
3 Pick. 226.  
See § 152.

SECT. 12. Every non-commissioned officer or private having bodily infirmity, may be exempted from military duty, if he obtains from the surgeon or surgeon's mate of the regiment, battalion, or detached company, to which he belongs, (or, if there are no such officers commissioned in such regiment, battalion, or company, then from some respectable physician living within the bounds of the same,) a certificate that he is unable to do military duty, on account of bodily infirmity, the nature of which shall be described in such certificate; and the captain or commanding officer of his company may, on the back of the certificate, discharge the non-commissioned officer or private named therein, from performing military duty, for a term of time which he judges reasonable, not exceeding one year; which certificate, when countersigned by the colonel or commanding officer of said regiment, battalion, or company, shall for the time specified exempt him from military duty, except attendance at the election of officers. If such non-commissioned officer or private, having obtained such certificate, is refused a discharge, he may apply to the commanding officer of the brigade, who may discharge him from military duty for such time, not exceed-

Soldiers having  
bodily infirm-  
ity, how ex-  
empted from  
duty.  
R. S. 12, § 2.  
1 Mass. 81.  
9 Mass. 322.  
11 Mass. 456,  
540.  
14 Mass. 290.  
3 Pick. 386.  
7 Pick. 251.  
See § 152.



ing one year, as he judges reasonable, by indorsing the same upon the surgeon's certificate.

## VOLUNTEER MILITIA.

Active militia to consist of volunteers.  
1840, 92, § 11.

SECT. 13. The active militia shall be composed of volunteers; and in case of war, invasion, the prevention of invasion, the suppression of riots, and to aid civil officers in the execution of the laws of the commonwealth, shall first be ordered into service.

Number of companies, how apportioned and raised. Number of men.  
R. S. 12, § 21.  
1840, 92, §§ 12, 13, 18.  
1843, 84, § 4.  
1852, 104, § 5.  
1853, 174, §§ 5, 7.  
1858, 166, §§ 4, 5, 6.  
See § 122.

SECT. 14. The number of [*such*] companies shall not exceed one hundred and twenty, and shall be apportioned among the counties according to population, but retaining the volunteer companies with their officers now organized. Petitions for organizing companies of foot artillery may be granted by the commander-in-chief with advice of the council, for organizing other companies, by the commander-in-chief or by the mayor and aldermen or selectmen by his permission. Companies of cavalry shall be limited to eighty privates and a saddler and farrier; companies of foot artillery, to forty-eight cannoneers, twenty-four drivers, and a saddler and farrier; the cadet companies of the first and second divisions, to one hundred, and companies of infantry and riflemen to fifty, privates. No new company shall be organized if thereby the whole force will exceed five thousand officers and men.

Rep. 1861 Ch. 29 § 2

Quota how completed.  
1840, 92, § 30.  
1843, 84, § 3.

SECT. 15. When a county does not raise its quota, the commander-in-chief may grant petitions to complete the prescribed number in other counties.

Term of duty five years.  
1840, 92, § 17.  
4 Mass. 556.  
8 Mass. 274.  
11 Mass. 239.  
13 Mass. 491.  
3 Pick. 226, 264.  
6 Pick. 431.  
11 Pick. 265.  
Election of officers.  
1840, 92, § 19.  
1858, 166, § 4.

SECT. 16. Non-commissioned officers and soldiers of volunteer companies shall do duty therein for five years, unless disability after enlistment incapacitates them to perform such duty, or they are regularly discharged by the proper officer.

SECT. 17. No election of officers shall be ordered in a company hereafter organized unless at least fifty men have been enlisted therein. Upon the enlistment of that number, and notification given to the commander-in-chief by one or more of the petitioners for the company, attested by the mayor and aldermen or selectmen, an election of officers may be ordered; and if there is no officer of the volunteer militia conveniently located to preside at such election, the commander-in-chief may issue an order for that purpose, to one or more of the selectmen or mayor and aldermen of the place where a majority of the petitioners reside.

What constitutes a legal enlistment.

SECT. 18. After the organization of a company, recruits shall sign their names in a book of enlistment kept by the company for the purpose, which signing shall be a legal enlistment.

Militia to be arranged into divisions, &c., and numbered.  
R. S. 12, § 11.  
1836, 4, § 2.  
1840, 92, § 16.  
11 Mass. 382.  
16 Mass. 523.  
4 Pick. 25.

SECT. 19. The commander-in-chief may arrange the volunteer militia, when they exist in sufficient numbers and are conveniently located, into divisions, brigades, regiments, battalions, and companies, conformably to the laws of the United States, and make such alterations as from time to time may be necessary. Each division, brigade, regiment, battalion, and company, shall be numbered at the formation thereof, and a record thereof made in the office of the adjutant-general.

Cavalry and artillery companies, inconveniently situated.  
1840, 92, § 16.  
1854, 11, § 1.  
See § 27.

SECT. 20. Companies of cavalry and foot artillery inconveniently located for such organization may be attached to such brigades as the commander-in-chief shall order. Other companies inconveniently situated shall remain under their commanders, subject to the orders of the commander-in-chief through the commander of the nearest regiment; to whom such commanders shall make their annual returns.

Regiments, &c., of cavalry.  
R. S. 12, § 14.  
Companies attached to divisions.

SECT. 21. Squadrons of cavalry shall consist of two, and regiments, of not less than four, companies.

SECT. 22. Companies attached to divisions or brigades, and not to regiments, shall until otherwise organized be subject to the immediate

orders of the commanders of such divisions or brigades; who shall receive the returns and orders, have the authority, and perform the duties, with regard to such companies, which are prescribed for the commanders of regiments and battalions with regard to their companies.

ions, &c., but not to regiments.  
R. S. 12, § 15.

SECT. 23. The commander of a regiment or battalion may raise by voluntary enlistment, and warrant and organize, within the limits of his command, to be under his direction and command at encampments, a band of musicians, not to exceed including a master and deputy-master, eighteen for a regiment and eight for a battalion. The master, and in his absence the deputy-master, shall teach and command the band and issue all orders directed by such commander. Each member of the band shall keep himself provided with such uniform as may be directed by the commander-in-chief, and such instrument as the commander of his regiment or battalion prescribes, under penalty for each neglect, or deficiency, or for misconduct, of dismissal from the band by such commander, and of not less than ten nor more than twenty dollars, to be recovered on complaint by the brigade-major.

Regimental and battalion bands.  
1846, 218, § 7.  
1849, 218, § 4.  
1852, 104, § 7.

SECT. 24. If it appears to the commander-in-chief, on representation of the commanding officer of a division or brigade, that a company of militia has failed to comply with the requisitions of the law in matters of uniform, equipment, and discipline, so that it is incapacitated to discharge the duties required of it, such company may be disbanded by the commander-in-chief.

Companies may be disbanded in certain cases.  
1845, 243, § 9.

SECT. 25. If a company is destitute of commissioned officers, and, having been twice ordered to fill vacancies, neglects or refuses to fill them, or is reduced to a less number than thirty-two privates and so remains for six consecutive months, or when such company appears from a return made to the adjutant-general to be reduced below thirty-two privates, present and doing duty at the time for which such return is made, such company may be forthwith disbanded by the commander-in-chief.

in certain other cases.  
R. S. 12, §§ 16, 59.  
1836, 4, § 2.  
1858, 166, § 3.

SECT. 26. The commander of a regiment or battalion may, upon the written application of the commander of a company in his regiment or battalion, accompanied by a request in writing signed by a non-commissioned officer or private, discharge such officer or private from the company; and the commander of a company unattached may, upon application in writing signed by a member thereof, discharge such member; and commanding officers of regiments, battalions, or detached companies, may discharge non-commissioned officers or privates upon the request by vote of a majority of the active members of the company.

Discharge of soldiers.  
1854, 307, § 6.

OFFICERS — APPOINTMENT, ELECTION, QUALIFICATION, AND DISCHARGE OF.

SECT. 27. The officers and non-commissioned officers of the militia shall be as follows:

General staff officers.  
R. S. 12, § 22, 23.  
1840, 92, § 18.  
1846, 218, §§ 10, 12.  
1853, 174, § 4.  
1854, 11, § 2.  
1858, 166, § 5.  
Resolves, 1854, 39, §§ 1, 2.  
9 Pick. 41.  
11 Pick. 265.  
16 Pick. 84.  
See § 122.  
Division officers.

A commander-in-chief.

An adjutant-general, who shall be the inspector-general of the militia, and a quartermaster-general, each with the rank of brigadier-general.

Aids to the commander-in-chief with the rank of lieutenant-colonel, not exceeding four in number.

To each division there shall be one major-general, one division-inspector with the rank of lieutenant-colonel, two aids-de-camp, one division-quartermaster, one division-engineer, and one judge advocate, each with the rank of major.

To each brigade there shall be one brigadier-general, one brigade-inspector with the rank of major, to serve also as brigade-major, one brigade-quartermaster, one brigade-engineer, and one aid-de-camp, each with the rank of captain.

Brigade officers.



Regimental of-  
ficers.

To each regiment there shall be one colonel, one lieutenant-colonel, and one major; one adjutant, one quartermaster, and one paymaster, each with the rank of lieutenant; one surgeon, one surgeon's mate, one chaplain, one sergeant-major, one sergeant-quartermaster, one drum-major, and one file-major.

Battalion offi-  
cers.

To each separate battalion there shall be one major; one adjutant, and one quartermaster, each with the rank of lieutenant; one surgeon, one sergeant-major, and one quartermaster-sergeant.

Company offi-  
cers.

To each company of infantry, and riflemen, there shall be one captain, one first, one second, one third, and one fourth lieutenant; four sergeants, four corporals, and two musicians.

To each company of foot artillery attached to a brigade and organized as designated by the war department of the United States, the sixth day of March, eighteen hundred and forty-five, there shall be one major, to be elected in the manner provided for captains and subalterns, four lieutenants, six chiefs of pieces, six gunners, and two musicians.

To each company of cavalry there shall be one captain, one first, one second, one third, and one fourth lieutenant, four sergeants, four corporals, one saddler, one farrier, and two trumpeters.

To every company there shall be one clerk, who shall be one of the sergeants.

To the company of cadets of the first division, one captain with the rank of lieutenant-colonel, one lieutenant and one ensign, each with the rank of major, one adjutant with the rank of captain, and one quartermaster with the rank of first lieutenant.

To the company of cadets of the second division, one major, to be elected as provided for captains and subalterns, one captain, one first lieutenant, one second lieutenant, one ensign, one adjutant, and one quartermaster.

To each of said companies of cadets, one surgeon, five sergeants, four corporals, and four musicians; and there may be to each of said companies such number of company officers of a rank, in the company of the first division, not above first lieutenant, in the company of the second division, not above fourth lieutenant; and of sergeants, corporals, and musicians, as the commander-in-chief may from time to time deem expedient for instruction in the school of the battalion.

Companies of cavalry and artillery attached to brigades, as mentioned in section twenty, shall be entitled to an adjutant with the rank of lieutenant, and one surgeon, to be appointed by the commanding officers of said companies respectively, and commissioned by the commander-in-chief, and to hold their commissions, as other staff officers now do, or until the companies to which they are attached are organized into battalions or regiments of the same arm; and [an] adjutant so appointed and commissioned shall receive the same compensation as is allowed to other officers and soldiers of such companies. And a company of foot artillery attached to a brigade shall be entitled to a quartermaster with the rank of lieutenant, to be appointed by the commanding officer of the company, and commissioned by the commander-in-chief.

When office of  
quartermaster-  
general, major-  
general, &c., is  
vacant, &c.  
R. S. 12, § 23.

SECT. 28. When the office of quartermaster-general is vacant, the duties thereof shall be performed by the adjutant-general; and when the office of major-general, brigadier-general, colonel, major, or captain, is vacant, or such officer is sick or absent, the officer next in rank shall command the division, brigade, regiment, battalion, or company, until the vacancy is supplied.

Companies  
without officers,  
how command-  
ed.  
R. S. 12, § 24.

SECT. 29. When a company has neither commissioned nor non-commissioned officers, the commander of the regiment or battalion to which it belongs, shall appoint suitable persons within said company to be non-commissioned officers thereof; and shall appoint one of the non-commissioned officers to be clerk, indorse the appointment on his war-



rant, administer the oath to him, and certify the same, as required by section fifty-three. The senior non-commissioned officer of a company without commissioned officers, shall command the same, except upon parade, and as provided in the following section.

SECT. 30. When a company is first enrolled, or from any cause is without officers, and an election of officers is ordered, if such company neglects or refuses to elect any officer, or if the persons elected shall not accept, the commander of the regiment or battalion to which it belongs, shall detail some officer of the staff or line of the regiment to train and discipline said company, until some officer is elected or appointed by the commander-in-chief. Such officer shall have the same power, and be subject to the same liabilities, as if he were captain of such company; shall keep the records of the company, and prosecute for all fines and forfeitures, in like manner as a clerk might do, under section one hundred and fifty-four; and all meetings of such company shall be notified as provided in section ninety-six.

Companies refusing or neglecting to elect, how commanded.  
R. S. 12, § 25.  
23 Pick. 208, 214.  
24 Pick. 172.  
Sec §§ 96, 150.

SECT. 31. The officers of the line of the militia shall be elected as follows :

Officers of the line, election of.  
R. S. 12, § 48.

Major-generals, by the senate and house of representatives, each having a negative upon the other.

Brigadier-generals, by the written votes of the field officers of the respective brigades and commanders of brigade companies.

Field officers of regiments and battalions, by the written votes of the captains and subalterns of the companies of the respective regiments or battalions.

Captains and subalterns of companies, by the written votes of the non-commissioned officers and privates of the respective companies.

SECT. 32. The staff officers of the militia shall be appointed in manner following :

Staff officers, appointment of.  
R. S. 12, § 49.  
1837, 240, § 2.  
1853, 174, § 4.  
Resolves, 1854, 39.

The adjutant-general, by the commander-in-chief.

The quartermaster-general, by the commander-in-chief by the advice and consent of the council.

The aids to the commander-in-chief, by the commander-in-chief.

The division-inspectors and division-quartermasters, by the respective major-generals, and approved by the commander-in-chief.

The aids-de-camp of major-generals and division-engineers, by the respective major-generals.

The judge advocates, by the respective major-generals, and approved by the commander-in-chief.

The brigade-majors and inspectors, brigade-quartermasters, brigade-engineers, and aids-de-camp to brigadier-generals, by the respective brigadier-generals.

Adjutants, paymasters, quartermasters, chaplains, surgeons, and surgeons' mates, of regiments, by the respective colonels.

Adjutants, quartermasters, and surgeons, of battalions, by the respective majors.

The staff officers of the cadet companies shall be elected like company officers.

SECT. 33. The non-commissioned officers in the militia shall be appointed in manner following :

Non-commissioned officers, appointment of.  
R. S. 12, § 50.  
3 Pick. 444.  
5 Pick. 239.  
16 Pick. 84.  
24 Pick. 172.

Sergeant-majors, quartermaster-sergeants, drum-majors, and fife-majors, of regiments, by the colonel of the regiment.

Sergeant-majors, and quartermaster-sergeants, of battalions, by the major.

Non-commissioned officers of companies, by the respective captains, who shall forthwith return the same in writing to the commanding officer of the regiment or battalion.

Clerks, by the commanding officers of the respective companies.

Clerks.

SECT. 34. When the office of clerk of a company is vacant, and it

Duties of clerk.

how performed when the office is vacant or the clerk absent, &c. Records, how kept—to be evidence.  
R. S. 12, §§ 26, 100.

appears to the commander of the company that there is satisfactory evidence that no person will accept the same, he may issue his written order to a non-commissioned officer or private in the company, requiring him to perform all the duties of clerk except keeping the records, for a term not exceeding three months; in case of the absence, sickness, or inability, of the clerk, the commander of the company may appoint a clerk *pro tempore*; or, upon satisfactory evidence that no one in the company will accept the office *pro tempore*, may order any non-commissioned officer or private to perform the duties of clerk until the clerk is able to perform the same, or another is appointed; and any non-commissioned officer or private refusing or neglecting to perform such duty when so ordered, shall forfeit to the use of the company not less than ten nor more than twenty dollars, to be recovered on complaint by the commander of the company. In such cases the records of the company shall be kept by the commander thereof as long as such vacancy, absence, sickness, or inability, continues, and records so kept shall be competent evidence of such orders and temporary appointments, as well as of matters of which they would be evidence if kept by the clerk.

Officers, how commissioned.  
R. S. 12, § 51.

SECT. 35. All commissioned officers shall be commissioned by the commander-in-chief, according to the respective offices and grades to which they may be elected or appointed.

Every non-commissioned officer's warrant shall be given and signed by the commanding officer of his regiment or battalion.

Clerks shall have their appointments certified on the back of their warrants by the commanding officers of their respective companies.

Persons ineligible to office—when elected, commander-in-chief to fill vacancy.  
R. S. 12, § 52.

SECT. 36. No idiot, lunatic, common drunkard, vagabond, pauper, nor person convicted of an infamous crime, nor any other than white, able-bodied, male citizens shall be eligible to any military office. When it appears to the commander-in-chief, that a person thus ineligible has received a majority of the votes cast at an election of officers, he shall not commission him, but, with the advice and consent of the council, shall declare such election null and void, and appoint some person to fill the vacancy.

Rank of officers, how determined. Commission to express date of appointment.  
R. S. 12, § 53.

SECT. 37. Commissioned officers shall take rank according to the date of their commissions. When two of the same grade bear an even date, the rank shall be determined by lot drawn before the commander of the division, brigade, regiment, battalion, company, or detachment, or president of a court martial, as the case may be.

The day of the appointment or election of an officer shall be expressed in his commission, and considered as the date thereof. When he is transferred to another corps or station of the same grade, the date of the original appointment shall be expressed and considered the date of his commission.

Loss of commission, how supplied.  
R. S. 12, § 54.

SECT. 38. When an officer loses his commission, upon affidavit made before a judge or justice of a court of record and produced to the adjutant-general, a duplicate commission shall issue of the same tenor and date.

Major-general to be notified.  
R. S. 12, § 55.

SECT. 39. Major-generals shall be notified of their elections by the secretary of the commonwealth, and, unless within thirty days after such notice they signify to the secretary their acceptance of office, shall be taken to have refused the same.

to order elections of all commissioned officers.  
R. S. 12, § 56.  
1854, 367, § 9.

SECT. 40. Major-generals of division shall order elections to fill all vacancies which occur in their respective divisions, in the office of brigadier-general, field officer, captain, or subaltern. Such elections shall be held at the place most convenient for the majority of the electors, and shall be ordered throughout each division at least once in each year; the elections of company officers first, and those of field officers next.

Notice of elections. Penalty.

SECT. 41. Electors shall be notified of elections at least ten days previously thereto. A non-commissioned officer or private unnecessarily

absent from company election, shall forfeit one dollar, to be recovered on complaint of the clerk, one-half to his use, and one-half to the use of the commanding officer.

R. S. 12, §§ 57, 98, 112.  
3 Pick. 386.  
See § 44.

SECT. 42. Officers ordering elections may preside, or detail some officer of suitable rank to preside.

Presiding officer at elections. 1854, 367, § 9.

SECT. 43. A captain, or staff officer of the rank of captain, may preside at the election of an officer of equal or inferior grade within the limits of his regiment or battalion; but no candidate for the vacancy shall preside at the election, except to adjourn the meeting if no proper officer appears to preside.

Who to preside. Record and returns.

R. S. 12, § 58.  
1854, 367, § 8.

At all elections such presiding officer shall keep a record of the proceedings, and make return thereof to the commanding officer of the battalion, regiment, brigade, or division, as may be proper.

SECT. 44. The person who has a majority of the written votes of the electors present at a meeting duly notified, shall be deemed elected, and the presiding officer shall forthwith notify him of his election, and make return thereof, or of neglect or refusal to elect, to the commander of the division. Every person so elected and notified, shall accept, if a brigadier-general or field officer, within ten days, or, if a company officer, forthwith; otherwise he shall be taken to have refused. If before the meeting for the election of any officer is dissolved, the person chosen signifies to the presiding officer his refusal to accept, the same shall be recorded and make part of the return, and the electors shall proceed to another election. Elections may be adjourned, not exceeding twice, and each adjournment for a period not exceeding two days; but no company election shall be legal unless it is notified in the manner prescribed in section forty-one.

Who to be deemed elected; elections may be adjourned; not legal unless electors are notified.

Roster and rolls to be produced.

R. S. 12, § 58.  
1837, 240, § 6.  
1852, 104, § 2.

The original roster of the brigade, regiment, or battalion, or the original roll of the company, as the case may be, shall be produced at such elections, by the person having the legal custody thereof.

SECT. 45. When the electors neglect or refuse to elect to fill a vacancy, the commander-in-chief, with the advice and consent of the council, shall appoint a suitable person. The commanding officer of the division shall return all elections, and refusals or neglects to elect, to the commander-in-chief, and unless he is notified by the commander-in-chief of his intention to make an appointment, he may, if necessary, order a new election.

When electors fail to elect.

Returns of elections and refusals. New election ordered, unless, &c.

R. S. 12, § 59.  
24 Pick. 181.

SECT. 46. When a company newly enrolled, or, from any cause, is without commissioned officers, the commander of the regiment or battalion may without an order from the commander of the division, order an election of officers as soon as may be.

Elections in companies without officers.

R. S. 12, § 60.

SECT. 47. When an officer holding a military commission is elected to another office in the militia, and accepts the same, such acceptance shall constitute a part of the return of the presiding officer, and shall vacate the office previously held.

Acceptance of an office to vacate one previously held.

SECT. 48. Commissions shall be transmitted to the commanding officers of divisions, and by them, through the proper officers, to the officers elect.

Commissions, how transmitted.

R. S. 12, § 61.

SECT. 49. When a person elected or appointed to an office refuses to accept his commission or qualify at the time of acceptance, the major-general shall certify the fact on the back thereof, and return it to the adjutant-general; and if the office is elective a new election shall be ordered.

When persons refuse to accept, new election to be ordered.

R. S. 12, § 62.

SECT. 50. No candidate for office in the militia, pending or after an election, shall treat with intoxicating liquors the persons attending thereat, and no officer shall on days of military duty so treat persons performing such duty.

Officers, &c., not to treat with intoxicating liquors.

R. S. 12, § 63, 64.

SECT. 51. No officer or soldier shall be arrested on civil process, while going to, remaining at, or returning from, a place where he is ordered to attend for election of officers or military duty.

Persons on duty privileged from arrest.

R. S. 12, § 64.



Oath of commissioned officers—how administered and certified.  
Form of certificate.  
R. S. 12, § 65.  
3 Cush. 587.

SECT. 52. Every commissioned officer, before he enters on the duties of his office or exercises any command, shall take and subscribe before a justice of the peace, or general or field officer who has previously taken and subscribed them himself, the following oaths and declarations:—

“I, A B, do solemnly swear that I will bear true faith and allegiance to the commonwealth of Massachusetts, and will support the constitution thereof: So help me, God.”

“I, A B, do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as \_\_\_\_\_, according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution, and the laws of the commonwealth. So help me, God.”

“I, A B, do solemnly swear that I will support the constitution of the United States.”

And on the back of every commission the following certificate shall be printed and signed by the person before whom such officer is qualified:—

This may certify that A B, commissioned as within on this \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_ personally appeared, and took and subscribed the oaths required by the constitution and laws of this commonwealth and a law of the United States, to qualify him to discharge the duties of his office.

Before me,

Clerk's oath.  
Certificate.  
R. S. 12, § 66.  
5 Pick. 239.  
See § 29.

SECT. 53. Every clerk of a company, before he enters upon his duties, shall take the following oath, before the commanding officer of the company to which he belongs, viz.:—

“I, A B, do solemnly swear that I will faithfully and impartially perform all the duties incumbent on me, as clerk of the company to which I belong, according to the best of my abilities and understanding. So help me, God.”

The commander of such company shall at the time of administering the oath certify on the back of the warrant of the sergeant appointed to be clerk, that he was duly qualified, by taking the oath required by law.

Discharge of officers upon their own request.  
R. S. 12, § 67.

SECT. 54. When an officer requests in writing his discharge from office, with the approval of the commanders of the regiment or battalion, brigade and division, to which he belongs, the commander-in-chief may discharge him.

Request for discharge between May and November not to be approved, unless, &c.  
R. S. 12, § 68.

SECT. 55. No commanding officer shall approve a resignation under the preceding section, if the same is offered between the first day of May and the first day of November, unless the reasons for such resignation are urgent and proved to his satisfaction; and the rolls, orderly book, roster, and documents, in the custody of the officer resigning, shall before his discharge is delivered to him, be deposited with the officer having a right to the custody of the same.

If officer refuse to approve, commander-in-chief may discharge.  
R. S. 12, § 69.

SECT. 56. If an officer unreasonably refuses to approve an application for discharge, and it is so made to appear to the commanders above him, they may approve the same, and the commander-in-chief may discharge the applicant.

Officers not to be discharged, except—

SECT. 57. No officer shall be discharged by the commander-in-chief, unless upon his own request, except as follows:—

when unable to discharge duties, &c.

When it appears to the commander-in-chief that he has become unable or unfit to discharge the duties of his office, or to exercise proper authority over his inferior officers and soldiers, or that he has been convicted of an infamous crime;

when removed out of the bounds of his command.

When the commander of his division certifies that he has, either before or after receiving his commission, removed his residence out of the bounds of his command to so great a distance, that in the opinion of such commanding officer it is inconvenient to exercise his command;

absent more than a year, &c. upon address, &c.

When such commander certifies that he has been absent from his command more than one year without leave;

upon sentence, &c.

Upon address of both houses of the legislature to the governor;  
Upon sentence of court martial, after trial according to law;

When the corps to which he belongs is disbanded; In which cases he may be so discharged. Every officer, except when under arrest, shall perform the duties of his office until he is discharged.

Officers, when corps is disbanded.  
R. S. 12, § 71.

SECT. 58. When an officer accepts an appointment in the army of the United States, his office shall thereby become vacant; and if after accepting such appointment, he exercises any of the powers and authority of such office, he shall forfeit not exceeding three hundred dollars.

Discharge by appointment in U. S. army—Penalty.  
R. S. 12, §§ 72, 101.

SECT. 59. The commissions of staff officers appointed by a commanding officer, shall expire as soon as the successor of such commanding officer is commissioned.

Staff commissions.  
R. S. 12, § 73, 1837, 240, § 3.  
See § 9.

SECT. 60. Officers under arrest shall not resign, but shall be suspended from exercising the duties of office.

Officers under arrest.  
R. S. 12, §§ 70, 110.

SECT. 61. A non-commissioned officer or clerk of a company may resign his office to the commanding officer of his company, and be discharged by him.

Non-commissioned officer.  
R. S. 12, § 74.

THE ADJUTANT-GENERAL.

SECT. 62. The adjutant-general shall hold his office for the term of one year, and until his successor is appointed and qualified, but may be removed at any time by the commander-in-chief.

Adjutant-general.  
R. S. 12, §§ 22, 49  
R. S. 13, § 20.  
1843, 17, § 1.

SECT. 63. He shall give bond to the state in the penal sum of twenty thousand dollars, with two sureties at least, to be approved by the governor and council, conditioned faithfully to discharge the duties of his office; to use all necessary diligence and care in the safe keeping of military stores and property of the commonwealth committed to his custody; to account for the same, and deliver over to his successor, or to any other person authorized to receive the same, such stores and property.

to give bond.  
1843, 17, § 3.

SECT. 64. He shall receive a salary of eighteen hundred dollars a year, in full payment for all services rendered as such officer and as acting quartermaster-general and keeper of the public magazines, munitions of war, intrenching tools and other implements of war belonging to the commonwealth; and may employ in his office a clerk at a salary of twelve hundred dollars a year.

salary of, clerk, &c.  
1843, 13, § 4.  
1854, 81, § 1.  
1858, 156.  
1859, 164.

SECT. 65. He shall distribute all orders from the commander-in-chief; shall obey all orders relative to carrying into execution and perfecting any system of military discipline established by law; and shall be in attendance when the commander-in-chief reviews the militia.

to distribute all general orders, &c., and to attend reviews.  
R. S. 12, § 12, 30  
82.

SECT. 66. He shall furnish blank forms of rolls and of the different returns that may be required, explaining the principles upon which they should be made; of orders for the commanders of companies to order the non-commissioned officers and privates to notify their men to attend the inspections, trainings, reviews, and elections of officers, which may be ordered; and of notifications or orders, to be left with the men.

to furnish blank rolls and returns, and blanks for company orders, &c.  
R. S. 12, § 9, 34  
92.

SECT. 67. He shall make proper abstracts from the returns of the commanding officers of brigades and divisionary corps, and lay the same before the commander-in-chief, annually.

to make abstracts of returns.  
R. S. 12, § 33.

SECT. 68. He shall annually make a return, in duplicate, of the militia of the state, with their arms, accoutrements, and ammunition, according to such directions as he may receive from the secretary of war of the United States; one copy of which he shall deliver to the commander-in-chief, and transmit the other to the president of the United States, on or before the first Monday in January.

to make annual returns in duplicate.  
R. S. 12, § 33.

SECT. 69. He shall, within twenty days after the receipt of each company or band pay roll under sections one hundred and twenty-two and one hundred and twenty-four, after carrying out therein opposite to the name of each man returned, the amount of pay to which he is

to certify rolls, and transmit to towns.  
1846, 218, §§ 3, 5  
1849, 218, § 7.  
See § 139.

entitled, and certifying thereon that it contains the names of those persons only who are entitled to pay, transmit the same to the mayor and aldermen, or the selectmen of the city or town in which the armory or place of assembly of such company or band is situated.

Adjutant-general to submit to the auditor, roll of officers entitled to pay. 1845, 243, § 8. 1846, 218, §§ 4, 9. 1849, 56, § 2. 1849, 218, § 7. See § 139.

SECT. 70. He shall on or before the twenty-fifth day of January in each year, make out a certified roll of the names of all the general, field and staff officers that appear by the returns made to him under section one hundred and twenty-eight, to be entitled to the pay under section one hundred and thirty-seven, and shall ascertain from the returns made to him under sections one hundred and twenty-two and one hundred and twenty-four, the amount of money necessary to reimburse the several cities and towns, and shall submit such roll and result to the auditor; and the governor shall draw his warrant on the treasury for such sums as may be necessary to pay such officers and reimburse such cities and towns.

— account of expenditures. 1837, 240, § 4. 1849, 56, § 2. 1857, 40, § 1. to distribute arms, &c. R. S. 12, §§ 43, 44. 1840, 92, § 20. 1842, 93, § 1. 1844, 101, § 8. Resolves, 1845, 71, 82. 1847, 77. Field pieces to remain in possession of towns, &c. Resolves, 1853, 53.

SECT. 71. He shall, annually in January, lay before the auditor, an account, with vouchers, of his expenditures as adjutant-general and acting quartermaster-general.

SECT. 72. He shall distribute to the officers, regiments, battalions, and companies, of the volunteer militia, the arms, furniture, equipments, equipage, and books, required by law to be furnished at public expense, and may sue either in contract or tort any or all such officers for loss or damage sustained in articles so furnished them.

SECT. 73. He may permit the field pieces and artillery equipments now in the possession of the towns and cities, so to remain so long as they provide suitable places of deposit therefor, and keep them in good condition, without expense to the commonwealth.

#### ARMS, EQUIPMENTS, EQUIPAGE, &c.

##### ARTICLES FURNISHED BY SOLDIERS.

What uniform to be provided. R. S. 12, §§ 39, 99, 112. 1840, 92, § 22. 4 Gray, 502.

SECT. 74. Officers of the line and staff, and officers and soldiers of a company raised at large, shall provide themselves with such uniforms complete as the commander-in-chief prescribes, subject to such restrictions, limitations, and alterations, as he may order; and every such soldier deficient therein shall forfeit two dollars, to be recovered on complaint of the clerk, one-half to his use, and one-half to the use of the commanding officer.

Uniform, &c., exempt from attachment. R. S. 12, § 42. 1857, 235, § 1.

SECT. 75. Every officer and soldier shall hold his uniform, arms, ammunition, and accoutrements, required by law, free from all suits, distresses, executions, or sales, for debt or payment of taxes.

##### ARTICLES FURNISHED BY THE STATE.

Camp equipage to be furnished to commanders of divisions, &c. Resolves, 1847, 77.

SECT. 76. The quartermaster-general shall deliver as a loan from the state to the commanding officer of each division, brigade, regiment, battalion, or company, of the volunteer militia, such tents, fixtures, and other camp equipage as may be in the state arsenal; and each officer to whom such equipage is delivered, shall be responsible for the safe keeping of the same; and in case of the discharge or death of such officer, he or his legal representative shall be released from such responsibility, upon filing in the office of the adjutant-general, a certificate of the officer succeeding him in command, that the articles so furnished are at the date of the certificate, in good order and condition, reasonable use and wear thereof excepted.

Colors to be furnished. Who responsible. R. S. 12, § 43.

SECT. 77. Each regiment and battalion shall be furnished by the state with the state and regimental colors, their staffs, belts, and sockets, and the commander of such regiment or battalion shall be responsible for their safe keeping.

Arms and

SECT. 78. Each company of the volunteer militia on application by



the commander thereof to the adjutant-general, and producing satisfactory evidence that a suitable armory or place of deposit is provided therefor agreeably to section eighty-eight, shall be furnished with such appropriate arms and equipments as shall be determined by the commander-in-chief.

SECT. 79. The commissioned officers of every company of volunteer militia shall, from the time of their being qualified, be responsible for the safe keeping and return of all arms, equipment, and equipage, furnished and in their possession, by provisions of law, and for any loss or damage thereto, compensation may be obtained by an action of contract brought by the adjutant-general against all or any of such officers.

SECT. 80. In case of the discharge or death of such an officer, he or his legal representative shall be relieved from such responsibility, upon filing in the office of the adjutant-general a certificate signed by not less than two commissioned officers of his company, that such articles are, at the date of the certificate, undiminished in quantity and value, reasonable use and wear excepted.

SECT. 81. Upon the disbandment of a volunteer company which has received arms, equipments, or equipage, from the adjutant-general, he shall receive the same on presentation thereof by the officers of the company, or their agents.

SECT. 82. Each company of militia shall be furnished with such instruments of music as the commander-in-chief shall order. Each commander of a brigade may draw orders upon the quartermaster-general, or officer acting as such, in favor of the commanders of regiments, battalions, and companies, for colors and instruments of music. Commanders of companies shall be responsible for the safe keeping of the instruments delivered to them for the use of their companies.

SECT. 83. Each company of foot artillery shall be provided by the quartermaster-general with the battery of manœuvre prescribed for that arm by the war department of the United States; with caissons, harness, implements, laboratory, and ordnance stores, which may, from time to time, be necessary for their complete equipment for the field; and, when a state of war, or danger thereof, renders target practice expedient in the opinion of the commander-in-chief, such quantity of ammunition annually as he deems necessary to be expended in experimental gunnery. The commissioned officers of each company shall be accountable for the preservation of the pieces, apparatus, and ammunition aforesaid, and for the proper expenditure of the ammunition.

SECT. 84. The commanding officer of such company, when it is ordered to march out of the city or town where the gun-house is situated, and on occasions of parade for experimental gunnery, or camp duty, shall provide horses to draw the field pieces and caissons, and present his account of the expenses thereof, as provided in section one hundred and forty-nine. On all other occasions when ordered out by an officer of competent authority for camp or salute duty, the charges for horses, powder, and necessary expenses, shall be defrayed by the quartermaster-general.

SECT. 85. Every general and field officer, division and brigade-inspector, adjutant of regiment or battalion, and commander of a company, shall be furnished with Scott's Infantry Tactics, adopted by the war department in the year eighteen hundred and thirty-five; every subaltern officer of an infantry company with the first and second volumes of said Tactics; every field, staff, and company officer, and non-commissioned officer, with the compend of instruction in military tactics and the manual of percussioned arms with extracts from the army regulations, prepared by the adjutant-general. All which books shall be considered public property, and delivered by such officers to their successors.

equipments to be furnished. 1840, 92, § 20.

Commissioned officers responsible for equipments. 1840, 92, § 20. 1842, 93, § 1. 1852, 312. Resolves, 1845, 71.

how relieved from responsibility, in case of discharge, &c. 1842, 93, § 2. Resolves, 1845, 71.

Arms, &c., to be received from disbanded company. 1842, 93, § 4.

Instruments of music furnished. Commander of brigade to draw order. Who responsible. R. S. 12, § 43.

Cannon, ammunition, &c., to be furnished to artillery.

When in state of war, &c., powder, &c., furnished.

Who accountable. R. S. 12, § 44. 1849, 218, § 13. 1853, 174, § 7.

When company ordered to march out of town, &c. Expenses of battery, how paid. R. S. 12, § 45. 1849, 218, § 13.

Scott's Tactics, &c., to be furnished to officers. Resolves of 1852, 17, 27. 1854, 32.

Military stores may be sold, &c. Resolves, 1822, 24.

SECT. 86. The commander-in-chief, with the advice and consent of the council, may sell or exchange, from time to time, such military stores belonging to the quartermaster-general's department as are found un-serviceable or in a state of decay, or which they think it for the interest of the state to so sell or exchange.

Committee of legislature to visit arsenal and report. Resolves, 1845, 12.

SECT. 87. The committee of the legislature on the militia shall, annually in January, visit the arsenal in Cambridge, and make a thorough examination into the condition of the same, of the arms and munitions of war, and other property of the state or general government deposited there, and report the condition of the arsenal and property.

#### ARMORIES.

Armories, selectmen, &c., to provide. 1840, 92, § 20. 1853, 188, § 1. See § 78.

SECT. 88. The mayor and aldermen and selectmen shall provide for each company of militia within the limits of their respective places a suitable armory or place of deposit for the arms, equipments, and equipage, furnished it by the state. When a company is formed from different places, the location of such armory or place of deposit shall be determined by a majority of its members.

rent of, &c., to be certified by selectmen, &c. 1853, 188, § 2. See § 91.

SECT. 89. They shall annually in October or November transmit to the office of the adjutant-general a certificate, verified by the oath or affirmation of at least two of their board, showing the name of each company furnished with an armory, the amount paid for the rent thereof, and stating that a majority of their board consider such armory necessary for the use of such company, and that the rent charged therefor is fair and reasonable according to the value of real estate in their place.

Adjutant-general to audit, &c., claims for rent. Payment. 1849, 56, § 2. 1853, 188, § 3. 1857, 303, § 2. 1858, 166, § 2.

SECT. 90. The adjutant-general shall annually examine all certificates so returned to his office, institute any inquiries he deems expedient relative thereto, and allow them in whole or in part to an amount not exceeding three hundred dollars for one company. He shall within ten days after such examination file in the office of the auditor his certificate stating the sums allowed, the name of the company for whose use each sum is allowed, and the place to which it belongs; and shall thereupon notify the mayor, aldermen or selectmen, of the sum allowed to their place, which sum shall be paid upon the warrant of the governor to such mayor and aldermen or selectmen, as provided by law for the reimbursement of sums paid for military service.

Penalty for false certificate. 1853, 188, § 4.

SECT. 91. A city or town receiving from the treasury of the commonwealth, by reason of a false return or certificate, under section eighty-nine, any money to which such place is not entitled, shall forfeit a sum not exceeding four times the amount of money so received.

Armories, &c., how examined. 1840, 92, § 20.

SECT. 92. The commander-in-chief may at any time detail an officer to examine any armory and report the condition thereof, and of the arms, equipments, and equipage, therein deposited.

#### ORDERS AND NOTIFICATIONS.

Orders, by whom distributed. R. S. 12, §§ 12, 30. 1837, 240, § 8.

SECT. 93. Orders from the commander-in-chief shall be distributed by the adjutant-general; division orders, by the division-inspector; brigade orders, by the brigade-major; regimental and battalion orders, by the adjutant; company orders, by the clerk, or by any non-commissioned officer or private, when so required by the commanding officer.

Companies ordered out, how notified. R. S. 12, §§ 88, 100, 112. 13 Mass. 433. 9 Pick. 41, 557. 10 Pick. 134. 17 Pick. 243. 24 Pick. 172.

SECT. 94. When a commander orders out his company for military duty, or for election of officers, he shall order one or more of the non-commissioned officers or privates, to notify the men belonging to the company to appear at the time and place appointed. Such non-commissioned officer or private shall give notice of such time and place to every person whom he is ordered to notify; if he fails so to do, he shall forfeit not less than twenty nor more than one hundred dollars, to be



recovered on complaint of the clerk, one-half to his use and one-half to the use of the commanding officer.

SECT. 95. No notice shall be legal, unless given by such non-commissioned officer or private to each man verbally, or by leaving at his usual place of abode a written or printed order signed by such officer or private four days at least previous to the time appointed, if for military duty, and ten days previous thereto, if for election of officers; but in case of invasion, insurrection, riot, or an unforeseen or sudden occasion, a verbal, written, or printed notice, however short, shall be legal. When a company is paraded, the commanding officer may verbally notify the men to appear at a future day, not exceeding thirty days from the time of such parade, which shall be sufficient notice as respects the persons present; and all commanders of companies may on parade, read division, brigade, or regimental orders, and notify the soldiers of their several commands to appear as by such orders required; which notice shall be a sufficient warning. Notifications may be proved, as provided in section one hundred and fifty-four.

SECT. 96. When a company is without commissioned officers, the commander of the regiment or battalion to which it belongs, or the officer detailed by him to discipline the same, shall in writing order any non-commissioned officers or privates to notify the persons liable to do duty in such company, to appear for duty required by law, at the time and place mentioned in such order; and, if a non-commissioned officer or private refuses or neglects so to notify, he shall forfeit and pay to the use of his regiment or battalion not less than twenty nor more than one hundred dollars, to be recovered on complaint by the commander thereof.

SECT. 97. Clerks of companies shall record in the orderly book, company orders and notifications; but such record shall not be necessary to the recovery of a penalty.

DISCIPLINE, TRAININGS, INSPECTION, AND CAMP DUTY.

SECT. 98. The system of discipline and field exercise ordered to be observed by the army of the United States, in the different corps, or such other system as may hereafter be directed for the militia by laws of the United States, shall be observed by the militia.

SECT. 99. The commander of every regiment, battalion, and detached company, may annually order out the commissioned and non-commissioned officers under his command, for elementary drill, two separate days between the middle of May and the middle of July, at such place as he deems most convenient; and if the place of any such officer in a company is vacant, the commander thereof shall detail from the privates under his command a sufficient number to make up the deficiency. Every person unnecessarily neglecting to attend at the time and place appointed for such drill, shall forfeit to the use of his regiment, battalion, or company, three dollars, to be recovered by any commissioned officer thereof, in an action of tort.

SECT. 100. Unless the commander-in-chief prescribes the time, place, and manner, of assembling the troops for the purposes declared in this section, each commander of division shall annually order an encampment of his division by brigades or regiments, at some time between the middle of July and the middle of October. The orders for encampment by brigade shall be promulgated in the brigade thirty days before the time appointed for the encampment; the orders for encampment by regiment shall be promulgated in the regiment twenty days before such time. The place and, if no time is designated by the commander of division, the time of encampment shall be designated by the commander of the troops to be assembled, and regard shall always be had to the convenience, proximity, and accommodation, of the troops to be assembled; but no ground shall be occupied for an encampment in time of

Notifications, requisites and times of.  
Verbal notice on parade.  
Notifications, how proved.  
R. S. 12, § 89.  
1840, 92, § 24.  
15 Pick. 7.  
21 Pick. 332.  
22 Pick. 406.  
23 Pick. 54, 57.

Company without officers, how notified.  
Penalty.  
R. S. 12, §§ 91, 100, 111.  
See § 30.

Orders, &c., to be recorded.  
R. S. 12, § 93.

System of discipline, &c.  
R. S. 12, § 75.  
1840, 92, §§ 5, 21.

Commanders of regiments, &c., to order elementary drills.  
Penalty for non-attendance.  
1854, 367, §§ 3, 4.

Encampments. Orders for, how issued.  
Place of.  
R. S. 12, § 78.  
1840, 218, §§ 2, 6.  
1851, 302.  
1853, 174, §§ 1, 2.  
1858, 166, § 7.  
7 Gray, 360.



peace without the consent of the selectmen of the town, or mayor and aldermen of the city where the encampment is to be made.

Distance companies to march.  
Parade of more than brigade.  
R. S. 12, § 78.  
1840, 92, § 24.

SECT. 101. No officer or soldier shall be obliged to march more than fifteen miles from his residence to a review, except of a regiment, battalion, or less body, and no larger body than a brigade shall be ordered to parade at the same time and place, except by order of the commander-in-chief.

Troops to be exercised, inspected, &c.  
R. S. 12, §§ 98, 112.  
1852, 104, §§ 6, 9.

SECT. 102. Each encampment shall last three days; the troops shall be inspected, reviewed, and thoroughly exercised, as companies, battalions, or brigades, in the whole routine of camp and field duty. Every non-commissioned officer and private, holden by law to do military duty in a company, and unnecessarily neglecting to appear at the time and place appointed for encampment, shall forfeit five dollars, to be recovered on complaint of the clerk, one-half to his use and one-half to the use of the commanding officer.

Company roll calls, how made.  
1857, 303, § 1.  
1853, 166, § 1.

SECT. 103. Each company roll call shall be made during the term of encampment, under the supervision and in presence of a regimental or commissioned staff officer, to be designated by the commanding officer of the regiment or battalion to which the company is attached.

Rank of corps. Senior officer to command.  
R. S. 12, § 79.  
1853, 337, § 1.  
See § 37.

SECT. 104. Each division, brigade, regiment, and battalion, shall, in the field, rank according to its number, the lowest number having the highest rank; companies in a regiment or battalion shall form according to the rank of the officers present commanding them; and when distinct corps parade, join, or do duty, together, the senior officer present shall command.

Companies without officers, how commanded.  
R. S. 12, § 79.

SECT. 105. When a company destitute of commissioned officers parades with other troops, the officer in command shall detail one or more commissioned officers present to command it, unless the officer detailed by the commander of the regiment to command it is present.

Brigade-majors to attend reviews, inspect arms, &c.  
R. S. 12, § 81.

SECT. 106. The brigade-majors and inspectors shall attend the annual encampments of the regiments and battalions in their brigades while encamped separately, and while they are under arms, inspect their arms, ammunition, and accoutrements, superintend their exercises and manœuvres, and introduce the system of military discipline required by law and by orders received from time to time from the commander-in-chief.

Officers and soldiers may drill in camp, &c.  
1849, 218, § 3.

SECT. 107. By permission of the officer in chief command, and of their own immediate superiors, officers, privates, and musicians, may drill and manœuvre in camp in undress uniform or fatigue dress, and mounted officers may discharge their duties on foot.

Bounds of parade may be fixed.  
Punishment for intrusion.  
R. S. 12, § 80.

SECT. 108. Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade, (not including a road, so as to prevent passing,) within which no spectator shall enter without leave from such commanding officer. Whoever intrudes within the limits of the parade, after being forbidden, may be confined under guard during the time of parade, or a shorter time, at the discretion of the commanding officer; and whoever resists a sentry who attempts to put him or keep him out of such limits, may be arrested by order of the commanding officer, and carried before a court or magistrate, to be examined or tried upon complaint for such assault, or disturbance or breach of the peace.

Persons not holden to do duty on days of certain elections, except, &c.

SECT. 109. No officer or soldier shall be holden to perform military duty except in case of invasion, insurrection, riot, or tumult made or threatened, or in obedience to the orders of the commander-in-chief, on a day appointed for a meeting in the town in which he resides for the election of governor, lieutenant-governor, senators, electors of president or vice-president of the United States, or representatives to congress or the general court; and an officer parading his company or ordering it to parade contrary to the provisions of this section, shall, besides being liable to a court martial, forfeit not less than fifty nor more than three hundred dollars.

Liability of officers.  
R. S. 12, §§ 85, 101.  
See §§ 100, 161.

SECT. 110. The commander-in-chief may order out any portion of the militia for escort and other duties. The commanders of companies or corps so ordered out shall present their accounts for necessary music to the quartermaster-general, who shall pay the same out of the money of the state in his hands.

Commander-in-chief may order escort, &c.  
Music.  
R. S. 12, § 86.  
Resolves, 1811, 64.

SECT. 111. Nothing herein contained shall be construed to prevent any company from meeting for the purpose of drill, funeral or other escort, or a voluntary service; nor to impair the obligation arising under constitutional articles of agreement adopted by the company, so far as regards the members who have signed the same, unless they are repugnant to law. All fines, penalties, and assessments incurred by officers or soldiers of such company, under such constitutional articles of agreement signed by them, and approved by the commander-in-chief, may, in addition to any other remedy thereon, be recovered on complaint of the clerk.

Voluntary parades not prohibited.  
Articles of agreement adopted by company binding. Remedy for breach thereof.  
R. S. 12, § 87.

SECT. 112. Every non-commissioned officer or private who appears at a parade or drill required by law, deficient in any arm furnished him by the state, or with such arms unserviceable or in bad condition, shall forfeit one dollar, and every such officer or private so appearing, deficient in any article of equipment or ammunition furnished to or required of him by law or general order, or with such equipment or ammunition of bad quality or condition, shall forfeit fifty cents, to be recovered on complaint of the clerk, one-half to his use and one-half to the use of the commanding officer.

Penalty for deficiency in arms, &c.  
R. S. 12, §§ 43, 44, 99, 112.  
1849, 218, § 13.  
1852, 104, § 6.

SECT. 113. A soldier who unnecessarily, or without order from a superior officer, comes to any parade, with his musket, rifle, or pistol, loaded with ball, slug, or shot, or so loads the same while on parade, or unnecessarily, or without order from a superior officer, discharges the same when going to, returning from, or upon parade, shall forfeit not less than five nor more than twenty dollars, to be recovered on complaint of the clerk, one-half to his use and one-half to the use of the commanding officer.

Loaded arms not to be brought on parade, &c.  
R. S. 12, §§ 83, 100, 112.

SECT. 114. A soldier behaving with contempt towards an officer, or conducting in a disorderly manner, or exciting or joining in a tumult or riot, or being guilty of unmilitary conduct, disobedience of orders, or neglect of duty when under arms or on duty, shall forfeit not less than five nor more than twenty dollars, to be recovered as provided in the preceding section.

Contempt, disorderly conduct, &c., how punished.  
R. S. 12, § 100.

SECT. 115. A soldier quitting his guard, section, platoon, or company, shall forfeit not less than two nor more than ten dollars, to be recovered, if the offence is committed at a regimental or battalion parade, on complaint by the commander of the regiment or battalion, or the company clerk; if at any other parade, by the clerk.

Quitting guard, &c., how punished.  
R. S. 12, § 100.

SECT. 116. For any offence mentioned in the preceding section the delinquent may be put and kept under guard by the commander of the company, regiment, or of the field, for a time not extending beyond the term of service for which he is then ordered. A non-commissioned officer, for an offence mentioned in this chapter, or for disobedience of orders or unmilitary conduct at a regimental or battalion parade, may besides incurring the fine prescribed be reduced to the ranks by the commander of his regiment or battalion; and for such misconduct at any other parade, by such commander with the advice of his company commander.

Soldiers may be put under guard. Non-commissioned officer may be reduced to ranks.  
R. S. 12, § 100.

SECT. 117. Soldiers in companies without officers, when ordered out to be trained and disciplined, shall for absence, deficiency, misconduct, or neglect, be liable to the fines prescribed for offences in other companies, to be recovered upon complaint of the officer so detailed, substantially as by clerks under section one hundred and fifty-four, one-half to the use of such officer and one-half to the use of the regiment or battalion.

Penalties on soldiers in companies without officers.  
R. S. 12, §§ 104, 111.



## ROSTERS, ORDERLY BOOKS, ROLLS, AND RETURNS.

Rosters and orderly book, by whom kept.  
R. S. 12, § 27.  
1837, 240, § 8.

SECT. 118. The division-inspector of each division, the brigade-major of each brigade, and the adjutant of each regiment, battalion, or corps, shall constantly keep a correct roster of the command to which he belongs, and an orderly book in which he shall record orders received and issued.

Company rolls, how kept, to be revised and corrected.  
R. S. 12, §§ 9, 28.  
22 Pick. 405.  
23 Pick. 54, 208.

SECT. 119. A fair and exact roll of each company shall be kept by the clerk, under the direction of the commander, with the state of the arms and equipments furnished to each man, in the form prescribed for the returns of the militia by the commander-in-chief. Such rolls shall be annually revised in the month of May, and corrected from time to time, as the state of the company and alterations in it may require.

Company orderly book, how kept.  
Delinquencies, fines, &c., to be recorded.  
R. S. 12, § 29.  
23 Pick. 54, 208.

SECT. 120. An orderly book shall also be kept in each company, by the clerk, under the direction of the commander, and the proceedings of the company, orders received and issued, and exact details of drafts and detachments, shall be recorded therein. Fines and forfeitures, with the time when, and the offence, neglect, default, or deficiency, for which they were incurred, money collected by him with the names of the persons from whom collected, and all delinquencies and deficiencies, shall be recorded in said book, which shall not be alienated from the company, and shall always be open to the inspection of its officers.

Commander of companies to make duplicate returns in ten days.  
Returns of divisionary corps, &c., to whom made.  
R. S. 12, § 15.  
1846, 218, § 1.  
1849, 218, § 9.  
1858, 166, § 1.

SECT. 121. At the conclusion of each tour of camp duty, commanders of companies shall make correct duplicate returns of their several companies for each day of the encampment, upon which the commander of the regiment or battalion to which the company belongs shall certify that such company on each of the days of encampment well and faithfully performed the duties required by law, and the staff officer supervising the roll shall certify thereon that the number of officers, non-commissioned officers, musicians, and privates therein reported as present and doing duty each day is correct. He shall deliver one of such returns to the brigade-major or inspecting officer on duty in the camp, and transmit the other, within ten days after said tour of camp duty, to the office of the adjutant-general. The returns of companies attached to divisions or brigades, and not to regiments, shall be certified by the commanding officers of divisions or brigades respectively, and by staff officers of the division or brigade.

to make alphabetical pay rolls of companies within ten days after camp duty.  
1846, 218, § 2.  
1849, 218, § 9.  
1858, 166, § 1.  
See §§ 69, 70, 139, 140.  
1861 Ch. 119

SECT. 122. The commander of a company, within ten days after each tour of camp duty, shall make a correct alphabetical pay roll of his company, containing the names of the members who appeared, armed, uniformed, and equipped, and performed all the duties required on the days of encampment, and showing the duty done by each member, and transmit the same, certified under his oath to be correct and true, to the office of the adjutant-general. Such roll shall not contain the name of a private who has done duty as a musician, and the whole number so returned shall in no case exceed the number allowed to his company by sections fourteen and twenty-seven.

Penalty for neglect, or false return, &c.  
1845, 243, § 10.  
1849, 218, § 9.  
2 Met. 296.

SECT. 123. A commanding officer of a company who neglects to make the returns required by the two preceding sections, shall forfeit twenty-five dollars, and for making a false return in any case, shall forfeit one hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Returns by master of regimental or battalion band.  
1846, 218, § 9.  
See §§ 69, 70, 139, 140.

SECT. 124. The master of every regimental or battalion band shall, within ten days after a parade thereof, made under order of the commander of the regiment or battalion to which such band belongs, make and transmit to the adjutant-general an alphabetical list of the men who appeared in uniform and performed duty on such day, the last return to be made on or before the tenth day of November; upon which the commanding officer to whom the band was ordered to report for duty,



shall certify that the duty was well and faithfully performed. For neglect to make such return, the master shall forfeit twenty-five dollars, and for making a false return shall forfeit one hundred dollars, to be prosecuted for by the officer to whom the return should be made.

SECT. 125. On the last day of each tour of camp duty, commanders of regiments and battalions shall make correct certified rolls of the field and staff officers of their several commands on duty for each day, specifying the names, rank, and duty done, by each officer who appeared armed, uniformed, and equipped, on any day, and deliver the same to the brigade-major or inspecting officer of the camp. Every officer neglecting to make such returns, shall forfeit for each offence fifty dollars, and for making a false return in any case two hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Commanders of regiments, &c., to make returns of officers.  
Penalties.  
1846, 218, § 5.  
1849, 218, § 10.  
1854, 367, § 10.

SECT. 126. Brigade-majors within twenty days after each tour of camp duty done by their respective brigades, or the regiments or battalions thereof, shall make and transmit to the commander of the brigade a correct return of such brigades, reporting therein the condition of the arms, accoutrements, and ammunition, of the several corps, with such suggestions relating to the government of the militia, and the advancement of order and discipline, as in his judgment may be required; and also in like manner make and transmit to the commander of division a certified roll of the general field and staff officers of their several brigades, specifying the rank of and duty done by each one who appeared uniformed and equipped, and performed duty on any day. For neglect to make either of said returns each brigade-major shall forfeit seventy-five dollars, and for making a false return in any case, three hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Brigade-majors to make returns of brigade and field and staff officers, &c.  
Penalty.  
R. S. 12, § 32.  
1846, 218, § 5.  
1849, 218, § 11.  
1854, 367, §§ 1, 2, 10.

SECT. 127. Commanders of brigades shall within thirty days after each tour of camp duty performed by the troops under their respective commands, transmit to the commanders of their divisions a correct return of their respective brigades, as furnished by the brigade-majors under the preceding section. Commanders of divisions shall within ten days after the receipt of such returns of brigades under their respective commands, transmit to the office of the adjutant-general correct returns of the state of their divisions, as derived from such brigade returns. Each officer, for neglect to make the returns required of him under this section, shall forfeit for each offence one hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Commanders of brigade to make returns to commanders of division.

Commanders of division to make returns to adjutant-general.

Penalties.  
1854, 367, §§ 1, 2.

SECT. 128. Commanders of divisions shall, annually, on or before the first day of November, make and transmit to the office of the adjutant-general a certified roll of the general field and staff officers in their respective divisions, specifying the name, rank, and duty done, by each one who has appeared armed, uniformed, and equipped, and performed duty, on any day. For neglect to make such return, such commander shall forfeit one hundred dollars, and for making a false return in any case five hundred dollars, to be prosecuted for by the officer to whom the return should be made.

Commanders of division to make out roll of officers.  
Penalty.  
1846, 218, § 5.  
1849, 218, § 12.  
See § 70.

CALLING OUT THE MILITIA IN CASE OF WAR, INVASION, INSURRECTION, TUMULT, OR RIOTS.

SECT. 129. When an invasion of or insurrection in the state is made or threatened, the commander-in-chief shall call upon the militia to repel or suppress the same; and may order out divisions, brigades, regiments, battalions, or companies; or may order to be detached parts or companies thereof, or any number of men to be drafted therefrom, and may cause officers to be detailed, sufficient, with those attached to the

Militia, how called out in case of invasion, &c.  
When commander of division may order out troops.

R. S. 12, § 129.  
1840, 92, §§ 5, 11.  
8 Mass. 549.  
See §§ 161, 168.

troops, to organize the forces. If such invasion, or insurrection, or imminent danger thereof, in any part of the state is so sudden that the commander-in-chief cannot be informed and his orders received and executed in season to resist or suppress the same, a commander of division in such part of the state may order out his division, or any part thereof, as the commander-in-chief might do.

Drafts.  
Officers detailed.  
R. S. 12, § 130.  
See §§ 161, 168.

SECT. 130. When a draft from the militia is ordered, the non-commissioned officers and privates, except so many as offer to serve voluntarily, shall be drafted by lot from the company, and the officers regularly detailed from the roster.

If company without officers be called out, officer to be detailed.  
R. S. 12, § 131.  
See §§ 161, 168.

SECT. 131. If a company without officers is ordered to march, or a draft or detachment is ordered therefrom, the commander of the regiment or battalion shall detail an officer to command, who shall have the same authority to order them to appear, to command them in the field, or to make a draft or detachment therefrom, as the captain of such company would have; and shall be under the same responsibility.

Penalty on soldiers neglecting to appear, &c. Soldiers to take provisions.  
R. S. 12, § 132.  
See §§ 161, 168.

SECT. 132. Every soldier so ordered out, detached, or drafted, who does not appear armed and equipped according to law, at the appointed time and place, or provide a substitute, or within twenty-four hours pay to the captain of his company fifty dollars, shall be taken to be a soldier absent without leave; and each soldier, ordered out, detached, or drafted, when so ordered, shall take with him provisions for not less than three days.

Selectmen, &c., to provide carriages, &c., in certain cases.  
Penalty.  
Officer responsible.  
R. S. 12, § 133.  
See §§ 144, 161, 168. Ch. 144, §§ 65, 66. Ch. 164, § 5.

SECT. 133. The selectmen of a town and the mayor and aldermen of a city to which men so ordered out, detached, or drafted, belong, when required in writing by the commander of a regiment or detachment, shall provide carriages to attend them with further supplies of provisions, and to carry necessary baggage, and provide necessary camp equipage and utensils, until notified by the commanding officer to desist; and shall present their accounts, as provided in section one hundred and forty-nine. For any neglect by mayor and aldermen or selectmen under this section, their place shall forfeit not less than twenty nor more than five hundred dollars. The officer, to whom any articles above mentioned are delivered, shall be responsible that care is taken of the same.

Troops, how ordered out in case of riot, &c.  
1840, 92, § 27.  
5 Gray, 121.

SECT. 134. When there is in any county a tumult, riot, mob, or a body of men acting together by force with intent to commit a felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the commonwealth, or when such tumult, riot, or mob, is threatened, and the fact is made to appear to the commander-in-chief, or the mayor of a city, or to a court of record sitting in said county, or, if no such court is sitting therein, then to a justice of such court, or, if no such justice is within the county, then to the sheriff thereof, the commander-in-chief may issue his order, or such mayor, court, justice or sheriff may issue a precept, directed to any commander of a division, brigade, regiment, battalion, or corps, directing him to order his command, or a part thereof, (describing the kind and number of troops,) to appear at a time and place therein specified, to aid the civil authority in suppressing such violence, and supporting the laws; which precept, if issued by a court, shall be in substance as follows:—

— ss.

COMMONWEALTH OF MASSACHUSETTS.

Form of requisition, &c.

L. S.

To { *insert the officer's title.* } A B, commanding. { *insert his command.*

Whereas it has been made to appear to our justices of our \_\_\_\_\_, now holden at \_\_\_\_\_, within and for the county of \_\_\_\_\_, that (*here state one or more of the causes above mentioned*) in our county of \_\_\_\_\_, and that military force is necessary to aid the civil authority in suppressing the same; now therefore, we command you that you cause, (*here state the number and kind of troops required*), armed, equipped, and with ammunition, as the law directs, and with proper officers, either attached to

the troops, or detailed by you, to parade at \_\_\_\_\_, on \_\_\_\_\_, then and there to obey such orders as may be given them, according to law. Hereof fail not at your peril; and have you there this writ, with your doings returned thereon.

Witness, L. S., Esq., at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_  
C D, Clerk.

And if the same is issued by a mayor, justice, or sheriff, it shall be under his hand and seal, and otherwise varied to suit the circumstances of the case.

SECT. 135. The officer to whom the order of the commander-in-chief or such precept is directed, shall forthwith order the troops therein mentioned to parade at the time and place appointed. If he refuses or neglects to obey such order or precept, or if an officer neglects or refuses to obey an order issued in pursuance thereof, he shall be cashiered and punished by fine or imprisonment not exceeding six months, as a court martial may adjudge. And a non-commissioned officer or soldier neglecting or refusing to appear at the place of parade to obey an order issued in such case, or any person advising or endeavoring to persuade an officer or soldier to refuse or neglect to appear at such place, or to obey such order, shall forfeit fifty dollars.

Penalties for disobedience, &c.  
R. S. 12, § 135.  
1840, 92, §§ 26, 28, 7  
See §§ 161, 168.

SECT. 136. Such troops shall appear at the time and place appointed, armed and equipped, and with ammunition as for inspection of arms, and shall obey and execute such orders as they may then and there receive according to law.

Troops to appear armed, &c.  
1840, 92, § 29.  
See §§ 161, 168.

COMPENSATION.

SECT. 137. General, field, and commissioned staff officers shall receive for each day's duty in camp, and according to the returns of the inspecting officers of encampment, five dollars, and non-commissioned staff officers three dollars a day, to be paid them from the state treasury, upon the warrant of the governor and council, and according to a pay roll made up in the office of the adjutant-general.

Pay of general, field, and staff officers.  
R. S. 12, § 123.  
1849, 218, § 7.  
1852, 104, § 1.  
See § 70.

SECT. 138. Division-inspectors, brigade-majors or inspectors, and adjutants of regiments or battalions, of volunteer militia, shall receive twenty-five dollars annually; adjutants of enrolled organized militia, twelve dollars annually.

Pay of inspectors, &c.  
R. S. 12, § 123.  
1837, 240, § 8.  
1839, 163.  
1842, 93, § 9.

SECT. 139. Every officer and soldier of the volunteer foot companies shall receive, for each day's duty in camp, two dollars and fifty cents.

Every member of a regimental or battalion band shall receive, for services performed in obedience to an order of his regimental or battalion commander, at the rate of three dollars a day while on duty.

of members of companies, and bands, how computed, disbursed, &c.  
1846, 218, §§ 3, 4, 8, 9.  
1849, 56, § 2.  
1849, 218, § 7.  
1853, 174, § 6.  
1859, 226.  
2 Met. 296.  
4 Gray, 601.

Every member of a mounted company or band shall receive double the pay allowed to such members performing duty on foot.

Such sums shall be computed by the adjutant-general on the company and band pay rolls, made out, certified, and returned, under sections one hundred and twenty-two, and one hundred and twenty-four.

After such computation, such pay rolls shall be transmitted to the mayor and aldermen of the cities and the selectmen of the towns in which such companies and bands are situated, as provided in section sixty-nine.

Upon receipt of the same, the mayor and aldermen, and selectmen, shall draw their warrants upon their respective treasurers, directing them to pay the amount due to the persons named in such rolls, and shall, annually, on or before the first day of December, under a penalty of thirty dollars for neglect in so doing, remit such rolls to the adjutant-general, with a certificate indorsed thereon, setting forth that a warrant has by them been drawn on their respective treasurers, in favor of the several persons whose names are recorded therein. Thereupon the adjutant-general shall lay the same, together with his roll, prepared under



section seventy, of general, field, and staff officers entitled to pay, before the auditor, and the governor may draw his warrant on the treasury for such sums as may be necessary to pay such officers and reimburse such cities and towns.

Pay forfeited for deficiency in returns. Not to be received unless full duty is performed, except, &c.  
1846, 218, §§ 1, 9.  
1858, 160, § 1.

SECT. 140. The compensation provided in the preceding section shall be forfeited for default in making the returns required by sections one hundred and twenty-two and one hundred and twenty-four; and no person shall receive compensation who does not remain in camp and perform all duties required during the period of encampment; except that a person who once appears and is excused from further duty by reason of sickness, shall be entitled to compensation for the time he is actually engaged in service.

Personal service requisite to compensation. Excuses not to entitle to.  
1844, 101, § 2.

SECT. 141. No officer or soldier in the volunteer militia shall receive the compensation provided in this chapter, unless he personally performs the duties required by law; nor shall excuses granted for absence from or non-performance of military duty entitle the person excused to receive such compensation.

Inspector-general, expenses.  
R. S. 12, § 128.  
1840, 218, § 12.

SECT. 142. The adjutant-general shall present his account for expenses incurred in the performance of his duty as inspector-general to the auditor of accounts for allowance.

Pay for travel in attending elementary drills. How paid.  
1854, 367, §§ 3, 5.

SECT. 143. Each officer and soldier appearing at an elementary drill shall receive for his necessary travel to and from the place of drill five cents a mile not exceeding forty miles in all. The travel of every such person shall annually on or before the first day of October, be certified and returned to the adjutant-general by the commander of his regiment, battalion, or detached company; and the sums due members of companies therefor shall be computed by the adjutant-general on such returns, and be transmitted, paid, remitted, and reimbursed, as provided in section one hundred and thirty-nine. The sums due other officers shall be made up according to such returns, and paid as provided in section one hundred and thirty-seven.

of detachment on special duty.  
1840, 92, § 27.  
1852, 104, § 4.

SECT. 144. When a detachment is ordered on special duty, by the commander-in-chief, or under section one hundred and thirty-four, each member shall receive two dollars a day while in the performance of such duty, and four cents a mile for travel.

for travel in attending elections.  
1854, 367, § 9.

SECT. 145. Officers obliged to go out of the city or town of their residence to attend a military election, shall be allowed five cents a mile, each way, for travel.

of members of courts martial, &c.

SECT. 146. Officers composing courts martial, courts of inquiry, and military boards, and witnesses attending before them, shall receive five cents for every mile they necessarily travel, in going to and returning from the place of trial, and the following sums for each day of attendance:—

of president.

The president of a court martial, court of inquiry, or military board, three dollars.

of judge-advocate.

The judge-advocate of the same, four dollars; which shall be in full compensation, also, for all services of preparing papers before, and making copies after, any trial, inquiry, or investigation.

of marshal and members of witnesses.  
1855, 120, § 2.

The marshal and other members of such court or board, two dollars. Each witness attending on such court, or board, one dollar and twenty-five cents.

Fees.

Fees for subpoenas, and service of them, shall be the same as in civil cases.

Pay not allowed guard, &c.  
R. S. 12, § 124.

No allowance shall be made for pay or rations for a military guard, unless such guard is ordered by the officer appointing the court; nor shall the above compensation be made to officers in actual service and receiving pay.

Relief to soldiers or their families.

SECT. 147. If an officer or soldier is wounded, or otherwise disabled, or is killed, or dies of wounds received, while doing military duty, he,

his widow, or children, shall receive from the general court just and reasonable relief. R. S. 12, § 126.

SECT. 148. The militia, while in actual service, shall receive the same pay and rations as the regular troops of the United States; and the rations shall be valued at twenty cents each. Pay of troops in actual service. See § 171.

Every non-commissioned officer and private who provides himself with a uniform and blanket when called into service, shall receive, monthly, in addition to his stated pay, as follows: every sergeant and musician, four dollars; every corporal and private, three dollars and seventy-five cents; and if he does not so provide himself, he shall be allowed, monthly, two dollars and fifty cents. to those who provide uniforms, &c. to those without uniforms.

When the militia are discharged from actual service, they shall be allowed pay and rations to their respective homes, at the rate of fifteen miles a day. when discharged, &c. R. S. 12, § 127.

SECT. 149. All military accounts, including claims against the state for money expended in the transmission of military documents to and from the department of the adjutant-general, unless it is otherwise specially provided by law, shall annually on or before the fifth day of January be transmitted to the adjutant-general and examined, and if found correct, certified by him. They shall then, unless it is otherwise specially provided by law, be presented to the state auditor for allowance, and upon such allowance certified by him to the governor, shall be paid to the persons to whom they are severally due, or to their order, at the treasury of the commonwealth. And no military account shall be certified by the adjutant-general, or allowed by the auditor, unless presented to the adjutant-general for allowance within the time prescribed by law. Military accounts, &c., how examined, certified, and paid. R. S. 12, § 128. 1849, 56, § 2. 1859, 226. Resolves, 1845, 126. See § 84.

EXCUSES.

SECT. 150. Excuses for the non-appearance of a soldier shall be made to the commanding officer of his company, or the officer detailed to train and discipline the company, under section thirty, within twenty days after a training or other military duty, from which he has been absent; and on the delinquent's producing satisfactory evidence of his inability to appear, such officer may excuse him; but no such officer shall receive an excuse for non-appearance, after the expiration of the twenty days. No excuse shall avail such soldier, on a prosecution for the recovery of a fine or forfeiture, unless proved to have been made to such officer before the expiration of the twenty days, unless the delinquent satisfies the court or justice before whom the case is tried, that it was not in his power to make such excuse within the time. Such officers shall inform their clerks of all excuses allowed for non-appearance. Excuses to be made within 20 days, unless, &c. Clerks to be informed of excuses. R. S. 12, §§ 94, 97. 4 Pick. 66. 15 Pick. 1, 7. See § 154.

SECT. 151. No commanders of companies shall receive excuses for deficiencies of equipment. Deficiencies in equipments. R. S. 12, § 95.

SECT. 152. When a person is entitled to exemption from military duty, upon presenting evidence of the cause of his exemption to his commanding officer within or before a certain time as provided in sections ten, eleven, and twelve, and omits so to present such evidence, it shall not avail him by way of excuse upon a prosecution for a particular absence or default, unless he makes his excuse to the commanding officer within twenty days after the training, or satisfies the court or justice it was not in his power to make such excuse within the time. Certain conditional exemptions not to be excuses, unless, &c. R. S. 12, § 96. 11 Mass. 456. 17 Mass. 51.

PROSECUTION FOR FINES.

SECT. 153. Fines and forfeitures incurred by members of volunteer companies, under their constitutional articles of agreement, may be collected by such persons and disposed of in such manner, for the benefit of said companies, as a majority of the members thereof determine. Fines of members of volunteer companies. 1837, 240, § 9.

Prosecution for fines.  
 R. S. 12, § 112.  
 1 Mass. 443.  
 4 Mass. 239, 376, 556, 670.  
 5 Mass. 406.  
 11 Mass. 456.  
 12 Mass. 271.  
 1 Pick. 463.  
 3 Pick. 263.  
 5 Pick. 189.  
 11 Pick. 355.  
 15 Pick. 170.  
 16 Pick. 84.  
 19 Pick. 376, 530.  
 21 Pick. 330.  
 23 Pick. 54, 208.  
 24 Pick. 172.  
 1 Met. 148.  
 See §§ 30, 95, 117.  
 Form of information.

SECT. 154. The clerk of each company after the expiration of twenty days, and within forty days after the day of parade or election of officers, shall in those cases where fines are to be collected upon his complaint, make and subscribe an information against the offending soldiers who have not been excused by the commander of the company, under section one hundred and fifty, or who have not, within the twenty days aforesaid, paid to him the forfeitures they have incurred; which information shall be left with some justice of the peace, or filed in some police court, in the county in which the offender resides. Such information shall be in substance as follows:—

To A B, Esq., justice of the peace within and for the county of \_\_\_\_\_, or to the justice of the police court, within and for \_\_\_\_\_

I, the subscriber, clerk of the company commanded by \_\_\_\_\_, do hereby give information against the following person [or persons] who, being duly enrolled in said company, and being duly notified to meet with said company, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, [for inspection or review, election of officers, special duty, or as the case may be,] was guilty of the offences and did incur the forfeitures set against his name:

<i>Names.</i>	<i>Offences.</i>	<i>Forfeitures.</i>	<i>Sums.</i>
A B, non-commissioned officer; C D, private,	{ For unnecessarily neglecting to appear on said day, . . . . . }	} has forfeited	
E F, . . . . .	{ For being deficient of a . . . . . on said day, . . . . . }		
G H, . . . . .	{ For being on said day guilty of coming on to the parade with his arms loaded, . . . . . }	} has forfeited	
I K, . . . . .	{ For unnecessarily discharging his musket, [rifle, or pistol,] in going to, [or returning from, or on the place of] parade, without the orders of an officer, . . . . . }		
L M, . . . . .	{ For leaving his guard, [section, platoon, or company,] without the leave of an officer, . . . . . }	} has forfeited	

[And in the same manner, substantially, all other offences are to be set forth against offending non-commissioned officers and privates:]

I, therefore, agreeably to my oath of office, and in compliance with the requisitions of the law in this behalf, request you to issue a summons, directed to the person named in the above information, to appear before you, and show cause, if any he has, why it should not be adjudged that he pay the forfeiture set against his name, for the offence which he is therein alleged to have committed.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

A B, clerk of the company commanded by \_\_\_\_\_

Summons to be issued within nine months, giving seven days' notice.

The justice or court shall file the same; and, upon motion of the clerk, shall, within nine months, and not afterwards, issue a summons to each person informed against, to be served at least seven days before the time appointed for showing cause.

The summons, if issued by a justice of the peace, shall be in substance as follows:—

Form of summons issued by a justice.

ss.  
 [Seal.] To the sheriff of said \_\_\_\_\_ county, or either of his deputies, or either of the constables of the town of \_\_\_\_\_, in the county aforesaid, greeting:

In the name of the Commonwealth of Massachusetts, you are hereby required to summon C D, of \_\_\_\_\_, in the county aforesaid, to appear before me, E F, one of the justices of the peace for the county aforesaid, at \_\_\_\_\_, in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited \_\_\_\_\_ for, [here insert the offence, and the time when and place where it was committed.] Hereof fail not, and make due return of this writ and your doings thereon, unto myself, on or before the said hour of the day of \_\_\_\_\_

Dated at \_\_\_\_\_ aforesaid, the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

E F, Justice of the Peace.

If issued from a police court, as follows:—



ss.

THE COMMONWEALTH OF MASSACHUSETTS.

Form of summons by police court.

[Seal.] To the sheriff of the county of \_\_\_\_\_, or either of his deputies, or either of the constables of the town of \_\_\_\_\_ in said county, greeting :

We command you to summon C D, of \_\_\_\_\_ in said county, to appear before our justices of our police court, to be holden at \_\_\_\_\_, within and for our \_\_\_\_\_, on \_\_\_\_\_, then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited \_\_\_\_\_ for, [here insert the offence, and the time and place where it was committed.] Hereof fail not, and have you there this writ, with your doings thereon.

Witness, W S, Esq., at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year

T P, Clerk.

[or, witness my hand and seal at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of our Lord

A B, Justice of said Court.

When the person summoned appears, he may plead that he is not guilty, and give any special matter in evidence.

Defendant may plead not guilty.

Upon the trial of such complaint, made by the clerk of a company, it shall be sufficient for the complainant to prove that he is clerk of the company ; for which purpose he shall produce his warrant as a non-commissioned officer, and prove the signature thereto of the colonel or commanding officer of the regiment or battalion, and that at the time of signing such warrant he was reputed to be and acted as such colonel or commanding officer ; which shall be *prima facie* evidence that such complainant was appointed a non-commissioned officer by the captain or commanding officer of such company, and that a legal return of such appointment was made to the colonel or commanding officer of the regiment.

What shall be sufficient for complainant to prove.

He shall then show, upon the back of his warrant, a legal certificate of his appointment as clerk, and qualification as such by taking the oaths required by law. For which purpose he shall prove the signature of the captain or commanding officer of such company, and that he is such captain or commanding officer, by producing his commission as such ; but if the clerk is appointed clerk *pro tempore*, his appointment may be proved by the records of the company.

Complainant to show certificate of appointment and qualification.  
5 Pick. 239.  
8 Pick. 449.  
15 Pick. 446.

He shall then produce the roll of the company, and prove that the defendant resided within the limits of the company and was enrolled or enlisted therein at the time he was notified of such meeting.

to produce roll, and prove enlistment.

He shall then produce the order of the commanding officer of such company to notify the said meeting or meetings thereof, and prove his signature thereto, and that the defendant was legally notified of the time and place of such meeting or meetings.

to produce order to notify meeting.

If it is required by law that the order for such military duty shall in such case be given by any officer superior to the commanding officer of a company, then the orders of such superior officer, and all intermediate orders of officers transmitting the same to the commanding officer of the company shall be proved, and that the persons purporting by said orders to be such officers, are such ; for which purpose, it shall be sufficient to produce the transmitted written or printed copies of such orders, and the regimental, battalion, or other last order, transmitting the same to the commanding officer of the company ; to prove the signature of the proper officer to such regimental, battalion, or other last order, transmitting the same ; and to prove that all the officers above mentioned are reputed to be such officers and act as such.

to prove order when required to be given by superior officer.

The absence or offence of the defendant shall then be proved, to show that he is liable to the fine alleged to be incurred by him ; and, in case of absence, the burden of proof shall be upon him to show that his absence was necessary. The evidence above described shall be taken to be *prima facie* sufficient to support the complaint.

Offence to be proved.

Burden of proof.

When it appears that a document or paper above mentioned can-

Secondary cvi-

dence, when received.

not be produced, satisfactory secondary evidence thereof shall be received.

Clerk, &c., may be witness. 4 Pick. 251. 15 Pick. 170.

Upon the hearing of such case the testimony of the clerk, or other person who was ordered to notify the whole or part of the company, shall be *prima facie* evidence of notice to the defendant and that he neglected to appear.

Exemptions for infirmity, how proved. Certificate of surgeon of regiment, evidence.

The certificate of the surgeon of the regiment that the defendant was unable to perform military duty at the time of his absence, shall be *prima facie* evidence that he ought to be excused for a particular absence, if the provisions of section one hundred and fifty have been complied with; but any permanent disability which renders the enrolment of the defendant illegal, or such temporary excuse, may be proved by parol.

Commanding officer may be witness. Execution, when issued.

The commanding officer of a company may be a witness to prove any fact whatever.

If the defendant makes default, or judgment is rendered against him, and he neglects for two days after to satisfy the same, with legal costs, execution shall be issued therefor; which execution, issued by a justice of the peace, shall be in substance as follows, but if by a police court, shall be so altered as to conform to the summons:—

Form of execution.

ss. .

THE COMMONWEALTH OF MASSACHUSETTS.

[Seal.] To the sheriff of said county, or either of his deputies, or either of the constables of the town of \_\_\_\_\_ in the same county, greeting:

Whereas E L, clerk of the company commanded by \_\_\_\_\_ in said county, on the \_\_\_\_\_ day of \_\_\_\_\_, before J D, Esq., one of our justices of the peace for the county aforesaid, recovered judgment against T P, of \_\_\_\_\_, for the sum of \_\_\_\_\_ fine or forfeiture, and \_\_\_\_\_ costs of prosecution, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the money of the said T P, or of his goods or chattels, within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied, unto the said E L, the aforesaid sums, being \_\_\_\_\_ in the whole; and also, out of the money, goods and chattels of the said T P, you levy twenty-five cents more for this writ, together with your own fees; and for want of such money, goods, or chattels of said T P, to be by him shown unto you, or found within your precinct, to the acceptance of the said E L, for the aforesaid sums, we command you to take the body of the said T P, and him commit unto our jail in B, and we command the keeper thereof accordingly to receive the said T P into our said jail, and him safely keep, until he pay the full sums above mentioned, with your fees, or that he be discharged by the said E L, or otherwise, by order of law. Hereof fail not, and make return of your doings therein unto our said justice, within twenty days next coming.

Witness our said justice at B, the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand \_\_\_\_\_

J D, Justice of the Peace.

Amendments. Continuance. When complainant is not liable for costs.

The complaint or summons may be amended in any stage of the proceedings without payment of costs; and the defendant shall be allowed an adjournment or continuance of the case, if justice requires it. The clerk shall not be liable to pay costs to a defendant in a case in which the commanding officer of his company has certified, upon the information of the clerk, his approval of the same. And no appeal shall be allowed from any such judgment, unless the forfeiture adjudged exceeds ten dollars exclusive of costs.

Appeals not allowed, except. 19 Pick. 376, 530.

Complaints by other officer, how prosecuted. R. S. 12, § 112.

A complaint by any other officer shall be prosecuted in the like manner so far as the same is applicable thereto, the forms being varied accordingly; and he shall prove his authority by producing his commission and other competent evidence which may be necessary.

Imprisonment on execution. R. S. 12, § 113.

SECT. 155. No person shall be imprisoned upon an execution issued upon a complaint and judgment described in the preceding section, for a longer time than six days; but shall at the expiration of that time be discharged by the keeper of the jail to which he is committed. The judgment debtor shall remain liable for the amount of the judgment and the costs of imprisonment; and execution for the whole of the same may be sued out against the property of such debtor.



SECT. 156. The clerk of each company shall retain to his own use one-half the forfeitures so collected, and, upon demand, pay the other half to the commander, who shall give his receipt therefor, and expend the same in defraying such expenses of the company as a majority of the commissioned officers thereof judge necessary.

Money collected for fines, how disposed of.  
R. S. 12, § 114.

COURTS MARTIAL.

SECT. 157. All complaints upon which courts martial are ordered, shall be in writing and signed by the complainant, and shall clearly specify the offence, and the time when and the place where it was committed. No officer shall be tried by court martial for an offence committed more than one year before the complaint, unless his absence or other manifest impediment has prevented a complaint within that time; nor on a charge preferred by a soldier, unless for an offence committed while in the actual service of the state or of the United States, nor unless such charge is preferred before such soldier has left the service.

Complaints on which courts martial are ordered.

See § 172.  
Trial must be within a year. By whom charges to be preferred.  
R. S. 12, § 115. 1854, 367, § 7. 5 Wheat. 22.

SECT. 158. Every officer to be tried by court martial shall be put under arrest. The judge-advocate shall deliver to the accused a copy of the charges against him, and a notice of the time and place of trial, ten days at least before the day of trial; and if he objects and the court is satisfied that he has not received the same, they shall adjourn, so as to allow the time required to elapse, after the delivery of the notice and copies.

Respondent to be arrested. Copy of charges, &c., to be delivered. Court may adjourn.  
R. S. 12, § 116. See § 172.

SECT. 159. Courts martial shall consist of a president, judge-advocate, not more than four nor less than three members, present at the organization of the court, and a marshal; and shall be holden between the first day of December and the last day of May, in the daytime. There shall be only one general and one division court martial, in one division, in one year.

Courts martial, of whom to consist. when held. how often.  
See § 172.

General courts martial shall be appointed for the trial of all officers above the rank of captain, by the orders of the commander-in-chief, issued to the divisions which in his opinion can most conveniently furnish members for the same; and he shall appoint a president, not below the rank of brigadier-general, and a marshal of said court.

general, by whom appointed, and to try whom.

Division courts martial shall be appointed for the trial of officers of and under the rank of captain, by the orders of each commanding officer of a division, in his own division, issued to the brigades, regiments, battalions, and companies which, in his opinion, can most conveniently furnish members for the same; and he shall appoint a president, of the rank of colonel or lieutenant-colonel, and a marshal.

division, by whom appointed, and to try whom.

Officers shall be detailed to sit upon courts martial, in manner following: major-generals, by the commander-in-chief, from the general roster; brigadier-generals and officers of any divisionary corps, by the commanding officers of divisions, from the division roster; colonels, lieutenant-colonels, and majors, and officers of any company attached to a brigade, by the commanding officers of brigades, from the brigade roster; captains and subalterns, by the commanding officers of regiments, battalions, and other separate corps. And when it appears that an officer detailed or to be detailed is or will be, for some sufficient cause, unable to serve on a court martial, the officer detailing him, having satisfactory evidence thereof, shall certify such inability to the officer ordering the court martial, and shall at the same time detail the officer next in rotation on the roster. No senior officer, or superior in rank to the president, shall be detailed. The officers ordered to detail members shall make returns forthwith to the officer appointing the court, who shall transmit the same to the judge-advocate.

members of, how and by whom detailed.

Provision in case any officer detailed is unable to serve.

No one superior in rank to the president, to be detailed. Officers ordered to detail, to make return.

The judge-advocate of each division shall, when ordered, attend general and division courts martial within his division; but when he is prevented by inability or legal impediment, the officer ordering the

Judge-advocate to attend. when unable to attend.



court martial shall appoint some person to be judge-advocate to the same.

If president does not attend.

If the officer appointed president does not appear at the opening of the court, the officer highest in rank present shall be president.

If sufficient number of members do not attend, or are not qualified.

When it is found that by reason of absence, challenge, or other cause, the number of members of a general or division court martial, (besides the president,) qualified to act, is less than three, the court shall adjourn for a suitable time; and the president shall forthwith notify the fact to the commanding officer of the division in which such general or division court martial is held; and such commanding officer shall himself detail from the division a number of officers of the same rank as those before detailed, sufficient to complete the court.

If judge-advocate or marshal is absent.

If no judge-advocate or marshal attends at the opening of the court, the president shall appoint a judge-advocate or marshal, which appointment shall be entered on the record and signed by him. The judge-advocate acting at the commencement of a trial, shall serve during the trial, notwithstanding the attendance or appointment of any other person afterwards.

Person acting as judge-advocate to continue during trial.

Officers' rank. See § 37. Court may adjourn, when. R. S. 12, § 117. Members to be sworn. See § 172.

Officers on a court martial shall rank by seniority of commission.

The court may adjourn, when necessary, before a judge-advocate appears and before they are qualified.

SECT. 160. Before a court martial proceeds to the trial of an officer, the judge-advocate shall administer to the president and members, severally, the following oath:—

Oath of president and members.

You, A B, do swear, that without partiality, favor, fear, prejudice, or hope of reward, you will well and truly try the cause now before you, between the commonwealth and the person [or persons, if more than one is accused, in the same complaint,] to be tried; and that you will not divulge the sentence of this court martial, until it shall be approved or disapproved of, and that you will not discover the vote or opinion of a member, unless required to give evidence thereof, as a witness, in due course of law: So help you, God.

And the president shall administer to the judge-advocate the following oath:—

Oath of judge-advocate.

You, A B, do swear, that you will faithfully and impartially discharge your duties as judge-advocate on this occasion, as well to the commonwealth as to the accused; and that you will not on any account at any time divulge the vote or opinion of any member of this court martial, unless required to give evidence thereof, as a witness, in due course of law: So help you, God.

Challenges, how and when made, and by whom tried.

No member shall be challenged by the government or the accused, until the president, members, and judge-advocate, are sworn. Only one member shall be challenged at a time, and the challenge shall be in writing, stating the cause of it. The person challenged shall not vote, but the president and other members shall try whether the challenge is good.

Certain causes of challenge, when waived. 22 Pick. 501.

Illegality or irregularity in the detail of a member of the court, shall be good cause of challenge by either party; but shall be considered as waived, unless the objection is taken at the time and in the manner aforesaid.

If accused is absent, or withdraws.

If the accused neglects to appear and defend, or refuses to plead, or withdraws in contempt of the court, the court may proceed to trial and judgment, as if he had pleaded not guilty.

Witnesses summoned must appear. Penalty.

Persons summoned by the judge-advocate or a justice of the peace, shall appear and give evidence before a court martial, (but the defendant's witnesses shall have their fees first tendered to them,) and the penalties for neglect to appear shall be the same, and the judge-advocate may issue a *capias*, in like manner as in criminal prosecutions.

Before the witnesses testify, they shall be sworn by the judge-advocate in the following form:—

Oath of witnesses.

You, A B, do swear, [or affirm,] that the evidence you shall give, in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth: So help you, God, [or, This you do under the pains and penalties of perjury, in case the witness affirms.]

When the adjutant-general is complainant for neglect or default in making returns, he shall not be required to be present, and his certificate shall be sufficient *prima facie* evidence that the return was or was not made, and that a copy of a return is true.

Evidence of default in returns.

Judge-advocates shall be the certifying officers, to authenticate copies of papers and documents used before courts martial, courts of inquiry, or boards of officers, except papers or documents from the adjutant-general's office, which shall be certified by him; but copies may be proved as in other courts.

Copies of documents, &c., how authenticated.

The statement of the complainant and the defence of the accused, and motions, arguments, and objections to the proceedings by either party, and the answers thereto, shall be submitted to the court in writing; the evidence and proceedings in and out of the court, and opinions of the judge-advocate on questions of law arising during the trial, shall be put in writing by him. After the prosecution and defence are concluded, he shall state and sum up the evidence, and give his opinion to the court upon matters of law; which opinion, with the judgment, he shall put in writing.

All proceedings and evidence to be in writing.

When a question is to be decided, the judge-advocate shall receive the vote of each member, beginning with the youngest and proceeding to the eldest. The president shall not vote; and unless two-thirds of the members agree that the accused is guilty, he shall be acquitted. If two-thirds of the members find him to be guilty, he shall be sentenced to be reprimanded in orders, or to forfeit a sum not exceeding two hundred dollars, or to be dismissed from office, — either or all of them; and in the last case, he may be further adjudged to be disqualified from holding any military office during life or a term of years.

Votes, how taken — two-thirds required to convict.

Sentence.

Courts martial may preserve order during their session; and whoever, in such court, behaves in a disorderly or insulting manner, or makes a tumult or disturbance, may be arrested by order of the court, and confined not exceeding twenty-four hours, and fined not exceeding five dollars, — either or both. If the fine is not paid, the judge-advocate shall issue a mittimus, forthwith to commit such person to prison in the same manner and with the same effect as upon executions from justices of the peace in cases of prosecutions for non-payment of other military fines and costs.

Courts martial authorized to preserve order.

The record of the trial and judgment, with the papers used therein, or copies thereof, certified by the judge-advocate, shall be authenticated by his certificate and signature, and sealed up and transmitted by him to the officer who ordered the court, who shall annex thereto his approval or disapproval of the same, and the reasons thereof in writing, and transmit the same as soon as may be to the office of the adjutant-general, to be kept and preserved.

Records, how authenticated and transmitted.

Approval or disapproval of sentence.

The judge-advocate shall also make, certify, and transmit the pay roll of the court martial to the same office.

Pay roll.

The officer ordering the court, and the party tried thereat, shall receive, upon request, from the adjutant-general, a copy of the record; the party tried paying a reasonable sum for his copy.

Copies to be furnished.

The judgment of disqualification may, after approval, be reversed in whole or in part, by the commander-in-chief with the advice of the council; but all other parts of the sentence, when approved, shall remain in full force.

Judgment of disqualification may be reversed. R. S. 12, § 118.

SECT. 161. Every commissioned officer may be tried by a court martial for the following offences: —

What offences may be tried by court martial. R. S. 12, § 119. Sec § 172.

For unilitary or unofficer-like conduct when on duty;

For neglect of any duty required in this chapter;

For disobedience of orders, or an act contrary to the provisions of this chapter;

For oppression or injury of any under his command;

What offences may be tried by court martial.

For a combination or attempt to break, resist, or evade, the laws, or lawful orders given to a person, or advising any person so to do;

For insult to a superior officer in the exercise of his office;

For presuming to exercise his command while under arrest, in which case, if guilty, he shall be removed from office;

For neglect or refusal, when commanding officer, to order out the troops under his command, when required by law or ordered by his superior officer;

For excusing, as commanding officer of a company, any person under his command, for deficiency or unnecessary absence, or after the expiration of the time allowed by law;

For neglect or refusal to make a draft or detachment, when legally ordered to do so;

For neglect or refusal to cause prosecutions to be commenced for fines, when it is necessary;

For parading the troops under his command on days of election, contrary to the provisions of section one hundred and nine;

For receiving any fee or gratuity, as surgeon or surgeon's mate, for a certificate of inability to do military duty;

For neglect, when detailed to train and discipline a company, [*or*] to make complaint for neglect or violation of duty, as provided by law, or for any other neglect for which a commanding officer of the company would be liable;

For neglect or refusal to march, to make a draft, or for disobedience to an order, in case of rebellion or insurrection, as provided in sections one hundred and twenty-nine to one hundred and thirty-two, inclusive, in which case the offender shall be cashiered;

For refusal or neglect to obey a precept or order to call out the militia, or an order issued in obedience thereto, in case of tumult, riot, or other cause, as provided in sections one hundred and thirty-four to one hundred and thirty-six, inclusive, or for advising any officer [*of*] [*or*] soldier to do the like; in which cases, the offender shall be cashiered, besides being subject to fine and imprisonment, as provided in section one hundred and thirty-five.

Fines imposed by court martial, how prosecuted.

Costs against judge-advocate, how paid.

R. S. 12, §§ 101, 110.

1852, 312.

See §§ 170, 172.

SECT. 162. Any fine not exceeding two hundred dollars may be inflicted on any officer, by sentence of a general or division court martial, as a part of, or the whole of, such sentence; and such fines shall be prosecuted by the judge-advocate, or person appointed to act as such at the court martial, in an action of tort, to the use of the commonwealth; and if any judgment for costs is rendered against any judge-advocate in such case, the officer to whom the execution upon such judgment is delivered, shall demand payment of the execution of the treasurer of the county in which such judgment is rendered, and the said treasurer shall pay the same, and it shall be allowed to said county, in the settlement of said treasurer's account with the commonwealth.

#### BOARDS OF OFFICERS.

Boards of officers to settle military questions.

R. S. 12, § 120.

See § 172.

SECT. 163. The commander-in-chief, when in his opinion it is necessary, may call boards of officers for settling military questions, or for other purposes relative to good order and discipline.

#### GENERAL AND DIVISION COURTS OF INQUIRY.

Courts of inquiry, how ordered, &c.

R. S. 12, § 121.

See § 172.

SECT. 164. General and division courts of inquiry shall consist of three officers and the judge-advocate of the division in which they are held; and they may be ordered and organized in the like manner as courts martial, and, under the same regulations, may examine into the nature of a transaction, imputation, or accusation, made against any officer by an inferior.



Vacancies shall be filled as in courts martial.

Vacancies.

The judge-advocate shall administer to each of the officers composing a court of inquiry, the following oath : —

You, A B, do swear that you will well and truly examine and inquire into the matter now before you, without fear, favor, partiality, prejudice, or hope of reward : So help you, God.

Oath of president and members.

After which, the president shall administer to the judge-advocate the following oath : —

You, A B, do swear that you will impartially record the proceedings of the court, and the evidence to be given in the case now in hearing : So help you, God.

Oath of judge-advocate.

Witnesses shall be summoned in the same manner, take the same oath, and be examined and cross-examined by the parties in the same way, as on trials before courts martial ; but the court shall not give their opinions on the merits of the case, unless specially required so to do.

Witnesses.

Judge-advocates shall attend courts of inquiry in their division, in the same manner as they attend courts martial ; and special judge-advocates for the court shall be appointed, in the same manner in like cases. The proceedings therein shall be recorded, and, with the papers and documents used therein, authenticated and transmitted, by the judge-advocate, to the officer who ordered the court, in like manner as in courts martial.

Judge-advocate to attend courts of inquiry.

SECT. 165. No officer appointing a court martial, court of inquiry, or board of officers, shall order a guard for the same, unless in his opinion it is necessary for their protection.

No guard, unless. R. S. 12, § 122. See § 172.

RULES AND ARTICLES FOR GOVERNING THE MILITIA IN ACTUAL SERVICE.

SECT. 166. The following rules and articles are established and declared to be in force, for governing the troops and militia of this commonwealth in actual service, in field, camp, or garrison. Sutlers and retainers to an army, drivers, conductors, and all persons receiving pay or hire for services in or with the troops or militia in actual service in the field, camp, or garrison, shall be taken to be soldiers, and governed by these rules and articles.

Who shall be taken to be soldiers. R. S. 12, § 137.

SECT. 167. The offenders described in this section shall suffer death, or such punishment as may be inflicted upon them by sentence of a court martial, according to the nature of the offence : —

Offences punished by death or otherwise.

Art. i. An officer or soldier who begins, excites, causes, or joins in any meeting or sedition in a company, regiment, party, post, detachment, guard, or body of soldiers, in the service of the commonwealth.

Sedition

Art. ii. An officer or soldier who, being present at or knowing of such meeting or sedition, does not use his utmost endeavors to suppress the same, or knowing of such intended meeting or sedition, does not give information thereof to his commanding officer.

Not suppressing sedition, nor giving information of it.

Art. iii. An officer or soldier who deserts.

Desertion.

Art. iv. An officer or soldier who advises another officer or soldier to desert.

Advising desertion.

Art. v. An officer or soldier who misbehaves himself before an enemy, runs away, or shamefully abandons a fort, post, or guard, or speaks or does any thing to induce others to do the like at such time.

Misbehaving before an enemy, &c.

Art. vi. An officer or soldier who abandons his post or colors, to plunder.

Abandoning post, &c.

Art. vii. An officer or soldier who makes known the watchword to a person not entitled, according to the rules and discipline of war, to receive it ; or who gives a parol or watchword different from what he has received.

Making known or falsifying watchword.

Art. viii. An officer or soldier who forces a safeguard.

Forcing safeguard.

Art. ix. An officer or soldier who knowingly harbors or protects an enemy, or relieves them with money, victuals, arms, or ammunition.

Harboring or relieving an enemy.

- Corresponding with an enemy. *Art. x.* An officer or soldier who, directly or indirectly, holds correspondence with, or gives intelligence to, the enemy.
- Compelling commander to surrender. *Art. xi.* Any officers or soldiers who compel the commander of any garrison, post, fortress, or guard, to surrender or abandon it.
- Sentence of death. *Art. xii.* No person shall be sentenced to death except by a general court martial, and in cases expressly mentioned in the foregoing articles.
- R. S. 12, § 138. Offences punished by cashiering, &c. **SECT. 168.** The offenders described in this section shall be cashiered, in addition to any other punishment which may be lawfully inflicted:—
- Using traitorous, &c., words. *Art. xiii.* An officer who uses traitorous or contemptuous words against the authority and government of the United States, or the authority, government, or legislature, of the commonwealth.
- Neglecting to march, &c. *Art. xiv.* An officer who refuses or neglects to march to the place of rendezvous, to make a draft, or to obey a lawful order, in case of war, invasion, or insurrection, as provided in sections one hundred and twenty-nine to one hundred and thirty-two, inclusive.
- Disobedience of orders, &c. *Art. xv.* An officer who refuses or neglects to obey a precept or order to call out the militia, or an order issued in obedience to such order, contrary to the provisions of sections one hundred and thirty-four to one hundred and thirty-six, inclusive, or shall advise or persuade any other officer or soldier to do the like.
- Provocation to fight a duel. *Art. xvi.* An officer who uses any reproach or provocation to another, in speech, gesture, or writing, to induce him to fight a duel.
- Giving or accepting challenge. *Art. xvii.* An officer who gives or sends a challenge to an officer or soldier to fight a duel, or accepts such challenge when sent to himself, or who is second in a duel, or promoter or carrier of a challenge.
- Upbraiding, &c. *Art. xviii.* An officer who upbraids another for not sending, or for refusing a challenge.
- Suffering person to pass guard to fight duel, or not arresting such person. *Art. xix.* An officer commanding a guard, who knowingly and willingly suffers a person to pass the same in order to fight a duel, or an officer knowing or believing, or having reason to believe, a challenge to be given or accepted, carried, or promoted, by an officer or soldier under his command, who does not immediately arrest and bring him for trial.
- Drunkenness on duty. *Art. xx.* An officer found drunk on his guard or other duty.
- Escaping from arrest. *Art. xxi.* An officer under arrest, who leaves his confinement before he is set at liberty by his commanding or other superior officer, or the officer who confined him.
- Behaving scandalously. *Art. xxii.* An officer convicted of behaving in a scandalous or infamous manner.
- Embezzling or committing fraud. *Art. xxiii.* An officer, store-keeper, or commissary, embezzling or committing a fraud concerning any property of the commonwealth, or of an officer or soldier, besides being criminally liable for the same.
- Selling or wasting stores, &c. *Art. xxiv.* An officer selling, or designedly or through neglect wasting the ammunition, military stores, implements, or other property, of the commonwealth, in his care or possession.
- Not delivering offender to civil authority. *Art. xxv.* An officer who refuses to deliver over any other officer or soldier to the civil authority, or who shelters or conceals any witnesses, contrary to the provisions of section one hundred and seventy-one.
- Offences punished at discretion of court martial. **SECT. 169.** The offenders described in this section shall suffer such punishment, according to the nature of the offence, as may be inflicted upon them by sentence of a court martial:—
- Preceding offences by soldiers. *Art. xxvi.* A non-commissioned officer or private guilty of the offences described in the last section, for which an officer would be cashiered.
- Disrespect to commanding officer. *Art. xxvii.* An officer or soldier who behaves with disrespect or contempt towards the commander-in-chief, the commanding officer of the troops, or his own commanding officer.
- Disobedience. *Art. xxviii.* An officer or soldier who disobeys the lawful command of his superior officer.
- Violence to an officer. *Art. xxix.* An officer or soldier who strikes his superior officer, or draws or lifts up any weapon against him, or offers any violence against him in the execution of his office.



*Art. xxx.* An officer or soldier who refuses to obey, or resists, or draws or lifts a weapon against, or offers violence to, an inferior or superior officer of any rank attempting to part or quell a quarrel in his own or any other company, regiment, or body of men, or who does not submit, when arrested by such officer, in such case, by the authority hereby given.

Resisting an officer who attempts to quell a quarrel.

*Art. xxxi.* An officer commanding in quarters, garrisons, or on a march, who does not keep good order, and, to the utmost of his power, redress all abuses and disorders committed by those under his command, or who, upon complaint made to him of any beating, ill treatment, riot, or disquieting of any citizens or subjects of the United States, omits to use means to punish the offender or offenders, and cause reparation to be made to the party injured, so far as the offenders' pay will go.

Not keeping order, redressing abuses, protecting citizens.

*Art. xxxii.* Non-commissioned officers and privates found one mile from the camp, fort, or post, without leave in writing from the commanding officer.

Being one mile from camp, &c.

*Art. xxxiii.* An officer or soldier who is out of his camp, post, or quarters, without leave from his superior officer.

Being absent without leave.

*Art. xxxiv.* A non-commissioned officer or private who does not retire to his quarters or tent, at the beating of the retreat.

Not retiring to quarters.

*Art. xxxv.* An officer or soldier who does not repair at the time fixed, to the place of parade or exercise, or other rendezvous appointed by the commanding officer, unless prevented by sickness or evident necessity, or who goes from guard or such place of rendezvous, without leave from his commanding officer, before he is regularly dismissed or relieved.

Not repairing to rendezvous, unless, &c.

*Art. xxxvi.* A sentinel who is found sleeping on his post, or who leaves it before he is regularly relieved.

Sentinel sleeping, &c.

*Art. xxxvii.* An officer or soldier who occasions false alarms in camp, garrison, or quarters, by discharging firearms, drawing of swords, beating of drums, or by any other means.

Occasioning false alarms.

*Art. xxxviii.* An officer or soldier who, without urgent necessity or leave of his superior officer, leaves his platoon, division, or guard.

Leaving platoon, &c.

*Art. xxxix.* An officer or soldier who does violence, or offers any insult or abuse, to a person who brings provisions or other necessaries to the camp, garrison, or quarters.

Violence to persons bringing provisions.

*Art. xl.* A person who uses menacing words, signs, or gestures, in presence of a court martial then sitting, or causes any disorder or riot to disturb their proceedings.

Disturbing courts martial.

*Art. xli.* An officer or non-commissioned officer commanding a guard or provost marshal, who refuses to receive a prisoner committed to his charge by an officer of the forces of this commonwealth, when a written statement of the charge, signed by such officer, is delivered to him.

Refusing to receive prisoner.

*Art. xlii.* An officer or soldier releasing a prisoner without proper authority, or suffering him to escape.

Releasing prisoner.

*Art. xliii.* Every officer or provost marshal to whom prisoners are committed, who does not within twenty-four hours after, or as soon as he is released from his guard, notify to his and to their commanding officers, their names and crimes, and the names of the officers who committed them.

Not reporting prisoners.

*Art. xliv.* Offenders guilty of crimes not capital, and of disorders and neglects which officers and soldiers may be guilty of to the prejudice of good order and military discipline, though not mentioned in the foregoing articles.

Crimes not capital and not specified.

*Art. xlv.* Officers who unnecessarily absent themselves from divine service, or behave indecently or irreverently at any place of worship, shall, upon judgment of a court martial, be publicly and severely reprimanded by the president.

Officers absent from divine service, &c.  
R. S. 12, § 140.

SECT. 170. Officers and soldiers shall be subject to the following fines: Fines.



Soldiers absent, &c., during divine service.

*Art. xlvi.* A non-commissioned officer or private, absenting himself from, or behaving indecently and irreverently at, divine worship, not exceeding one dollar, and for each offence after the first to be confined twenty-four hours in addition thereto.

Profanity by officers.

*Art. xlvii.* An officer guilty of profane cursing and swearing, for each offence, two dollars.

Profanity by soldiers

*Art. xlviii.* A non-commissioned officer or private guilty of profane cursing and swearing, for each offence, not exceeding one dollar.

Fines by court martial.

*Art. xlix.* A fine, not exceeding two hundred dollars, may be inflicted by a court martial, as a part or the whole of the sentence; and so much of the same as cannot be stopped out of the pay of the offender, shall be recovered as provided in section one hundred and sixty-two.

Fines stopped out of pay.  
R. S. 12, § 141.

*Art. l.* All fines may be stopped out of the pay of the offender; and the field officers of every regiment may appoint some suitable person, in the regiment, to receive all fines incurred for any breach of these articles, and may direct the same to be properly applied to the relief of the sick, wounded, or needy soldiers of such regiment; and the receiver shall account to such officers for all sums so received.

General rules.

SECT. 171. The following rules shall also be observed in actual service:—

Officer wronged by colonel.

*Art. li.* If an officer thinks himself wronged by his colonel, or the commanding officer of his regiment or battalion, and is, upon due application made to him, refused redress, he may complain to the commander-in-chief, or commander of the forces in service, who shall examine the case and see that justice is done.

Officer or soldier wronged by captain.

*Art. lii.* If an inferior officer or soldier thinks himself wronged by his captain, or the commanding officer of his company, he may complain to the commanding officer of his regiment or battalion, who shall convene a regimental court martial, for the purpose of doing justice to the complainant; from which either party may appeal to a general court martial; but if the appeal is vexatious, the party appealing may be punished at the discretion of the court martial.

Public stores secured.

*Art. liii.* Public stores taken from the enemy shall be secured to the use of the commonwealth.

Oldest officer to command, without regard to corps.  
See § 37.

*Art. liv.* When different corps of the same or different arms of foot, or horse and foot, join or do duty together upon marches, guards, or in quarters, or camp, the oldest officer by commission shall command, without respect to corps, and give the orders necessary to the service.

Offenders against citizens to be delivered to civil authorities.

*Art. lv.* When an officer or soldier is accused of a capital crime, or of having used violence, or committed any offence against the person or property of any citizen or subject of the United States, such as is punishable by the known laws of the United States, or of the state where it is committed, the commanding officer and the officers of every army, detachment, regiment, battalion, or company, to which the accused belongs, upon application duly made by or in behalf of the party injured, shall use their utmost endeavors to deliver over the accused to the civil magistrate, and to aid the officers of justice in apprehending and securing the accused to bring him to trial. And if any officer wilfully neglects or refuses, upon such application, to deliver over the accused, or to aid the officers of justice, or detains, shelters, or conceals, any witnesses in a case, he shall be punished as provided in section one hundred and sixty-eight.

Property of deceased soldiers secured.

*Art. lvi.* When an officer or soldier dies or is killed in the service of the commonwealth, his commanding officer shall order some suitable person to secure all his property and effects, and to take an inventory of them in the presence of two commissioned officers, who shall attest the same; and to preserve said effects and inventory until they are demanded by his legal representative.

Pay and rations.  
R. S. 12, § 142.

*Art. lvii.* The pay and rations of troops in actual service shall be such as provided by section one hundred and forty-eight.

SECT. 172. Courts martial in actual service shall be ordered and held, and shall proceed, in the same manner as the militia courts martial provided in sections one hundred and fifty-seven to one hundred and sixty-five, inclusive, except so far as the same are repugnant to the following regulations:—

*Art. lviii.* When an officer or soldier commits an offence deserving punishment, if an officer, he shall be put under arrest and confined to his quarters, and his sword shall be taken from him by the commanding officer; and if a non-commissioned officer or soldier, he shall be imprisoned until he can be tried by a court martial or discharged by proper authority.

Courts martial in actual service, &c.

Arrests.

*Art. lix.* No officer or soldier under arrest and imprisoned shall continue in confinement more than eight days, or until a court martial can be conveniently assembled.

Imprisonment before trial.

*Art. lx.* A general court martial may be ordered by the general commanding any separate army in the field, garrison, or quarters, as well as by the commander-in-chief; and a division court martial by a major-general, or by a commanding officer of a division, as organized for field service.

General and division courts martial, by whom ordered.

*Art. lxi.* A general court martial in actual service shall consist of not less than thirteen commissioned officers; and the president shall not be the commander-in-chief, nor the commanding officer of the army, detachment, or garrison, where the offender is tried, nor under the rank of a field officer.

Of whom general court martial shall consist.

*Art. lxii.* Division courts martial shall consist of not less than nine, and regimental courts martial, of not less than five officers, when that number can be conveniently assembled, nor less than three in any case.

Division and regimental courts martial.

*Art. lxiii.* Regimental courts martial shall not have the power to try commissioned officers, but they shall be tried by general or division courts martial, according to their rank; nor shall they inflict any punishment heavier than a fine equal to one month's pay, or than one month's imprisonment.

Power of regimental.

*Art. lxiv.* An officer commanding a fort, castle, quarters, or a body of men composed of detachments from different regiments, or of independent companies, may assemble courts martial like regimental courts martial, and with the same powers.

Post and detachment court martial.

*Art. lxv.* When the matters to be examined are peculiar to the troops of a particular arm, the courts martial shall be composed, as far as possible, of officers of that arm.

Courts martial in particular corps.

*Art. lxvi.* No officer below the rank of captain shall sit at the trial of an officer of the rank of field officer.

Rank of members of court martial.

*Art. lxvii.* No court martial shall sit except between the hours of eight in the morning and three in the afternoon, except in cases which require an immediate example.

Time of holding court martial.

*Art. lxviii.* Members of courts martial belonging to different corps shall take rank according to seniority.

Rank in court martial. See § 37. Judge-advocate.

*Art. lxix.* The judge-advocate of the division in which the offence was committed, or some other judge-advocate, or, in their absence, some suitable person, shall be appointed to be judge-advocate of the court, by the officer ordering the same.

*Art. lxx.* The judge-advocate shall administer to the president and each member of the court, the following oath:—

You swear, that you will well and truly try and determine, according to your evidence, the matter now before you, between the Commonwealth of Massachusetts and the prisoner to be tried; that you will duly administer justice, according to the rules and articles for governing the troops of the said commonwealth, without partiality, favor, or affection, and if any doubt shall arise, which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; that you will not divulge the sentence of the court until it shall be approved by the commanding officer; and that you will not, upon any account, at any

Oath of president and members.

time, disclose or discover the vote or opinion of any particular member of the court martial, unless required, by a court of justice, to give evidence as a witness, in due course of law: So help you, God.

The president shall then administer the following oath to the judge-advocate:—

Oath of judge-advocate.

You, A B, do swear, that you will faithfully and impartially discharge your duties on this occasion, to the commonwealth as well as to the accused, and that you will not, upon any account, at any time whatsoever, divulge any vote or opinion of any member of this court martial, unless required, by a court of justice, to give evidence thereof as a witness: So help you, God.

Witnesses refusing to appear and testify.

*Art. lxxi.* Persons called to give evidence before a court martial, who do not appear, or who refuse to testify, without legal excuse, shall be punished at the discretion of such court martial.

Oath of witnesses.

*Art. lxxii.* Witnesses shall be examined upon oath administered by the judge-advocate, in the form prescribed by section one hundred and sixty.

Votes in court martial; two-thirds necessary to capital sentence.

*Art. lxxiii.* Members of a court martial shall vote, beginning with the youngest, and shall give judgment by a majority of voices; but no sentence of death shall be given, unless two-thirds of the members concur therein.

Proceedings to be transmitted to commanding officer.

*Art. lxxiv.* No sentence of a court martial shall be carried into execution, until the proceedings and evidence, documents, papers, and all matters in and concerning the same, are transmitted in the manner provided in section one hundred and sixty, to the commanding officer of the army, station, camp, or post, where the court martial is held, and he approves the same, and orders it to be carried into execution.

Pay may be suspended.

*Art. lxxv.* When a court martial sentences an officer to be suspended, it may also suspend his pay and emoluments.

Pardon and mitigation of punishment.  
R. S. 12, § 143.

*Art. lxxvi.* Every officer having power to order a general court martial, may pardon or mitigate any sentence of the court, except sentence of death and cashiering; and he may suspend the execution of these, until the commander-in-chief is informed thereof; and he with the advice and consent of the council, may pardon or mitigate the sentence.

Construction of "soldier" and "battalion."  
R. S. 12, §§ 102, 144.

SECT. 173. In this chapter, the word "soldier" includes company musicians and all persons in the volunteer or enrolled militia, except commissioned officers; and the word "battalion" may include squadron.

Penalty on civil officers.  
1840, 92, § 10.

SECT. 174. Civil officers named in this chapter, neglecting or refusing to obey its provisions, shall, except as otherwise specially provided, forfeit not less than twenty nor more than five hundred dollars.

"Selectmen" to include "mayor and aldermen."  
R. S. 12, § 145.

SECT. 175. The provisions of this chapter concerning the powers and duties of the selectmen of towns, shall be construed to include the mayor and aldermen of any city.



# TITLE V.

## OF CERTAIN STATE OFFICERS AND MATTERS OF FINANCE.

CHAPTER 14. — Of certain State Officers.

CHAPTER 15. — Of the Auditor, Treasurer, Land Agent, and Matters of Finance.

CHAPTER 16. — Of the State Board of Agriculture.

## CHAPTER 14.

### OF CERTAIN STATE OFFICERS.

#### GOVERNOR, LIEUTENANT-GOVERNOR, AND COUNCILLORS.

##### SECTION

1. Salary of governor.
2. Compensation of lieutenant-governor and councillors.

##### SECRETARY.

3. Secretary, salary of, &c.
4. clerks of, and their salaries. Messenger.
5. When secretary is disabled, &c., deputies may act.
6. Secretary to be keeper of state seal. Certified copies to be evidence.
7. to give certificates for release of impressed seamen.
8. shall issue passports to citizens of any color.
9. to furnish blanks to certain officers.
10. returns to, of moneys received by certain officers, &c.
11. Clerks of courts to make returns of criminal cases to secretary.
12. Trial justices, &c., to make like returns.
13. Details of returns, under two preceding sections.
14. Secretary to prepare full abstracts of returns.
15. Penalty on officers for neglect.

#### ATTORNEY-GENERAL AND DISTRICT-ATTORNEYS.

16. Attorney-general, salary of, and clerk hire.
17. to appear for commonwealth in S. J. C., &c.
18. to file informations in certain cases.
19. to advise and assist district-attorneys in certain cases.
20. to enforce application of funds for public charities, and prosecute corporations, &c.
21. to attend sessions of legislature, and give opinions if required, &c.
22. to consult and advise with secretary, treasurer, &c.
23. to make annual reports to legislature.
24. to receive money for contingent expenses in civil actions, &c.

#### SECTION

25. In absence of attorney-general, or district-attorney, court may appoint, &c.
26. Prosecuting officer not to receive fees of prosecutors, nor be attorney in case, &c.
27. Attorney-general to account for fees.
28. Districts for administration of criminal law.
29. District-attorneys, salaries.
30. vacancies in office of, how filled.
31. general duties of.
32. Assistant district-attorney for Suffolk.
33. District-attorneys may interchange duties.

#### NOTARIES PUBLIC.

34. Notaries may administer oaths.
35. on death of, their records to be deposited in office of clerk of the courts.
36. Penalty for neglect in case of resignation, &c.
37. on executors of notaries for neglect.
38. Records of notaries, penalty for destroying, &c.
39. clerks of courts to receive and take charge of records.

#### COMMISSIONERS, &C., TO ADMINISTER OATHS TO PUBLIC OFFICERS.

40. Commissioners, &c., to administer oaths to public officers.

#### COMMISSIONERS TO TAKE DEPOSITIONS, &C., IN OTHER STATES.

41. Commissioners in other states.
42. to be sworn, file signature and impression of seal, &c., with secretary.
43. powers and duties of.
44. secretary to furnish forms to.

#### COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS, &C., IN FOREIGN COUNTRIES.

45. Commissioners in foreign countries.
46. to be sworn, &c.
47. powers and duties of.

<p>GUARDIANS AND TREASURERS OF INDIANS. SECTION 48. Guardians, &amp;c., of Indians, to have accounts approved—may be removed, &amp;c.</p> <p style="text-align: center;">SERGEANT-AT-ARMS.</p> <p>49. Sergeant-at-arms, how appointed, removed, &amp;c. 50. salary and bond of. 51, 52. general duties of. 53. to preserve state house, &amp;c., from injury. 54. to appoint door-keepers and assistants, subject, &amp;c. 55. Watchmen, appointment of. 56, 57, 58. duties of.</p>	<p>SECTION 59. Watchmen, salaries of. 60. Appointment of firemen. 61. Sergeant-at-arms, &amp;c., to receive no fee.</p> <p>COMMISSIONERS ON REPAIRS OF THE STATE HOUSE, &amp;c. 62. Commissioners on state house to have charge of appropriations, &amp;c.</p> <p>MESSENGER TO THE GOVERNOR AND COUNCIL. 63. Messenger and assistant, appointment and salaries of. 64. duties of.</p>
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## GOVERNOR, LIEUTENANT-GOVERNOR, AND COUNCILLORS.

Salary of governor.

R. S. 13, § 2.  
1854, 308, § 1.  
See Ch. 15, § 36.  
Compensation of lieutenant-governor and councillors.  
1858, 78, §§ 1, 2, 3, 4.  
1859, 7.

SECTION 1. The governor shall receive out of the treasury a salary of thirty-five hundred dollars a year, and shall be entitled to no fees or perquisites of office.

SECT. 2. At the close of each session of the council, the lieutenant-governor and councillors shall be paid as follows: for attendance at the regular session held during the annual session of the legislature, the lieutenant-governor, six hundred dollars, and each councillor, three hundred dollars; for attendance at each subsequent session, the lieutenant-governor, six dollars a day, and each councillor, three dollars a day; and for travel once in each session, one dollar for every five miles to and from their several places of abode.

## SECRETARY.

Secretary, salary of, &c.

R. S. 13, § 9.  
1854, 131, § 1.  
1859, 221, § 1.  
See Ch. 15, § 36;  
Ch. 157, § 12.  
clerks of, &c.  
Messenger.  
R. S. 13, §§ 12, 13.  
1853, 275.  
1854, 131, § 2.  
1855, 440, § 1.  
1857, 269, § 1.  
1859, 133, 269.  
See Ch. 15, § 36.

When deputies may act.  
R. S. 13, § 8.  
Amend. const. art 17.

Secretary to keep state seal.  
Certified copies to be evidence.  
R. S. 13, § 5.

to give certificates to release seamen.  
R. S. 13, § 10.

to issue passports to citizens of any color.  
1857, 224.

to furnish blanks.  
1851, 216, § 1.  
1852, 289, § 4.

SECT. 3. The secretary of the commonwealth shall receive a salary of two thousand dollars a year. He shall exhibit to the governor and council a quarterly return, under oath, of all fees of office received by him, and pay the same into the treasury.

SECT. 4. He may employ in his office two permanent clerks, the first at a salary of fifteen hundred dollars a year, and the second at a salary of fourteen hundred dollars a year; and such additional clerical assistance as may be necessary for the despatch of public business, at a salary not exceeding eleven hundred dollars a year for each person employed. He may also employ a messenger at a salary of eight hundred dollars a year.

SECT. 5. When the secretary by reason of sickness, absence, or other cause, is disabled from executing the duties of his office, his deputies shall execute the same until such disability is removed, or a secretary is chosen or appointed as provided by the constitution.

SECT. 6. The secretary shall have the custody of the state seal; and copies of records and papers in his office, certified by him and authenticated by the state seal, shall be evidence in like manner as the originals.

SECT. 7. He shall without charge give any certificates that may be necessary to procure the release of American seamen impressed on board of the ships of a foreign nation.

SECT. 8. He shall issue to any citizen of this state, of whatever color, who may apply therefor, a passport or certificate under the state seal setting forth the age and general description of the applicant, and that he is a citizen of the Commonwealth of Massachusetts.

SECT. 9. He shall annually in September furnish to the officers mentioned in the three following sections blank forms of the returns required by said sections, with the three following sections printed thereon.

SECT. 10. Justices of police courts, trial justices, clerks of courts,

registers of probate and insolvency, and other officers receiving costs, fees, fines, forfeitures, or other moneys, which they are required to pay or account for to the treasurer of the commonwealth, treasurers of counties, or other public authority, shall, on or before the fifteenth day of October annually, return to the secretary under oath a true account of all such moneys received by them by virtue of their office, for the year ending on the last day of the preceding month, stating what disposition has been made thereof. As soon as the returns are received, the secretary shall transmit them to the auditor, who shall examine and report upon the same to the legislature.

Returns to secretary of moneys received by certain officers, &c.  
1851, 216, § 1.  
1852, 289, § 2.  
1857, 40.  
1858, 46.  
1858, 155, § 2.  
1859, 193, 201.

SECT. 11. Clerks of courts shall annually, on or before the fifteenth day of October, make a return to the secretary, in relation to all criminal cases commenced before the grand jury, which have been pending in their several counties during the year ending on the last day of the preceding month, and a like return of all criminal cases coming to their several courts by appeal from police courts and trial justices, and so pending.

Clerks of courts to make return of criminal cases to secretary.

SECT. 12. Trial justices, and the clerks, or where there are no clerks the justices, of police courts, shall annually, at the time and for the period mentioned in the preceding section, make a like return of all criminal cases in which such justices or courts have exercised final jurisdiction, and of all such cases in which they have exercised jurisdiction not final.

Trial justices, &c., to make like returns.

SECT. 13. The returns under the two preceding sections shall specify, as far as applicable, the following details: Number of prosecutions pending at the beginning of the year—Number on file—Number commenced within the year—Pending cases disposed of within the year—Bills found—No bills—Placed on file—On file at end of year—Pending at end of year—Plea guilty—Plea *nolo contendere*—Plea not guilty—Verdict guilty—Verdict not guilty—Disagreement of jury—Number of sentences—To state prison—To jail or house of correction—To almshouse—To state reform school—Fine and imprisonment—Fine—*Nol. pros'd* or discharged on payment of satisfaction—*Nol. pros'd* or quashed for informality—Carried to supreme judicial court—Defaulted before trial—Defaulted after verdict—Not arrested—Costs accrued within the year—Costs of the year paid—Costs of former years paid. In said returns offences shall be classified as follows: Against the person feloniously—Against the person not feloniously—Against property—Against the currency, and criminal frauds—Against public justice—Against the public peace—Against chastity, decency, and morality—Against public policy—Other offences.

Details of return under two preceding sections.

SECT. 14. From said returns, the secretary shall annually prepare full and complete abstracts and tabular statements of the criminal business of each county and of the commonwealth for the year next preceding, and append the same to the annual report of the attorney-general.

Secretary to prepare abstract of returns.

SECT. 15. Any officer who neglects to make the returns required of him by sections ten, eleven, and twelve, shall forfeit two hundred dollars.

Penalty.  
1851, 216, § 2.  
1852, 289, § 3.

ATTORNEY-GENERAL AND DISTRICT-ATTORNEYS.

SECT. 16. The attorney-general shall receive a salary of twenty-five hundred dollars a year, and a sum not exceeding one thousand dollars annually for such clerical assistance as the business of his office may require.

Attorney-general, salary of and clerk hire.  
1849, 186, § 12.  
Resolve, 1856, 60.  
See Ch. 15, § 36.

SECT. 17. He shall appear for the commonwealth, in the supreme judicial court, when held by three or more justices, in all prosecutions for crimes punishable with death; and in the trial and argument, in said court, of all causes, criminal or civil; in which the commonwealth

to appear for the commonwealth in S. J. C., &c.  
1849, 186, §§ 2, 3.  
3 Cush. 48.



is a party or interested; and in such causes in any court or tribunal, when required by the governor or either branch of the legislature.

Attorney-general to file informations in certain cases. 1849, 186, § 9.

SECT. 18. He may when in his judgment the interest of the state requires it, file and prosecute informations, or other process, against persons who intrude on the lands, rights, or property, of the commonwealth, or commit or erect any nuisance thereon.

to advise district-attorneys. 1849, 186, § 4. 1850, 46, § 1.

SECT. 19. He shall consult with and advise the district-attorneys, in matters relating to the duties of their offices; and when in his judgment the interest of the state requires it, shall assist them by attending the grand jury in the examination of any case in which the party accused is charged with a capital offence.

to enforce application of funds for public charities, &c. 1849, 186, § 8. 5 Cush. 336.

SECT. 20. He shall enforce the due application of funds given or appropriated to public charities within the state, prevent breaches of trust in the administration thereof, and when necessary, shall prosecute corporations which fail to make to the legislature the returns required by law.

to attend sessions of legislature and give opinions, &c. 1849, 186, § 6.

SECT. 21. He shall, when required by either branch of the legislature, attend during their sessions, and give his aid and advice in the arrangement and preparation of legislative documents and business; and shall give his opinion upon questions of law submitted to him by either branch thereof, or by the governor and council.

to advise secretary, &c. 1849, 183, § 7. 1858, 85. 1859, 91.

SECT. 22. He shall, when required by the secretary, treasurer, adjutant-general, auditor, or land agent, consult and advise with them respectively, on questions of law relating to their official business.

to make annual reports to legislature. 1849, 186, § 4. See Ch. 4, § 10.

SECT. 23. He shall annually make a report to the legislature of the cases argued, tried, or conducted, by him in the supreme judicial and superior court during the preceding year, with such other information in relation to the criminal laws, and such observations and statements, as in his opinion the criminal jurisprudence and the proper and economical administration of the criminal law warrant and require.

to draw money for expenses in civil actions, &c. 1839, 28, § 1.

SECT. 24. On his representation, the governor with the advice and consent of the council may draw his warrant on the treasury to an amount not exceeding three hundred dollars in one year, for the contingent expenses of civil actions in which the commonwealth is a party or has an interest, for which sum he shall annually in October account to the governor and council; and he shall state the amount so expended in his annual report to the legislature.

when court may appoint, &c. R. S. 13, § 40.

SECT. 25. The supreme judicial court and the superior court may at any term, in the absence of the attorney-general and district-attorney, appoint some suitable person to perform the duties by law required of them.

Prosecuting officers not to receive fees, &c. R. S. 13, § 46. 4 Gray, 147.

SECT. 26. No prosecuting officer shall receive any fee or reward from, or in behalf of, a prosecutor, for services in any prosecution or business to which it is his official duty to attend; nor be concerned as counsel or attorney for either party, in a civil action depending upon the same state of facts.

Attorney-general, &c., to account for fees. R. S. 13, § 45.

SECT. 27. The attorney-general and the district-attorneys shall severally account with the treasurer of the commonwealth for all fees, bills of cost, and moneys, received by them by virtue of their offices.

Districts for administration of criminal law. R. S. 13, §§ 34, 35. 1848, 16, § 1. 1852, 196. 1855, 275.

SECT. 28. For the administration of the criminal law the county of Suffolk shall constitute the Suffolk District; the county of Middlesex, the Northern District; the county of Essex, the Eastern District; the counties of Norfolk and Plymouth, the South-eastern District; the counties of Bristol, Barnstable, Nantucket, and the county of Dukes County, the Southern District; the county of Worcester, the Middle District; the counties of Berkshire and Hampden, the Western District; and the counties of Franklin and Hampshire, the North-western District; for each of which there shall be a district-attorney.

District-attorneys, salaries of.

SECT. 29. Annual salaries shall be paid out of the treasury to the district-attorneys for the several districts as follows: For the Suffolk

1860 Ch. 191 § 9

District, three thousand dollars; for the Northern, Eastern, Southern, Middle, South-eastern, and Western Districts, twelve hundred dollars each; and for the North-western District, eight hundred dollars; which shall be in full for all services rendered by them as district-attorneys.

1855, 328.  
1853, 111, § 1.  
1839, 216.  
See Ch. 15, § 36.

SECT. 30. When a vacancy occurs in the office of district-attorney, the governor with the advice and consent of the council may appoint a suitable person to fill such vacancy, who shall hold the office until the next annual election, or until another is chosen in his stead.

Vacancies in office of district-attorney.  
1856, 173, § 8.

SECT. 31. The district-attorneys within their respective districts shall appear for the commonwealth in the supreme judicial court and superior court in all cases, criminal or civil, in which the commonwealth is a party or interested; shall aid the attorney-general in the duties required of him, and perform all the duties which he is authorized to perform, when he is not required to do the same personally; but the attorney-general when present shall have the direction and management of such prosecutions and suits.

General duties of district-attorneys.  
R. S. 13, § 38.  
1859, 194.  
3 Cush. 48.

SECT. 32. The governor with the advice and consent of the council shall appoint an assistant district-attorney for the Suffolk district, who under the direction of the attorney in said district, shall assist him in the performance of his official duties, and who shall receive, out of the treasury, an annual salary of eighteen hundred dollars.

Assistant attorney in Suffolk.  
1856, 67.  
See Ch. 15, § 36.

SECT. 33. The district-attorneys may, with reference to their mutual accommodation, interchange official duties, so as to insure a punctual discharge thereof.

District-attorneys may interchange.  
R. S. 13, § 39.

NOTARIES PUBLIC.

SECT. 34. Notaries public shall have the same authority to administer oaths as justices of the peace.

Notaries may administer oaths.  
1851, 29.

SECT. 35. On the death, resignation, or removal from office, of a notary public, his records, together with his official papers, shall be deposited in the office of the clerk of the courts within the county in which he resided, or in the county of Suffolk, in the office of the clerk of the superior court for civil business.

When records to be deposited in clerk's office.  
R. S. 13, § 47.  
1855, 449.  
1859, 196.

SECT. 36. A notary public who on his resignation or removal from office, neglects for three months so to deposit his records and official papers, shall forfeit a sum not exceeding five hundred dollars.

penalty.  
R. S. 13, § 48.

SECT. 37. If the executor or administrator of a deceased notary public neglects for three months after his acceptance of such appointment, so to deposit in the clerk's office the records and official papers of the deceased which shall come into his hands, he shall forfeit a sum not exceeding five hundred dollars.

on executors of notaries.  
R. S. 13, § 49.

SECT. 38. Whoever knowingly destroys, defaces, or conceals, the records or official papers of a notary public, shall forfeit a sum not exceeding one thousand dollars and be liable in damages to the party injured.

for destroying records of.  
R. S. 13, § 50.

SECT. 39. The several clerks of the superior court shall receive and safely keep the records and official papers of notaries which are deposited in their offices; shall make and certify copies thereof, for which they shall be paid the same fees that the notary would have been entitled to, and copies thus certified shall have the same effect as if certified by him.

Clerks to take charge of and give copies, &c.  
R. S. 13, §§ 51, 52.  
1859, 196.

COMMISSIONERS, &C., TO ADMINISTER OATHS TO PUBLIC OFFICERS.

SECT. 40. The governor, with the advice and consent of the council, shall appoint a suitable number of commissioners to administer to public officers the oaths required by the constitution; and all public officers, except those for whom a different provision is made by the constitution

Commissioners to administer oaths to public officers.  
R. S. 13, § 57.



or laws, may take and subscribe such oaths, before the governor, lieutenant-governor, two members of the council, or two such commissioners.

COMMISSIONERS TO TAKE DEPOSITIONS, &C., IN OTHER STATES.

Commissioners  
in other states.  
R. S. 13, § 53.  
1854, 17, § 1.

SECT. 41. The governor with the advice and consent of the council may appoint in each of the states and territories of the United States, one or more commissioners, who with those now appointed, shall hold their offices three years from the date of their respective appointments, unless sooner removed by the governor.

to be sworn,  
file signature,  
impression of  
seal, &c., with  
secretary.  
R. S. 13, § 56.  
1854, 17, § 2.

SECT. 42. Every such commissioner shall within three months from his appointment take and subscribe an oath or affirmation before a justice of the peace or other magistrate of the city or county where he resides, faithfully to discharge the duties of his office, shall cause to be prepared an official seal in which shall be designated his name, the words "Commissioner for Massachusetts," and the name of the state or territory and city or county where he resides; an impression of which seal, together with his oath of office and signature, shall be forthwith transmitted to, and filed in, the office of the secretary of this commonwealth.

powers and  
duties of.  
R. S. 13, §§ 54,  
55.  
1854, 17, § 3.

SECT. 43. He may, in the state or territory for which he is appointed, administer oaths, take depositions, affidavits, acknowledgments of deeds and other instruments, to be used or recorded in this state, and the proof of such deeds, when the grantor refuses to acknowledge the same, in like manner as justices of the peace may take the proof thereof. All oaths, depositions, affidavits, and proofs, so administered or taken and certified by him under his official seal, shall be as effectual as if administered or taken and certified by a justice of the peace in this state.

Secretary to  
furnish forms.  
1854, 17, § 4.

SECT. 44. The secretary shall forward to each commissioner instructions and forms prepared by him in conformity to law, with a copy of the three preceding sections.

COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS, &C., IN FOREIGN COUNTRIES.

Commissioners  
in foreign coun-  
tries, &c.  
1856, 253, § 1.

SECT. 45. The governor may appoint in every foreign country one or more commissioners, who with those now appointed shall hold their offices during the pleasure of the governor.

to be sworn,  
&c.  
1856, 253, § 1.

SECT. 46. Every commissioner, before performing any duty of his office, shall take and subscribe an oath or affirmation before a judge or clerk of one of the courts of record of the state, kingdom, or country, in which he resides, faithfully to discharge the duties of his office under and by virtue of the laws of the commonwealth of Massachusetts; which, with a description of his seal of office, and his signature, shall be filed in the office of the secretary of this commonwealth.

powers and  
duties of.  
1856, 253, §§ 1,  
2, 3.

SECT. 47. Such commissioner may, according to the laws of this state, take the acknowledgment and proof of the execution of any deed, conveyance, or lease, of lands, lying in this state, or of any contract, or letter of attorney, under seal or not, to be used or recorded in this state; administer oaths, and take depositions to be used in the courts of this state either under a commission from a court, by consent of parties, or on legal notice given to the opposite party. An acknowledgment or proof so taken and certified by him under his official seal, and annexed to or indorsed on the instrument, and any such oath or deposition administered or taken and certified by him, shall have the same force and effect as if done by any officer authorized to perform such acts in this state.



GUARDIANS AND TREASURERS OF INDIANS.

SECT. 48. Guardians and treasurers of Indians appointed under the laws of this state, shall before sending their accounts to the auditor have them approved by the judge of the probate court for the county in which they respectively reside.

Such guardians and treasurers may be removed by the governor and council for just cause, and others appointed in their places.

Guardians, &c., of Indians.  
1828, 114.  
1846, 216.  
1850, 141.  
1853, 186.  
Resolves,  
1814, 31.  
1828, 78.  
1829, 62.  
1852, 85.

SERGEANT-AT-ARMS.

SECT. 49. The legislature shall annually in January choose a sergeant-at-arms, who shall hold his office until another is chosen in his stead, and may remove him for misconduct or other sufficient cause. During the recess of the legislature the governor and council may suspend him for like cause, and when a vacancy occurs during a recess, the governor and council may appoint a suitable person to perform the duties of the office until a new election.

SECT. 50. He shall receive a salary of two thousand dollars a year, and shall give bond to the treasurer of the commonwealth, in the sum of two thousand dollars, for the faithful performance of his duties, and to account for all money intrusted to him for the use of the commonwealth.

SECT. 51. He shall serve such processes and execute such orders, as may be enjoined upon him by the legislature, or either branch thereof; he shall attend the members or clerks of either house, when they are charged with messages to the other; shall see that the chambers and lobbies occupied by the legislature, are during the session kept in good order, and that the fires are seasonably kindled, diligently tended, and carefully extinguished; shall maintain order among the spectators admitted into the rooms in which the respective branches hold their sessions, and take proper measures to prevent the interruption of either branch, or the committees thereof; and shall have the control of, and exercise a strict superintendence over, his subordinate officers, giving them all needful directions and taking care that they promptly perform their duties.

SECT. 52. He shall have the general charge and oversight of the state house and its appurtenances, shall superintend alterations and repairs thereof, shall daily visit and inspect the apartments therein, (except the secretary's office, council chamber, and apartments therewith connected, which shall be under the care of the messenger of the governor and council,) and take proper precautions against damage thereto, or to the books, papers, or other property therein; and he shall take care that the chambers and lobbies, occupied by the legislature, are kept clean and in good order, during the recesses of the general court.

SECT. 53. He shall take all proper care to prevent any trespass or injury being committed, contrary to the provisions of section fourteen of chapter five; and if such trespass or injury occur, and the offender is known, he shall forthwith give notice to the attorney-general or district attorney for the Suffolk district, in order that such offender may be prosecuted therefor.

SECT. 54. He shall, immediately after his election, appoint, subject to the approval of the presiding officers of the two branches, respectively, suitable and proper persons to be door-keepers to each house, who shall, during the session, render him all necessary assistance; and he shall also appoint, subject to like approval, such assistants to the door-keepers as the two houses may respectively direct.

SECT. 55. He shall annually appoint, subject to the approval of the secretary and treasurer of the commonwealth, four good and discreet

Sergeant-at-arms, how appointed, removed, &c.  
R. S. 13, §§ 58, 64.

salary and bond of  
R. S. 13, § 58.  
1854, 131, § 1.  
Resolves,  
1859, 95, 96.  
See Ch. 15, § 36.

general duties of.  
R. S. 13, §§ 59, 60, 62.

same subject.  
R. S. 13, § 60.  
1841, 130, § 2.

to preserve state house, &c., from injury.  
R. S. 13, § 63.

to appoint door-keepers and assistants, subject, &c.  
R. S. 13, § 59.  
1858, 159.

to appoint watchmen.

R. S. 13, § 61.  
1838, 80.  
1858, 159, § 1.

persons as watchmen of the state house, whom he may at any time remove, and for whose fidelity and good conduct, in said capacity, he shall be responsible.

Watchmen, duties of.  
1858, 159, §§ 1, 2.

SECT. 56. The watchmen shall remain in the state house every night from nine o'clock in the evening until sunrise in the morning, and maintain proper watch and guard for the security thereof; and shall visit, each night, all the rooms in which fires have been kindled during the preceding day, and attend to their safety.

same subject.  
R. S. 13, § 63.  
1858, 159, § 3.

SECT. 57. They shall take proper care to prevent any trespass or injury being committed in or upon any part of the state house, or of the appurtenances thereof belonging to the state; and if any is committed, and the offender is known, they shall forthwith give notice thereof to the attorney-general, in order that such offender may be prosecuted therefor.

same subject.  
1858, 159, §§ 1, 2,  
4.

SECT. 58. They shall open the outside doors of the lower floor and the gates every morning, and close the same every evening, except Sundays and public holidays; shall keep the lower floor, entries, and all the offices except that of the secretary, clean and in good order, kindle and keep up suitable fires therein, and light, clean, and keep in good order, the outside lamps. They shall act as messengers to the legislature during the sessions thereof, and shall perform all other duties with regard to the offices in the state house, except that of the secretary, as have heretofore been performed by watchmen and messengers to the general court. Two of them shall be on duty in the state house during the daytime while the outside doors are open, and maintain watch and guard for the security thereof. The keys of the doors, gates, and apartments, shall be so deposited that they may have ready access thereto.

salaries of.  
1859, 176.  
See Ch. 15, § 36.

SECT. 59. Each watchman shall receive a salary of eight hundred dollars a year in full compensation of all services required of him by the sergeant-at-arms as watchman throughout the year, and messenger during the annual session of the legislature.

Fireman, appointment of.  
1858, 159, § 5.  
See Ch. 15, § 36.

SECT. 60. The sergeant-at-arms may appoint one person as fireman, who shall make and attend the fires in the basement of the state house, and perform such other duties as may be required by the sergeant-at-arms; and who shall receive in full compensation for his services a salary of six hundred dollars a year.

Sergeant-at-arms, &c., to receive no fee.  
R. S. 13, § 65.

SECT. 61. No fee or reward shall be taken by the sergeant-at-arms, or any person under him, for opening the public rooms in the state house, for the view and inspection of visitors.

#### COMMISSIONERS ON REPAIRS OF THE STATE HOUSE, &C.

Commissioners on state house to have charge of appropriations, &c.  
1857, 65, §§ 2, 3.

SECT. 62. The sergeant-at-arms, secretary and treasurer of the commonwealth, shall constitute a commission, without compensation, having in charge the appropriations for the repairs, improvements, and furniture, of the state house, and contingent expenses of the council, general court, and offices in the state house. No expenses shall be incurred for said purposes unless previously authorized by said commission, and no expenses shall be authorized by them unless the same come within the amount appropriated by the legislature; except that in case of damage to the state house, caused during the recess of the legislature by fire or other unforeseen casualty, the commissioners may make all necessary repairs for the protection and preservation of the building.

#### MESSENGER TO THE GOVERNOR AND COUNCIL.

Messenger to governor and council.

SECT. 63. The governor with the advice and consent of the council may appoint a messenger, who shall hold his office during the pleasure of the governor, and receive a salary of eight hundred dollars a year.

The messenger may employ an assistant, whom he may remove at any time, and who shall receive for his services three hundred and sixty-five dollars a year.

1847, 237.  
1858, 173.  
See Ch. 15, § 36.

SECT. 64. The messenger and assistant shall perform such duties as may be required of them by the governor or the governor and council.

Messenger's duties.

CHAPTER 15.

OF THE AUDITOR, TREASURER, LAND AGENT, AND MATTERS OF FINANCE.

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| <p>SECTION</p> <p>1. Auditor to give bond.</p> <p>2. salary of, may employ clerks, &amp;c.</p> <p>3. shall examine accounts, and may deduct overcharges, &amp;c.</p> <p>4. shall keep accounts of receipts, &amp;c.</p> <p>5, 6. report of.</p> <p>7. shall examine treasurer's books, &amp;c., and perform certain other duties.</p> <p>8. books, &amp;c., of, to be examined during recess of legislature.</p> <p style="text-align: center;">TREASURER.</p> <p>9. Treasurer to give bond.</p> <p>10. bond of, to be sued, in case, &amp;c.</p> <p>11. may be removed by governor on request of sureties, in case, &amp;c.</p> <p>12. salary of, clerks of, and their salaries.</p> <p>13. may assign mortgages.</p> <p>14. may sell real estate held under a mortgage foreclosed.</p> <p>15. shall stamp bonds, &amp;c., of the commonwealth.</p> <p>16. may assign, &amp;c., mortgages, &amp;c., made to his predecessors, with approval of governor.</p> <p>17. to transmit annually to attorney-general account of all bonds, &amp;c.</p> <p>18. to invest money received from sale of public lands.</p> <p>19. to report to the legislature.</p> <p>20. on death, &amp;c., of, secretary and others to take charge of his office, &amp;c.</p> <p>21. Inventory of moneys, &amp;c., to be taken by committee, &amp;c.</p> <p>22. Duplicate receipts to be given by successor of such treasurer.</p> <p style="text-align: center;">LAND AGENT.</p> <p>23. Land agent, salary and bond of.</p> <p>24, 25. duties of.</p> <p>26. sales, &amp;c., of, to be approved by governor and council.</p> <p>27. to make report to legislature.</p> | <p>AUDITOR.</p> |
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| <p>SECTION</p> <p>28. Public officers to make and submit estimates to speaker of the house.</p> <p>29. Officers disbursing money to report to the auditor.</p> <p>30. Money to be paid from treasury only upon warrant of governor, &amp;c.</p> <p>31. Balances of appropriations may be paid in succeeding year, but not afterwards.</p> <p>32. Payments may be withheld from persons with whom state has unadjusted accounts; or who withholds money, &amp;c.</p> <p>33. to be made from ordinary revenue, &amp;c. Cash at beginning of year, how applied.</p> <p>34. Notes to be signed by treasurer, approved by governor, &amp;c.</p> <p>35. Payments of interest on temporary loans, &amp;c.</p> <p>36. of salaries, &amp;c.</p> <p>37. Accounts for expenditures under orders of the legislature to be approved by presiding officers, &amp;c. Limitation of amount of such orders, &amp;c.</p> <p>38. Meaning of "incidental expenses" in appropriation laws.</p> <p>39. Less appropriation to supersede former larger.</p> <p>40. Appropriations for a specified year, how construed.</p> <p>41, 42. Directions to public functionaries in incurring liabilities, &amp;c.</p> <p>43. Improvements, &amp;c., in public buildings, not to be made without appropriation.</p> <p>44. Bills exceeding fifty dollars to be sworn to.</p> <p>45. Committees of legislature not to incur liability in behalf of state, unless, &amp;c.</p> <p>46. Appropriations for witness fees, may be applied to taking depositions.</p> <p>47. Compensation of commissioners, &amp;c., to be determined by governor and council.</p> <p>48. Travelling expenses of public officers.</p> <p>49. Bills of charges against state to contain items.</p> <p>50. Secretary, &amp;c., to lay before legislature accounts of expenses of their offices, &amp;c.</p> | <p>MATTERS OF FINANCE.</p> |
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AUDITOR.

SECTION 1. The auditor of accounts shall give bond to the treasurer of the commonwealth, with sufficient sureties, to be approved by the governor with the advice and consent of the council, for the faithful discharge of the duties of his office.

Auditor to give bond.  
1849, 56, § 1.

SECT. 2. He shall receive a salary of two thousand dollars a year. He may employ in his office one permanent clerk at a salary of twelve

salary of clerks, &c.



1852, 318.  
1854, 131, §§ 1, 2.  
1855, 410.

Auditor shall  
examine ac-  
counts, and  
may deduct  
overcharges,  
&c.  
1849, 57, § 2.  
1858, 11, § 7.  
1858, 158, § 13.

shall keep ac-  
count of re-  
ceipts, &c.  
1849, 56, § 3.

report of.  
1849, 56, § 4.  
1858, 158, §§ 4, 5,  
6, 7, 8.  
Sec. Ch. 4, § 10.

same subject.  
1849, 56, § 4.  
1858, 158, § 1.

shall examine  
treasurer's  
books, &c., and  
perform certain  
other duties.  
1849, 56, §§ 4, 7.

Books, &c., of,  
to be examined  
during recess of  
legislature.  
1849, 56, § 5.

Treasurer to  
give bond.  
R. S. 13, § 14.

hundred dollars a year, and such additional clerical assistance as may be necessary for the despatch of the public business, at a salary not exceeding eleven hundred dollars a year for each person employed.

SECT. 3. He shall examine and scrutinize and may deduct overcharges in all accounts and demands against the state, including those for services or objects for which definite appropriations are made, and for which appropriations are made not exceeding a certain sum, but excepting those due on account of the principal or interest of a public debt, or of the pay rolls of the council, senate, or house of representatives. He shall make and record in a book kept for that purpose a certificate specifying the amount due on each demand, the law authorizing its payment, and the head of expenditure to which it is to be charged; and shall transmit the certificate to the governor, who may draw his warrant therefor. As soon as may be after the drawing of a warrant, the secretary shall transmit to the auditor a written statement of the amount and purport thereof.

SECT. 4. He shall keep a distinct account of public receipts and expenditures under appropriate heads. If the sum allowed by law for any purpose has been expended or drawn for, he shall in writing communicate such fact to the secretary, who shall lay the same before the governor and council as soon as may be. He shall keep a like statement of the school fund and other public property, and of all debts and obligations due to and from the commonwealth; and for such purposes shall have free access to the books and papers in the offices of the secretary, treasurer, and land agent.

SECT. 5. On or before the fifteenth day of January in each year the auditor shall submit to the legislature a report exhibiting a full and accurate statement of the financial condition of the commonwealth, and of the pecuniary transactions thereof, during the year ending on the last day of the preceding month.

SECT. 6. He shall include in his report an estimate for the following year of the ordinary income of the commonwealth, and other means which he may point out for the defraying of expenditures, and shall annex thereto such representations or suggestions as he may deem necessary.

SECT. 7. He shall annually in January examine the books, accounts, and vouchers, of the treasurer, and shall comply with any regulations in relation to the duties of his office, not inconsistent with the provisions of this chapter, which may be transmitted to him in writing by the governor and council.

SECT. 8. The books and accounts of the auditor shall be carefully examined, at least once during the recess of the legislature, by a committee of the council, or such person as the governor with the advice and consent of the council may appoint; and shall annually in January be carefully examined by the committee of accounts.

#### TREASURER.

SECT. 9. The treasurer of the commonwealth shall give a bond, with three sureties at least, to be approved by the governor with the advice and consent of the council, in the sum of one hundred thousand dollars, payable to the commonwealth, with condition in substance as follows: that he and all persons employed in his office shall faithfully discharge their duties and trusts; that he shall use all necessary and reasonable diligence and care in the safe keeping and lawful disposal of all sums of money, books, bonds, notes, papers, and other things appurtenant to the office, which shall come to his hands, or to the hands of the persons employed by him; that he shall, upon reasonable notice, render a true account in the premises, when thereto required by law or by the senate

or house of representatives; shall deliver over to his successor in office, or other person authorized to receive the same, all money, books, bonds, notes, and other things belonging to said office; and that all balances and defalcations which shall appear against him, shall be forthwith paid into the treasury of the commonwealth.

SECT. 10. The bond shall be deposited in the secretary's office; and upon the order of the governor with the advice of the council, or the order of the senate and house of representatives, the attorney-general, or any other person by them respectively authorized for that purpose, shall commence an action thereon, and prosecute the same to final judgment, execution, and satisfaction.

Treasurer, bond of, to be sued in case, &c. R. S. 13, § 15.

SECT. 11. Upon the representation, under oath, of a surety in such bond, or other person, that the treasurer is insane, or manifestly insolvent, or has absconded or concealed himself, or is absent from the state, or from the duties of his office, to the hazard of the public treasury, if upon examination such representation appears to be true, the governor, with the advice and consent of the council, shall remove him from office and declare the office vacant.

may be removed by governor on request of sureties, in case, &c. R. S. 13, § 16. Amend. const. art. 17.

SECT. 12. The treasurer shall receive a salary of two thousand dollars a year. He may employ in his office two permanent clerks, the first at a salary of fifteen hundred dollars a year, and the second at a salary of twelve hundred dollars a year; and such additional clerical assistance as may be necessary for the despatch of the public business, at a salary not exceeding eleven hundred dollars a year for each person employed.

salary of, clerks of, and their salaries. R. S. 13, § 21. 1854, 131, §§ 1, 2. 1855, 440, § 1. 1857, 269, § 1. See Ch. 15, § 36.

SECT. 13. Where the treasurer is authorized to discharge a mortgage held by the commonwealth, he may instead thereof assign the same, and his assignment shall have the same effect as like assignments by other mortgagees; but shall not impose any liability, express or implied, upon the commonwealth.

may assign mortgages. 1847, 195.

SECT. 14. When the title to real estate becomes vested in the commonwealth by the foreclosure of a mortgage, the treasurer may, with the approval of the governor and council, convey the same, upon the payment of the amount of the mortgage debt, with the interest and expenses accrued thereon.

may sell real estate held under a mortgage foreclosed. 1856, 68, § 1.

SECT. 15. The treasurer shall provide himself with a stamp upon which shall be the words "The property of the commonwealth," and shall cause all bonds and securities in his possession belonging to the commonwealth to be stamped therewith.

shall stamp bonds, &c., of commonwealth.

SECT. 16. No bond or security belonging to the commonwealth shall be transferred except with the written approval of the governor. Where the treasurer holds, as the property of the commonwealth, any note, bond, mortgage, or other security, made to any predecessor in his office, the same may be transferred, assigned, or discharged, in like manner as if it had been made directly to the commonwealth.

may assign, &c., mortgages, &c., made to his predecessors with approval of governor. 1856, 68, § 2.

SECT. 17. He shall annually on the first Monday of May, transmit to the attorney-general or other prosecuting officer of the government, an account of bonds, notes, and securities, in the treasury, in which the state is interested, on which the principal or interest remains due and unpaid, or of which the conditions have not been performed, classing them under distinct heads, as far as may be conveniently done; and the attorney-general, or other officer, upon receiving the same, shall enforce the collection of the money so due, and the performance of conditions so unperformed, and require such payments and settlements in the premises as he thinks the interests of the state demand, with due regard to the situation of the debtors.

to transmit annually, to attorney-general, account of all bonds, &c. R. S. 13, § 25.

SECT. 18. He shall have the custody of all notes, bonds, and mortgages, given to the state for the purchase of lands in the state of Maine, and shall receive all money accruing from the same. He shall keep a

to invest money received from sale of public lands. R. S. 10, §§ 6, 7.



separate account of the money, notes, and obligations, so received by him; and shall, with the approbation of the governor and council, invest said money in the stocks of the New England states and in the obligations of the counties, cities, and towns, thereof; regard being had to the security, productiveness, and availability, of the fund when required for use.

Treasurer,  
to report to  
the legislature.  
1838, 1, § 4.

SECT. 19. The treasurer shall annually in January report to the legislature a statement of the operations of his department for the year ending on the last day of the preceding month; including a specific statement of all warrants remaining unpaid, and the names of the persons in whose favor they are drawn.

on death, &c.,  
of, secretary  
and others to  
take charge of  
his office, &c.  
R. S. 13, § 17.

SECT. 20. Upon the death or resignation of the treasurer, or other vacancy in that office, the secretary, with two suitable persons to be appointed by warrant under the hand and seal of the governor, shall repair to the places where the money, papers, and other things belonging to the treasury, are kept, and, having previously given notice to such late treasurer, or his heirs, executors, or administrators, and to his sureties or one of them, or to such of the persons as may be found within the state to attend thereat, shall seal up and secure, in their presence if they attend, all such money, papers, and other things supposed to be the property of the commonwealth; and they shall give such representatives or sureties, if required by them, a true list of all boxes and packages so sealed up and secured, and shall note on such list the place wherein the same are deposited.

Inventory of  
money, &c., to  
be taken by  
committee, &c.  
R. S. 13, § 18.

SECT. 21. After sealing up and securing the effects, the secretary, with the two persons appointed as aforesaid, shall as soon as may be, and after notice to the parties mentioned in the preceding section, cause the boxes and packages to be examined, and a true inventory to be taken of the money, and of all bonds, notes, securities, books, and other things appertaining to said office, which shall be required by the late treasurer, or his representatives or sureties, or either of them; a copy of which inventory shall be deposited in the secretary's office: and copies that may be required shall also be given to any of said parties. The secretary and said two persons shall safely keep all money and other effects inventoried as aforesaid, until another treasurer is chosen or appointed; to whom when qualified they shall deliver over the same, taking duplicate receipts from such new treasurer; one of which receipts shall be deposited with the secretary, and the other with the late treasurer, or his legal representatives or sureties, or one of them.

Duplicate re-  
ceipts to be giv-  
en by successor  
of such treasur-  
er.  
R. S. 13, § 19.

SECT. 22. Upon every appointment or election of a new treasurer, he shall give duplicate receipts, one of which shall be deposited with the secretary; and such receipts shall be sufficient evidence for his predecessor in office, of the property of the state remaining and delivered over by him, and shall be his sufficient discharge therefor.

LAND AGENT.

Land agent, sal-  
ary and bond  
of.  
R. S. 10.  
1851, 190.  
1838, 85.  
1859, 91.

SECT. 23. The governor, with the advice of the council, shall annually, and whenever a vacancy occurs, appoint a competent person to be land agent, who shall receive a salary of one thousand dollars a year, give bond to the commonwealth for the faithful performance of the duties of the office, in a sum and with sureties to be approved by the governor and council, and hold office for the term of one year, unless sooner removed.

duties of.  
Resolves,  
1859, 52, 103.

SECT. 24. He shall have charge of all lands, flats, shores, and rights in tide waters, belonging to the commonwealth, except the Back Bay lands and other lands and rights otherwise provided for; and shall exercise the powers and perform the duties specified in chapters fifty-two and one hundred and three of the resolves of the year eighteen hundred and fifty-nine.



SECT. 25. He shall have the custody of all records, deeds, instruments, plans, maps, charts, surveys, and other documents, relating to said property or appertaining to the lands in Maine, and safely keep the same in the land office at the state house; he may make and certify copies thereof, and shall keep said office open at stated hours, as public convenience may require.

Land agent, duties of. Resolves, 1859, 103.

SECT. 26. All sales, contracts, leases, deeds, and instruments, made by him, shall be approved by the governor and council and recorded in the records of the land office, and without such approval and record, the same shall be of no effect.

sales, &c., by, to be approved by governor, &c. Resolves, 1859, 103.

SECT. 27. He shall annually report to the legislature in detail all sales, leases, contracts, and other transactions, of said office for the previous year, and such other facts relating to said office and property as may be necessary or useful.

to make report to legislature. See Ch. 4.

MATTERS OF FINANCE.

SECT. 28. Every public officer or board having charge of any department of the public service requiring an expenditure of money from the state treasury, other than the payment of salaries, shall on or before the fifteenth day of January in each year, submit in writing to the speaker of the house of representatives, a detailed estimate of the sums which will be necessary for the maintenance of the department for the current year.

Public officers to make and submit estimates to speaker of house. Resolves, 1858, 158, § 1.

SECT. 29. Every public officer or board having charge of the disbursement of money, appropriated from the ordinary revenue or from the income of any funds belonging to or under the charge of the commonwealth, shall annually in the first week of January, report in detail to the auditor, in such form as he shall prescribe, all expenditures made by them, and the objects to which such expenditures have been applied.

Officers disbursing money to report to auditor. Resolves, 1859, 221, § 2.

SECT. 30. No money shall be paid from the treasury, but upon the warrant of the governor drawn in accordance with an appropriation in some act or resolve passed within the same political year, except for payments required on account of the principal or interest of a public debt, or for the salaries of the judges of the supreme judicial court, and of the governor, as established by standing laws. Said principal and interest shall be paid when due, and said salaries in the same manner as if a specific appropriation therefor were included in a separate law passed each year. No warrant shall be drawn for the payment of any account or demand except for the pay rolls of the council, senate, and house of representatives, unless the same is certified by the auditor.

Money to be paid from treasury only upon warrant of the governor, &c. Resolves, 1849, 56, § 2. 1858, 1, §§ 1, 2.

SECT. 31. The preceding sections shall not prevent the payment from the treasury in any year, to a person to whom the same is due, of any appropriation or unexpended balance of an appropriation made in the preceding year. If such an appropriation or balance shall not be called for by the person to whom it is due, or shall not be applied to the objects for which it was designed, within the political year in which it is made, or the succeeding year, it shall revert to the general treasury, and shall not afterwards be paid out, except upon a new appropriation.

Balances of appropriations may be paid in succeeding year, but not afterwards. Resolves, 1858, 1, § 3.

SECT. 32. No appropriation law shall be construed to require any payments to a person with whom the state has an unadjusted account. But the governor, upon receiving satisfactory information that any money is illegally withholden from the state by such person, shall instruct the treasurer to withhold all payments of money to him while such default continues.

Payments to be withheld from persons having unadjusted accounts, &c. Resolves, 1858, 11, § 2. 1858, 158, § 13.

SECT. 33. Payments authorized by laws appropriating money shall be made from the ordinary revenue, if no other provision is expressly made therefor. Cash from the ordinary revenue on hand at the beginning of each year, shall be carried to the account of the ordinary revenue of that year.

to be made from ordinary revenue, &c. Cash at beginning of year. Resolves, 1858, 11, § 8. 1858, 158, §§ 10, 13.

SECT. 34. All notes for money borrowed in anticipation of the reve-

Notes, how signed, &c.  
Resolves,  
1858, 13.  
Payments of interest, &c.  
1858, 158, § 17.

of salaries, &c.  
1849, 186, § 12.  
1850, 11, §§ 3, 4.  
1850, 158, § 13.  
1850, 272, § 4.  
1861 Oct. 31.

Accounts for expenditures under orders of legislature, how approved, &c.  
Limitation of amount.

1858, 158, § 11.  
Resolves,  
1857, 19.

“Incidental expenses.”  
1853, 11, § 5.  
1853, 158, § 13.  
1859, 272, § 5.  
Less appropriation to supersede larger.

1853, 11, § 6.  
1853, 158, § 13.  
1859, 272, § 6.  
Appropriations for a specified year.

1853, 158, § 15.  
Directions to public functionaries in incurring liabilities, &c.

1853, 11, § 7.  
1858, 158, §§ 13, 14.

Same subject.  
1858, 158, § 14.

Improvements, &c., in public buildings, not to be made without an appropriation.  
1859, 177, § 1.

Bills exceeding fifty dollars to be sworn to.  
1859, 221, § 3.

shall be signed by the treasurer, approved by the governor, and countersigned by the auditor.

SECT. 35. The interest on temporary loans to the state from banks, corporations, or individuals, shall be paid semi-annually, on the first days of April and October in each year.

SECT. 36. Salaries payable from the treasury shall be paid quarterly on the first days of April, July, October, and January, and shall be in full for all services rendered to the state by the persons to whom they are paid. No salary shall be paid to any person for a longer period than that during which he has been actually employed in the duties of the office. When a salary is diminished, no greater rate shall be paid by reason of any previous appropriation therefor. No person shall at the same time receive more than one salary from the state treasury.

SECT. 37. Accounts for expenditures incurred or services rendered under an order of either or both branches of the legislature, shall be approved by the presiding officer of the branch by which the same is passed, and thereupon the auditor shall audit and certify the same, and the governor may draw his warrant therefor. But no such order shall authorize the expenditure of more than one hundred dollars, unless a specific appropriation of a larger sum has been previously made.

SECT. 38. The term “incidental expenses,” when used in an appropriation, shall include expenses of postage, printing, and stationery.

SECT. 39. An appropriation for a service or object for which a larger or different appropriation has been made in some previous act or resolve, shall supersede the other.

SECT. 40. Laws making appropriations for a specified year shall not be construed to prevent the application in the following year of any unexpended balance, to the same objects.

SECT. 41. Public functionaries charged with the execution of any service for which an appropriation is made, shall use every effort to accomplish the same for a less sum than the amount of the appropriation, when it can be done conformably to the interests of the state. No public functionary shall make purchases or incur liabilities in the name of the commonwealth for a larger amount than that which has been appropriated by law for the service or object; and the state shall be subject to no responsibility for the acts of its servants and officers beyond the several amounts duly appropriated by law. But this section shall not prevent public officers or boards from continuing the several departments of service under their charge during the month of January, until the pleasure of the legislature is made known, at the rate of expenditure authorized by the appropriations for the preceding year.

SECT. 42. No public officer or board shall incur any new or unusual expense, make any permanent contract, increase any salary, or employ any new clerk, assistant or other subordinate, unless an appropriation sufficient to cover the necessary expense thereof has been previously made by the legislature.

SECT. 43. No permanent improvements, alterations, or additions, shall be made in any of the buildings belonging to the commonwealth, until specific descriptions of such intended changes, and estimates of the expenses thereof, have been submitted to the legislature, and special appropriations made therefor; but this shall not prohibit expenditures necessary for keeping said buildings and the grounds appurtenant thereto in good order and condition.

SECT. 44. Before any charges are paid in bills or schedules for articles purchased, services rendered, or expenses incurred, for the commonwealth, except for salaries fixed by law or payments otherwise provided for, the auditor may, and where the amount exceeds fifty dollars shall, require affidavit to be made that such articles have been purchased, services rendered, and expenses incurred. All original bills, and original



bills included in such schedules, shall, within one month after the money has been paid, be delivered to the auditor to be retained by him.

SECT. 45. No committee of the legislature shall incur any expenditure or liability in behalf of the state, after the close of the regular session, unless there is a subsisting appropriation therefor; and the amount of the expenditure or liability shall be limited by the appropriation.

Committees not to incur liability unless, &c. 1858, 158, § 12.

SECT. 46. Any appropriation for fees of witnesses before committees of the legislature, may be applied so far as necessary to pay the expense of taking depositions ordered or authorized by such committees. Bills for such fees or expenses of depositions shall be approved and audited as provided in section thirty-seven.

Appropriation for witness fees may be applied to taking depositions. 1859, 221, § 1.

SECT. 47. In cases not otherwise provided for, the compensation for the services of committees of the legislature appointed to act during the recess, and that of legal counsel and commissioners appointed by the executive, shall be determined by the governor and council, who shall approve such claims before they are sent to the auditor of accounts.

Compensation of commissioners, &c., to be determined by governor and council. 1859, 143.

SECT. 48. Commissioners and other public officers having jurisdiction throughout the commonwealth, to whom travelling expenses are allowed, shall receive for each mile actually travelled, not more than three and one-half cents a mile each way, nor more than the amount actually expended.

Travelling expenses of public officers. 1859, 221, § 7.

SECT. 49. No bill of charges against the state shall be allowed and paid, unless it specifies the items.

Bills of charges to contain items. 1852, 33.

SECT. 50. The secretary, treasurer, auditor, land agent, and adjutant-general, shall lay before the legislature, at the commencement of the annual session, an account of the salaries and allowances received by them and their clerks, and all other expenses of their offices, for the preceding year, with a statement of the names and periods of service of each clerk employed.

Secretary, &c., to lay before legislature accounts of expenses, &c. Resolves, 1819, 268. 1861. ch. 83. § 2

CHAPTER 16.

OF THE STATE BOARD OF AGRICULTURE.

SECTION

- 1. Board, how constituted.
- 2. Tenure of office of members—vacancies, how filled.
- 3. Board to meet at state house. Members to have no compensation, except for expenses.
- 4. Secretary and clerk, salaries of, &c.
- 5. Board to investigate subjects relating to agriculture, take donations, &c.

SECTION

- 6. Board to provide forms and regulate returns of agricultural societies, &c.
- 7. to report to legislature.
- 8. Secretary to publish for distribution abstracts of returns of agricultural societies.
- 9. may appoint agents. Agents to report to.

SECTION 1. The governor, lieutenant-governor, and secretary of the commonwealth, one person appointed from and by each agricultural society which receives an annual bounty from the state, and three other persons appointed by the governor with the advice and consent of the council, shall constitute the state board of agriculture.

Board, how constituted. 1852, 142, § 1.

SECT. 2. One-third of the appointed members of the board shall retire from office on the first Wednesday of February in each year, according to their appointments. The vacancies thus occurring shall be filled by the governor and council, or the agricultural societies, as the offices were before filled, and the persons thus appointed shall hold their offices for three years from the expiration of the former terms. Other vacancies may be filled in the same manner for the remainder of the

Tenure of office of members—vacancies, how filled. 1852, 142, §§ 1, 2.



vacant terms. The present members of the board shall continue to hold their offices during the terms for which they are appointed.

Board to meet at state house. to have no compensation except, &c. 1852, 142, § 4.

secretary, &c. 1852, 142, § 4. Resolves, 1854, 72. 1859, 46. See Ch. 15, § 36.

Board to investigate subjects relating to agriculture, take donations, &c. 1852, 142, § 3.

to provide forms, regulate returns, &c. 1853, 127, § 2.

to report to legislature. 1852, 142, § 4. See Ch. 4.

Secretary to publish abstracts, &c. 1847, 69, § 4. 1852, 142, § 4.

may appoint agents, &c. agents to report to. 1859, 203, § 1.

SECT. 3. The board shall meet at the state house at least once in each year, and as much oftener as may be deemed expedient. No member thereof shall receive compensation from the state, except for personal expenses when engaged in the duties of the board.

SECT. 4. They may appoint and prescribe the duties of a secretary of the board, who shall receive a salary of two thousand dollars a year; and who at such times as the board approve may employ a clerk at a salary not exceeding six hundred dollars a year.

SECT. 5. They shall investigate such subjects relating to improvement in agriculture in this state as they think proper, and may take, hold in trust, and exercise control over, donations or bequests made to them for promoting agricultural education, or the general interests of husbandry.

SECT. 6. They may prescribe forms for and regulate the returns required of the different agricultural societies, and furnish to the secretary of each, such blanks as they deem necessary to secure uniform and reliable statistics.

SECT. 7. They shall annually on or before the fourth Wednesday of January, by their chairman or secretary, submit to the legislature a detailed report of their doings, with such recommendations and suggestions as the interests of agriculture may require.

SECT. 8. The secretary of the board shall in each year cause to be made and published for distribution, as full an abstract of the returns of the agricultural societies as he deems useful.

SECT. 9. He may appoint one or more suitable agents, to visit the towns in this state, under the direction of the board, for the purpose of inquiring into the methods and wants of practical husbandry, ascertaining the adaptation of agricultural products to soil, climate, and markets, encouraging the establishment of farmers' clubs, agricultural libraries, and reading-rooms, and of disseminating useful information in agriculture by means of lectures or otherwise. Such agents shall annually in October make detailed reports to the secretary of the board.

## TITLE VI.

### CHAPTER 17.

#### OF COUNTIES AND CERTAIN COUNTY OFFICERS.

SECTION

1. Boundaries, powers, &c., of counties.
2. Former conveyances to counties confirmed.
3. In Suffolk, county property to belong to Boston.
4. How county lands may be sold.
5. Counties to provide public buildings except, &c.
6. In Suffolk, public buildings to be provided by Boston.
7. County maps.
8. Same subject.

SECTION

9. Counties of Suffolk and Middlesex to have common jurisdiction on Charles River.
10. Courts in Suffolk county to have concurrent jurisdiction with courts of other counties.

COUNTY COMMISSIONERS.

11. County commissioners to be sworn and to choose chairman.
12. Proceedings, if any of board are interested.
13. If opposing parties appear, three disinterested commissioners must act.

SECTION

14. Commissioners may punish for contempt.
15. processes of, sheriffs and other officers to execute.
16. general powers of.
17. to examine and allow treasurers' accounts, &c.
18. to make estimates annually.
19. Penalties.
20. Commissioners and treasurer to publish county receipts and expenditures.
21. Commissioners to apportion county taxes.
22. Limit of county debt.
23. Contracts above \$300, to be made in writing after proposals issued, &c.
24. When recognizances shall be required of parties who apply for damages, &c.
25. Costs, &c., of applications for damages, to be included in commissioners' estimate.
26. Proceedings not confined to the regular meetings of commissioners.
27. to be returned to the regular or special meeting, &c.
28. Commissioners to furnish blanks, &c., to cities and towns.
29. compensation of.
30. Costs when petition is disallowed.
31. Commissioners, times and places for meetings of.
32. Selectmen of Nantucket to have powers of commissioners; town may raise money for county expenses.
33. Aldermen of Boston to have powers of commissioners, except, &c.
34. In Chelsea, North Chelsea, and Winthrop, commissioners of Middlesex to act.
35. To whom powers and duties of commissioners appertain.

COUNTY TREASURERS.

36. County treasurer to be sworn and give bond.
37. compensation of.
38. vacancy in office of, how filled.
39. to pay over moneys according to order of commissioners.
40. to account with commissioners.
41. Further assessments not to be made until treasurer's accounts are allowed.
42. Treasurer may sue on bonds, &c., given to predecessors, and prosecute for injuries.
43. proceedings when public officer fails to pay over money to.
44. of Suffolk.
45. of Nantucket.
46. Incompatibility.

BOARD OF EXAMINERS.

47. Board of examiners in each county, except, &c., of whom to consist.
48. duty of in respect to commissioners' accounts.
49. compensation of.

BOARD OF ACCOUNTS IN SUFFOLK.

50. In Suffolk, board of accounts to examine and settle accounts, &c. Compensation.

SHERIFFS.

51. Sheriffs, to be sworn and give bond.
52. vacancies in office of, how filled.
53. may appoint deputies.
54. bonds of, to be annually examined by superior court, &c.; if insufficient, new to be given.
55. sureties of, may be discharged, when, &c.
56. penalty on, for neglect to give bond.

SECTION

57. Sheriffs, bond of, may be sued, &c.
58. Actions for malfeasance, &c., of sheriffs or deputies to survive.
59. Treasurer to furnish copies of bonds.
60. Sheriffs not to be arrested. Executions to run against property only.
61. liability of, when execution is returned unsatisfied.
62. upon removal of, *alias* execution may issue against their bodies, &c.
63. Defaults of deputies, &c., after death, &c., of sheriff, to be adjudged a breach.
64. Sheriff and deputy not to act as attorney. Penalty.
65. shall serve all writs, &c.; may serve where their towns, &c., are parties, &c.; may attend juries for assessing damages, &c.
66. may serve demands, &c., by copy.
67. may command aid.
68. may serve writs after sheriff's removal from office.
69. to attend courts, &c.
70. compensation allowed to, in each county.
71. to render account to county treasurers of all money received.
72. to make returns of moneys received, &c., and number of days' attendance upon courts. Penalty.
73. Secretary to furnish blanks.

CORONERS.

74. Coroners to be sworn, and give bond.
75. Superior court to examine into sufficiency of coroner's bonds; if insufficient, new to be given.
76. Surety of coroner, may petition to be discharged.
77. Penalty for neglecting to give bonds. Suits on coroner's bonds.
78. Coroner to execute process where sheriff is a party, &c.
79. shall perform duties of sheriff during vacancy in sheriff's office.
80. may require aid; not to act as counsel, &c.

COMMISSIONERS OF INSOLVENCY.

81. Commissioners of insolvency to be sworn. Vacancies in office of, how filled.

REGISTERS OF DEEDS.

82. Districts in Berkshire, middle, northern, southern.
83. in Bristol, southern, northern.
84. in Middlesex, northern, southern.
85. Registry of deeds in other counties.
86. Register to be sworn, and give bond.
87. may be appointed in certain cases.
88. may be removed.
89. must reside where office is kept.
90. Deeds to be recorded in county or district where the estate lies.
91. Special provision respecting Barnstable.
92. Register to keep book for noting receipt of deeds.
93. Deeds to be noted therein when received.
94. Manner of recording instruments, &c.
95. Certificate to be made on deed, when recorded.
96. Form of indexes to be kept by registers.
97. Entries to be made within twenty-four hours, &c.
98. Provisions respecting entry of name of grantor of estates conveyed by sheriffs, &c.
99. Deeds of executors, &c., and partitions of land, how indexed.

## SECTION

100. Registers to make annual returns to secretary of number of instruments recorded, amount of fees received, &c.  
 101. Form of such returns.  
 102. Abstract of returns to be laid before legislature.

## SECTION

103. Copies of indexes to be made annually, in which surnames shall be assorted into distinct alphabetical lists, &c.  
 104. Copies of indexes or new indexes may be made, and may be printed for sale, &c.

## COUNTIES.

Boundaries, &c., of counties. Mass. Records, 1643, vol. 2, p. 38. 1662, vol. 4, part 2, p. 52. Plym. Records, 1685. Statutes, 1693, 2. 1695, s. 1731, 13. 1761, 4. 1793, 43. 1803, 14. 1811, 61. 1812, 87. R. S. 14, §§ 1, 4, 5. See Ch. 1, § 1. Former conveyances to counties, confirmed. R. S. 14, § 6.

In Suffolk county property to belong to Boston. R. S. 14, § 7. 1852, 53. 1857, 18.

How county lands may be sold. R. S. 14, § 8.

Counties to provide public buildings, except, &c. R. S. 14, § 9.

In Suffolk, to be provided by Boston. R. S. 7, § 26. R. S. 14, §§ 10, 31. 1854, 448, § 36. County maps. 1846, 241, § 2. 1853, 325, § 1.

Same subject. 1846, 241, § 3. 1855, 325, § 2.

Counties of Suffolk and Middlesex to have common juris-

SECTION 1. The boundaries, rights, duties, powers, privileges, and immunities, of the several counties, shall remain as now established. Each county shall continue a body politic and corporate for the following purposes: to sue and be sued, to purchase and hold for the use of the county personal estate and lands lying within its own limits, and to make necessary contracts and do necessary acts in relation to the property and concerns of the county.

SECT. 2. Real and personal estate heretofore conveyed by any form of conveyance to the inhabitants of a county, to the county treasurer, or to a committee, or other persons, for the use and benefit of a county, shall be deemed to be the property of such county; and such conveyances shall have the same force and effect as if made to such counties by their respective corporate names.

SECT. 3. In the county of Suffolk, the real and personal estate which on or before the twenty-third day of June in the year one thousand eight hundred and thirty-one belonged, or was deemed and taken to belong, to said county, shall belong to and be vested in the city of Boston; and the city of Chelsea, and towns of North Chelsea and Winthrop, shall have no right, title, or interest, therein.

SECT. 4. The county commissioners, or other public officers having the charge and management of the county lands, may by their order of record appoint agents to sell any real estate of their county; and deeds made on behalf of the inhabitants of the county by such agents, under their proper hands and seals, and duly acknowledged by them, shall be sufficient to convey the right, title, interest, and estate, which the county then has to the lands so conveyed.

SECT. 5. Each county except Suffolk shall provide suitable court houses, jails, houses of correction, fire-proof offices, and other necessary public buildings for the use of the county; except that the county of Dukes County need not provide a house of correction.

SECT. 6. In the county of Suffolk, the court houses, jails, house of correction, fire-proof offices, and other necessary public buildings, for the use of the county, shall be provided by the city of Boston, and said city shall pay all county charges.

SECT. 7. Changes in the boundaries of cities and towns, the courses of roads, railroads, and canals, and other topographical alterations in each county, shall be correctly and fairly delineated on the county maps in the possession of the county commissioners, who shall retain said maps, and from time to time cause such delineations to be made thereon.

SECT. 8. The secretary of the commonwealth shall, as often as necessary, transmit the manuscript county maps in his office to the respective county commissioners, who shall cause to be transferred thereto, by a competent engineer or surveyor under their direction, all alterations and corrections mentioned in the preceding section, and shall within two months after receiving the same return such maps to the office of the secretary, who shall immediately cause the alterations to be delineated on the plates of the state map.

SECT. 9. The jurisdiction of the counties of Suffolk and Middlesex shall be in common in and upon the waters of Charles River; that is to say, all that space which lies within the banks of the river so far as the



same runs between said counties. All offences committed within the banks of the river, as above described, may be heard, tried, and punished, in that county in which legal process against the offender is first issued, in like manner as if such offence had been committed in such county; and civil process from either county may run into and be executed within the common jurisdiction.

jurisdiction on Charles River. R. S. 14, §§ 2, 3.

SECT. 10. The courts in the county of Suffolk, concurrently with the courts of the several other counties in which parts of the territory hereinafter described are situated, shall have jurisdiction of all crimes, offences, and misdemeanors, committed on the islands or waters in Boston harbor which lie westerly of a line drawn from Point Alderton to the easternmost point of the Outer Brewster Island, and from thence to Short Beach, at the line dividing the towns of North Chelsea and Winthrop, as if said islands and waters were within the limits of the county of Suffolk.

Courts in Suffolk county to have concurrent jurisdiction with courts of other counties. 1858, 135.

COUNTY COMMISSIONERS.

SECT. 11. County commissioners before entering upon their duties shall be sworn, and at their first meeting after the annual election in each year, shall choose a chairman of their board by ballot.

County commissioners to be sworn, &c. R. S. 14, §§ 24, 25.

SECT. 12. If either of the county commissioners is interested in a question before the board, or if any part of a road upon which they are to act lies within the city or town in which either of them resides, or if either of them is unable to attend, or if there is a vacancy in the board, the other member or members shall give notice to one or both of the special commissioners, as the case may require, who shall forthwith proceed to act as a member of the board. If a board cannot be organized in conformity with these provisions, then such residence in the city or town in which the road lies, shall be no disqualification.

1-54, 77, § 4. Proceedings, if either is interested. R. S. 14, § 26. 1837, 15. 2 Met. 185. 7 Cush. 395. 13 Gray, 12.

SECT. 13. No business in which opposing parties appear, shall be finally determined, except by consent, unless there are three disinterested commissioners present and acting thereon; but the provisions of this and the preceding section, except so much thereof as relates to proceedings in case of a vacancy, shall not extend to the county of Dukes County.

If opposing parties appear, three commissioners to act. R. S. 14, § 27. 1837, 151. 3 Cush. 1.

SECT. 14. The commissioners when assembled for the performance of their duties, may administer oaths to witnesses, and punish disorderly conduct causing an interruption to the business of their meeting, or amounting to an open and direct contempt of their authority or persons, by fine not exceeding five dollars, or by confinement in the custody of the sheriff, or a deputy-sheriff, coroner, or constable, for a time not exceeding twelve hours.

Commissioners may punish for contempt. R. S. 84, § 2. 1856, 53.

SECT. 15. Sheriffs, deputy-sheriffs, coroners, and constables, shall serve and execute all legal warrants and processes to them directed by the commissioners.

Sheriffs, &c., to execute processes. R. S. 84, § 3.

SECT. 16. The commissioners shall have authority:

Commissioners, general powers of. R. S. 14, § 31.

First, to provide for the erecting and repairing of court houses, jails, and other necessary public buildings, within and for the use of the county.

Second, to represent their county, and to have the care of the county property, and the management of the business and concerns of the county, in all cases which are not otherwise specially provided for.

Third, to do such other acts as may be necessary to carry into effect the powers given them by law.

SECT. 17. They shall examine and allow the annual accounts of the county treasurers, and allow and settle all accounts of the receipts and expenditures of the county.

to examine treasurers' accounts, &c. R. S. 14, §§ 31, 35.

SECT. 18. They shall annually prepare and make up to the last day of each year, the estimates of taxes for all county charges and debts for

to make estimates annually.

R. S. 14, §§ 31,  
32, 35.  
1836, 137.

the year then next ensuing; including the building and repairing of court houses, jails, houses of correction, and other county buildings, with their appurtenances. The estimates so made up and approved by them, shall be recorded by their clerk in a book kept for that purpose; and a fair copy thereof, with a statement of the amount of borrowed money due from the county, and the amount of taxes due and unpaid, at the time of making said estimates, signed by the presiding commissioner and attested by their clerk, shall, with the treasurer's accounts, be sealed up and transmitted by the clerk to the office of the secretary of the commonwealth on or before the first day of February next after making up the same, to be laid before the legislature for examination and allowance.

Penalties.  
1847, 199.

SECT. 19. Any county commissioner, clerk, or other officer, who neglects to perform a duty required of him by the two preceding sections, shall forfeit fifty dollars.

Commissioners  
and treasurer to  
publish county  
receipts and ex-  
penditures.  
R. S. 14, § 36.  
1853, 310, § 1.

SECT. 20. The county treasurer and commissioners of each county except Suffolk shall at the close of each year publish in one or more newspapers, not exceeding three, printed in the same or an adjoining county, an account of the receipts and expenditures of their county, arranged under distinct heads, and a specific statement of the debts of the county, the purposes for which they were contracted, and the time when they become due.

Commissioners  
to apportion  
county taxes.  
R. S. 14, §§ 31,  
33.

SECT. 21. The commissioners shall apportion all county taxes according to the then last state valuation, and shall by their clerk certify to the assessors of the several cities and towns their respective portions thereof.

County debts.  
1853, 310, § 2.  
1854, 235.  
1859, 231.

SECT. 22. The commissioners may renew the whole or any part of the county debts, negotiate loans in anticipation of and to be paid from the annual tax when collected, and contract new debts not exceeding in any one year or for any one object, thirty dollars for each one thousand inhabitants of the county.

Contracts above  
\$300 to be made  
in writing after  
proposals is-  
sued, &c.  
1854, 206.

SECT. 23. All contracts to be made by the commissioners for public works, shall, if exceeding three hundred dollars in amount, be made in writing, after notice for proposals therefor has been issued and published at least three times in some newspaper published in the county, city, or town interested therein.

In what cases  
recognizances  
shall be requir-  
ed of parties  
who apply for  
damages, &c.  
1836, 278, § 1.  
1847, 259, § 2.  
1857, 213, § 4.  
See Ch. 43, § 48.

SECT. 24. When a person or corporation applies to the commissioners to estimate or assess damages sustained by reason of property taken or intended to be taken for the purposes of a railroad or other corporation, or to perform any other official act in relation to matters in which the county has no interest, the commissioners, before proceeding to act, shall require the party to enter into a recognizance to the county, with sureties to their satisfaction, for the payment of all costs and expenses which shall arise by reason of such application and the proceedings thereon; and the same remedy shall be had to enforce the payment thereof, as is provided in the case of recognizances entered into under the provisions of chapter forty-three.

When damages  
assessed, costs,  
&c., to be add-  
ed.  
1836, 278, § 2.

SECT. 25. The commissioners, when application is made by a party whose property has been or is intended to be taken by a railroad or other corporation, shall, if they assess damage, add thereto the amount of costs and expenses incurred by reason of the application and the proceedings of the commissioners thereon.

Proceedings at  
other times  
than regular  
meetings.  
1839, 76, § 2.  
1846, 271.  
1847, 259, § 1.

SECT. 26. The commissioners or the chairman of the board may, at other times than at regular meetings, receive petitions relating to railroads or to matters in which the county has no interest, and take recognizances thereon, and upon such petitions, and similar petitions entered at a regular meeting and pending before them, may appoint times for hearing the parties, and acting thereon, and direct proper notices to be given to persons interested.



SECT. 27. The commissioners and chairman shall make return of such petitions and recognizances, with their proceedings, at any regular meeting, or special meeting held for that purpose; their clerk shall enter the same of record, and such further proceedings shall be had thereon as the case shall require. The costs of such special meetings shall be paid by such of the parties as the commissioners decide.

Petitions, &c., to be returned to regular or special meeting, &c.  
1859, 76, § 3.  
1846, 271.  
1847, 250, § 1.

SECT. 28. The commissioners shall annually, before November, furnish to the several clerks of the cities and towns, blank forms and envelopes for returns of votes for commissioners, county treasurer, and register of deeds, with such printed directions on the envelopes as they shall deem necessary for the guidance and direction of such officers in making the returns according to law.

Commissioners to furnish blanks, &c.  
1841, 126.  
1857, 295, § 1.

SECT. 29. The commissioners and special commissioners of each county shall receive from the county treasury, in equal semi-annual payments, in January and July, in full payment for all their services and travel in their respective counties, and to be divided among them in proportion to the number of days and amount of travel actually performed by them respectively, annual salaries as follows:—

compensation of.  
1859, 163, §§ 1, 2,  
3  
1860 Ch. 193 § 2.

- For the county of Barnstable, eight hundred dollars:
- For the county of Berkshire, twelve hundred dollars:
- For the county of Bristol, eleven hundred dollars:
- For the county of Dukes County, two hundred dollars:
- For the county of Essex, twenty-five hundred dollars:
- For the county of Franklin, nine hundred dollars:
- For the county of Hampden, fourteen hundred dollars:
- For the county of Hampshire, nine hundred dollars:
- For the county of Middlesex, three thousand dollars:
- For the county of Norfolk, eighteen hundred dollars:
- For the county of Plymouth, fifteen hundred dollars:
- For the county of Worcester, twenty-two hundred dollars.

SECT. 30. When a petition to the commissioners is disallowed, and costs are chargeable to the petitioner, there shall be taxed for each commissioner at the rate of three dollars a day for time, and five cents a mile for travel to and from the place of meeting, to be paid into the county treasury.

Costs when petition is disallowed.  
1859, 163, § 4.

SECT. 31. The commissioners shall hold meetings in their respective counties at the following times and places:—

Times and places for meetings.  
Essex.  
R. S. 84, § 6.  
1851, 227.  
1860 Ch. 3.

In the county of Essex, at Ipswich, on the second Tuesday of April; at Salem, on the second Tuesday of July; at Newburyport, on the second Tuesday of October; and at Lawrence, on the last Tuesday of August; and on the fourth Tuesday of December, at Ipswich, Salem, or Newburyport, as they shall order at their next preceding term.

In the county of Middlesex, at Cambridge, on the first Tuesday of January; at Concord, on the first Tuesday of June; and at Lowell, on the first Tuesday of September.

Middlesex,  
R. S. 84, § 6.  
1842, 1.  
1857, 36.

In the county of Worcester, at Worcester, on the fourth Tuesday of March, the third Tuesday of June, the second Tuesday of September, and the fourth Tuesday of December.

Worcester.  
R. S. 84, § 6.

In the county of Hampshire, at Northampton, on the first Tuesdays of March, September, and December, and on the Tuesday next after the second Monday of June.

Hampshire.  
R. S. 84, § 6.  
1846, 221.

In the county of Franklin, at Greenfield, on the first Tuesdays of March and September, and the second Tuesdays of June and December.

Franklin.  
R. S. 84, § 6.

In the county of Hampden, at Springfield, on the second Tuesday of April, the first Tuesday of October, and the fourth Tuesdays of June and December.

Hampden.  
R. S. 84, § 6.

In the county of Berkshire, at Lenox, on the first Tuesdays of January, April, July, and September.

Berkshire.  
1837, 146.  
1840, 77.



Norfolk.  
R. S. 84, § 6.  
1837, 200.

In the county of Norfolk, at Dedham, on the third Tuesday of April, the fourth Tuesdays of June and September, and the last Wednesday of December.

Plymouth.  
R. S. 84, § 6.

In the county of Plymouth, at Plymouth, on the first Tuesday of January, the third Tuesday of March, and the first Tuesday of August.

Bristol.  
R. S. 84, § 6.

In the county of Bristol, at Taunton, on the fourth Tuesdays of March and September.

Barnstable.  
R. S. 84, § 6.

In the county of Barnstable, at Barnstable, on the second Tuesdays of April and October.

Dukes County.  
R. S. 84, § 6.

In the county of Dukes County, at Edgartown, on the Wednesday next after the third Monday of May, and the Wednesday next after the second Monday of November.

Powers of commissioners, and county expenses in Nantucket.  
R. S. 14, § 30.  
1838, 71, § 1.

SECT. 32. In the county of Nantucket, the selectmen of the town of Nantucket shall have like powers and perform like duties, as are exercised and performed by the commissioners of other counties; and said town may raise such sums of money as may be necessary for defraying the expenses of the county of Nantucket.

in Suffolk.  
R. S. 14, § 29.  
1854, 418, § 33.

SECT. 33. In the county of Suffolk, the aldermen of the city of Boston shall have like powers and perform like duties within said city, as are exercised and performed by the county commissioners of other counties, except such as relate to trials by jury, and the recovery of damages on such trials, in laying out, altering, or discontinuing, highways or town ways.

In Chelsea, North Chelsea, and Winthrop, commissioners of Middlesex to act.  
R. S. 84, §§ 4, 7.  
1851, 336.  
1852, 163.  
1857, 14, 18.  
1859, 163.

SECT. 34. In the county of Suffolk, the county commissioners for the county of Middlesex shall have jurisdiction within the city of Chelsea and the towns of North Chelsea and Winthrop, and shall exercise and perform therein all the powers and duties relating to highways and to all other matters which in their own county are committed to their control and direction, except as is otherwise provided by law; and when performing duties which relate to said places, they shall be paid therefor by said places, or either of them, in such proportions as the commissioners may direct, at the rate of three dollars a day, and five cents a mile, travel, for each commissioner attending in the case.

To whom powers and duties of commissioners appertain.  
R. S. 14, § 37.  
1847, 199.

SECT. 35. All the provisions of law concerning the powers, duties, and liabilities, of county commissioners and their clerks, shall, except where otherwise specially provided, be construed to include and apply to all other public officers who by law exercise the powers of such commissioners or clerks in the respective counties.

#### COUNTY TREASURERS.

County treasurer to be sworn and give bond.  
R. S. 14, § 45.

SECT. 36. The treasurer shall be sworn by the county commissioners or any one of them, and shall give bond to the county, with sufficient sureties and in such penal sum as the commissioners direct, for the faithful discharge of the duties of his office.

compensation of.  
R. S. 14, § 51.  
1859, 253.

SECT. 37. The treasurer shall be furnished by the county with an office in the court house or other county building; and receive in quarterly payments from the treasury an annual salary, in full for all services by him performed, as follows:—

- For the county of Barnstable, five hundred dollars:
- For the county of Berkshire, eight hundred dollars:
- For the county of Bristol, eleven hundred dollars:
- For the county of Dukes County, one hundred dollars:
- For the county of Essex, fifteen hundred dollars:
- For the county of Franklin, six hundred dollars:
- For the county of Hampden, eight hundred dollars:
- For the county of Hampshire, six hundred dollars:
- For the county of Middlesex, two thousand dollars:
- For the county of Norfolk, eleven hundred dollars:

For the county of Plymouth, six hundred dollars :

For the county of Worcester, fifteen hundred dollars :

SECT. 38. If the office of treasurer becomes vacant by the death, removal from the county, or incapacity, of the treasurer, or otherwise, the commissioners shall appoint some suitable person resident in the county to fill the vacancy. The person so appointed, upon being sworn and giving bond, shall be treasurer until another is elected and qualified in his stead.

Treasurer, vacancy in office of, how filled.  
R. S. 14, § 46.

SECT. 39. The treasurer, except where provision is otherwise made by law, shall pay all money received by him for the use of the county, as the commissioners shall direct.

to pay over money as commissioners direct.  
R. S. 14, § 50.  
to account with commissioners.  
R. S. 14, §§ 35, 51.  
1847, 199.

SECT. 40. At the close of each year he shall render his account to the county commissioners and account with them for all money received and paid by him in behalf of the county, and when the account is approved and allowed, it shall be delivered by him to the clerk of the commissioners. If the treasurer neglects to perform the duty required of him by this section, he shall forfeit fifty dollars.

SECT. 41. No further assessment shall be made on the several places in the county until the treasurer thereof has rendered his accounts, and they are laid before the legislature as provided by law, and allowed.

no further assessments to be made until his accounts are allowed.  
R. S. 14, § 53.  
may sue on county bonds, &c.  
R. S. 14, § 54.

SECT. 42. The treasurer may prosecute to final judgment and execution, suits upon bonds, notes, and other securities, given to the county or to him or his predecessors in office, whether commenced by himself or his predecessor. He may prosecute for injuries done to the public lands, buildings, or other property of his county.

SECT. 43. If a public officer required by law to account with and pay over money to the county treasurer, fails to do so for ten days after the time prescribed by law therefor, the treasurer shall give notice thereof to the district-attorney, who shall forthwith institute the necessary proceedings for the recovery of the amount due.

to give notice, &c., when public officer fails to pay over money.  
1859, 221, § 4.

SECT. 44. In the county of Suffolk, the treasurer of the city of Boston shall be the county treasurer.

of Suffolk.  
R. S. 14, § 47.  
1854, 448, § 42.  
of Nantucket.  
R. S. 14, § 48.

SECT. 45. In the county of Nantucket, the treasurer of the town of Nantucket shall be county treasurer.

SECT. 46. No person holding the office of attorney-general, district-attorney, justice of the superior court, clerk of the courts, or sheriff, shall be county treasurer.

Incompatibility.  
R. S. 14, § 49.  
1859, 196.

BOARD OF EXAMINERS.

SECT. 47. In each county, except Suffolk and Nantucket, the judge and register of the probate court, and the clerk of the courts, shall be a board of examiners for the county, and if two of said offices are held by the same person in any county, the sheriff of such county shall be a member of the board.

Board of examiners, of whom to consist.  
R. S. 14, § 38.  
1858, 93, §§ 1, 2, 4, 5.  
See Ch. 7, §§ 25, 26.

SECT. 48. The board shall examine the accounts of the county commissioners for services rendered in the discharge of their duties; and if it appears that the accounts ought to be allowed, they shall make a certificate thereof upon the same.

to examine accounts of commissioners.  
R. S. 14, § 39.  
1859, 163.

SECT. 49. The members of the board shall each be paid at the rate of three dollars a day for every day employed in the discharge of their duties, and ten cents a mile for travel to and from the place of their meeting; and their accounts shall be audited and settled by the county treasurer.

compensation of.  
R. S. 14, § 40.

BOARD OF ACCOUNTS IN SUFFOLK.

SECT. 50. In the county of Suffolk, the judge of the probate court and the justices of the police court of the city of Boston shall be a board of accounts, three of whom shall constitute a quorum; who shall

In Suffolk, board of accounts to examine accounts, &c.

Board of ac-  
counts in Suf-  
folk.  
R. S. 14, §§ 41,  
42.  
1843, 7, § 1.  
1843, 61, §§ 1, 2.

compensation  
of.

meet quarter yearly, and as much oftener as may be necessary, to examine and allow bills of costs, accounts, and charges arising in said police court and in the maintenance and keeping of the prisoners in the jail of the county of Suffolk, and of other expenses and charges in keeping said jail and other places of confinement and punishment in said city. They shall certify such accounts, charges, and expenses, as are allowed by them, by an indorsement thereon addressed to the public officer by whom the same are payable. They shall each receive three dollars a day while employed in the discharge of said duties.

## SHERIFFS.

Sheriffs to be  
sworn and give  
bond.  
R. S. 14, § 58.  
1853, 69.  
1859, 196.

vacancies in  
office of, how  
filled.  
R. S. 14, §§ 56,  
60, 63.  
1856, 173, § 8.

may appoint  
deputies.  
R. S. 14, § 59.  
bonds of, to be  
annually exam-  
ined by super-  
ior court, &c.  
R. S. 14, § 62.  
1859, 196.

sureties of,  
may be dis-  
charged, when,  
&c.  
R. S. 14, § 61.  
1859, 196.

penalty on,  
for neglect to  
give bond.  
R. S. 14, § 63.  
1859, 196.

bond of, may  
be sued, &c.  
R. S. 14, §§ 64,  
65.  
17 Mass. 567.

SECT. 51. Every sheriff, before performing any official act by himself or deputy, shall be sworn, and shall give to the treasurer of the commonwealth such bond with sureties as the superior court shall direct and approve, with condition that he shall faithfully perform his own duties and be responsible for all his deputies.

SECT. 52. If a vacancy occurs in the office of sheriff in any county, the governor with the advice and consent of the council may appoint and commission some person to fill the same, who shall hold his office until another is elected and qualified. Every sheriff so appointed and qualified shall give immediate notice thereof to the several coroners of his county.

SECT. 53. Each sheriff may appoint deputies, who before proceeding to execute any process shall be sworn.

SECT. 54. The superior court shall once in each year examine into the sufficiency of the official bonds given by the sheriffs; and if it appears that any such bond is insufficient, the court shall cause a record thereof to be made by their clerk, give notice to the sheriff, and require him to give a new bond to the satisfaction of the court, within such time as they order.

SECT. 55. When a surety upon the official bond of a sheriff, or the heirs, executors, or administrators, of such surety, shall, in the county of the sheriff, petition the superior court to be discharged from the bond, the court shall cause the sheriff to be served with an attested copy of the petition, and shall require him to give new security, to the satisfaction of the court, at such time as they order. Upon new security being given, such surety, his heirs, executors, and administrators, shall be discharged from further responsibility on the bond.

SECT. 56. If a sheriff neglects or refuses to give bond as required in this chapter, he shall forfeit one hundred and fifty dollars for each month's neglect, and the attorney-general shall prosecute for the same; and the superior court shall forthwith certify the fact of such neglect or refusal to the governor and council, and to the attorney-general. Unless such sheriff satisfies the governor and council that there was reasonable cause for such neglect, and gives security to their satisfaction within twenty days after the date of such certificate, the governor with the advice and consent of the council shall remove him from office.

SECT. 57. When the condition of the official bond of a sheriff is broken, any person who has recovered judgment against the sheriff, his executors, or administrators, for a cause or injury which constitutes a breach of the condition of the bond, or has obtained an allowance of his claim against the estate of the sheriff if settled as insolvent in the probate court, may at his own expense institute and prosecute a suit thereon in the name of the treasurer. The writ shall be indorsed by the person for whose benefit the suit is instituted, or his attorney, and like proceedings shall be had thereon as in a suit by a creditor on an administration bond. The amount of such judgment or allowance, or such part thereof as remains unsatisfied, with the interest due thereon, shall be the sum for which execution shall be awarded.



SECT. 58. Actions for the malfeasance or nonfeasance of a sheriff or his deputies, may be sued against the executors or administrators of such sheriff, in like manner as if the cause of action survived at common law.

Actions against sheriffs, &c., to survive.  
R. S. 14, § 66.  
6 Met. 94, 114.  
See Ch. 127.

SECT. 59. The treasurer of the commonwealth shall deliver an attested copy of the official bond of any sheriff to any person applying and paying therefor; and such copy shall be received as competent evidence in a case relating to the bond; but if the execution of the bond is disputed, the court may order the treasurer to bring the original into court, for the purposes of the trial.

Treasurer to furnish copies of sheriff's bonds.  
R. S. 14, § 67.

SECT. 60. A sheriff shall not be arrested upon mesne process or execution in a civil action. When judgment is rendered against him, either in his official or private capacity, for a sum of money, the execution shall be issued against his goods, chattels, and lands, but not against his body.

Sheriffs not to be arrested. Executions to run against property only.  
R. S. 14, §§ 73, 74.  
1 Gray, 51, 60.

SECT. 61. If an execution issued against the goods, chattels, or lands, of a person who is sheriff, shall be returned not satisfied, the creditor may file before the governor and council an attested copy of such execution and return, and give notice of such proceedings to the sheriff. If the sheriff does not within thirty days after such notice pay to the creditor the whole amount of his debt with reasonable costs of the copies and notifications aforesaid, the governor with the advice of the council shall remove him from office.

Liability of, when execution is returned not satisfied.  
R. S. 14, § 75.

SECT. 62. When a sheriff is removed under the preceding section, the clerk of the court from which any execution against him has issued, upon the return thereof unsatisfied, and after the appointment of another sheriff, shall make out *alias* executions in common form, as well against the body, as the goods, chattels, and lands, of the judgment debtor.

upon removal of, *alias* execution may issue against their bodies, &c.  
R. S. 14, § 76.

SECT. 63. Any default or misfeasance in office of a deputy-sheriff or jailer, after the death or resignation of the sheriff by whom he was appointed, shall be adjudged a breach of the condition of the official bond given by such sheriff.

Defaults of deputies, &c., after death, &c., of sheriff.  
R. S. 14, § 77.  
7 Mass. 505.

SECT. 64. A sheriff or deputy-sheriff who appears in a court or before a justice of the peace as attorney or counsel for any party in a suit, or draws, makes, or fills up a writ, declaration, plea, or process for such party, or with intent to procure himself to be employed in the collection of a demand, or in any manner to make gain or profit therefrom, advises, counsels, or encourages any person, directly or indirectly, to commence a suit or process, shall forfeit fifty dollars.

Sheriff and deputy not to act as attorney. Penalty.  
R. S. 14, §§ 79, 80.  
6 Pick. 483.  
See § 80, and Ch. 18, § 65.

SECT. 65. Sheriffs and their deputies shall serve and execute, within their counties, all writs and precepts lawfully issued to them; may serve writs or other processes in cases wherein a county, city, town, parish, religious society, or any school district, is a party or interested, notwithstanding said officers are members of such corporations; and may summon and attend juries for assessing damages sustained by locating turnpike roads and railroads, when not members of such corporations.

shall serve writs, &c.; may serve where their towns, &c., are parties, &c.

SECT. 66. They may serve by copy by them attested, all demands, notices, and citations, and their returns of service thereof shall be *prima facie* evidence; but this provision shall not exclude the service thereof by other parties.

may attend juries, &c.  
R. S. 14, §§ 68, 69, 71.  
4 Pick. 405.

SECT. 67. They may require suitable aid in the execution of their office in a criminal case, or for the preservation of the peace, or for the apprehending or securing of a person for a breach of the peace; and may require like aid in cases of escape or rescue of persons arrested upon civil process.

may serve demands, &c., by copy.

SECT. 68. They may execute precepts in their hands at the time of their removal from office; and in case of a vacancy in the office of sheriff, every deputy in office under him, having a writ or precept in his hands at the time such vacancy happens, shall have the same authority,

may command aid.  
R. S. 14, § 72.  
1 Gray, 58.  
See § 80.  
See Ch. 18, § 65, and Ch. 163, § 16.

may serve writs after sheriff's removal from office.  
R. S. 14, § 70.

and shall be under the same obligation, to serve, execute, and return, such writ or precept, as if the sheriff had continued in office.

Sheriffs to attend courts, &c.  
1859, 257, § 3.

SECT. 69. Sheriffs shall attend all courts in their respective counties, and meetings of the county commissioners when so ordered by the board.

compensation allowed to, in each county.  
1859, 257, § 1.  
1861 Ch. 112.

SECT. 70. The sheriffs shall receive annual salaries payable quarterly from the treasury of their respective counties, as follows: Of Barnstable, four hundred dollars; of Berkshire, eight hundred dollars; of Bristol, one thousand dollars; of Dukes County, two hundred dollars; of Essex, fifteen hundred dollars; of Franklin, seven hundred dollars; of Hampden, eight hundred dollars; of Hampshire, seven hundred dollars; of Middlesex, two thousand dollars; of Nantucket, two hundred and fifty dollars; of Norfolk, one thousand dollars; of Plymouth, six hundred dollars; of Suffolk, twenty-five hundred dollars; of Worcester, eighteen hundred dollars.

1860 Ch. 99  
to render account and pay over money received.  
R. S. 14, § 90.  
1859, 257, § 2.

SECT. 71. The sheriffs shall keep a true account of all fees and moneys received by virtue of their offices, and annually on or before the fifteenth day of December render to the treasurers of their counties under oath a true account thereof; and at the same time pay over to said treasurers all such moneys.

to make return of money received, &c., and attendance on courts.  
Penalty.  
1843, 75, §§ 4, 5.  
1850, 31.  
1857, 40.  
1855, 46, § 1.  
1859, 257.

SECT. 72. They shall annually on or before the fifteenth day of October, return to the secretary of the commonwealth, under oath, a true account of all moneys received by them from all sources by virtue of their office, for the year ending the last day of the preceding month; designating the amount received from the county treasurer, and from all other sources; and specifying the amount received by them for fees in civil and criminal processes; with a statement of the number of days they have attended upon a court of record and the county commissioners; and upon more than one at the same time. If a sheriff neglects to make such return he shall forfeit two hundred dollars.

Secretary to furnish blanks.  
1843, 75, § 4.  
1850, 31, § 2.

SECT. 73. The secretary shall annually furnish the sheriffs of the several counties with blank forms for the returns required by the preceding section, and shall lay said returns before the legislature.

## CORONERS.

Coroners to be sworn, &c.  
R. S. 14, § 93.  
bonds of, to be examined by superior court  
R. S. 14, § 94.  
1859, 196.

SECT. 74. Coroners, before entering upon the duties of their office, shall be sworn and give bond in the manner required of sheriffs.

Surety may be discharged.  
R. S. 14, § 95.  
1859, 196.  
See § 55.

SECT. 75. The superior court shall once in each year examine into the sufficiency of the official bonds given by the respective coroners; and if it appears that the bond of any coroner is insufficient, shall cause a record thereof to be made by the clerk, give notice to such coroner, and require him to give a new bond, to the satisfaction of the court, within such time as they order.

Penalty for neglecting to give bonds.  
Suits on coroners' bonds.  
R. S. 14, § 96.

SECT. 76. When a surety upon the official bond of a coroner, or the heirs, executors, or administrators, of such surety, petition the superior court in the county of the coroner to be discharged from such bond, like proceedings shall be had thereon as are provided in case of a similar petition by a surety on a sheriff's official bond.

SECT. 77. If a coroner neglects or refuses to give the bond required, or if the condition of his bond is broken to the injury of any person, he shall be liable to removal from office, and be subject to like penalties as sheriffs are in like cases; and any person interested shall have remedies upon the official bond of the coroner in like manner as is provided in the case of official bonds given by sheriffs.

when to serve process.  
R. S. 14, §§ 97, 98.  
19 Pick. 339.  
21 Pick. 535.

SECT. 78. Every coroner shall within his county, when the sheriff is a party, serve and execute all writs and precepts, and perform all other duties of the sheriff; and may serve and execute all such writs and precepts where any county, town, parish, religious society, or school dis-



trict, is a party or interested, notwithstanding he is at the time a member of such corporation.

SECT. 79. When the office of sheriff is vacant, the several coroners of the county may perform all the duties required by law to be performed by the sheriff, until another sheriff is appointed or elected and qualified, and they have notice thereof.

SECT. 80. Sections sixty-four and sixty-seven of this chapter shall apply to coroners as well as sheriffs.

1 Met. 508.  
5 Met. 88.  
1 Gray, 51.

Coroner, when to perform duties of sheriff.  
R. S. 14, § 99.  
may require aid, &c.  
R. S. 14, §§ 72, 79.

COMMISSIONERS OF INSOLVENCY.

SECT. 81. Commissioners of insolvency before entering upon the discharge of their duties shall be sworn. If a vacancy occurs in the office of commissioner of insolvency in any county, the governor with the advice and consent of the council shall appoint some person to fill the same, who shall hold his office until another is elected as provided in chapter ten.

Commissioners of insolvency to be sworn — vacancies in office of, how filled.  
1848, 304, § 2.  
1856, 173, § 8.

REGISTERS OF DEEDS.

SECT. 82. The county of Berkshire is divided into three districts for the registry of deeds, as follows: —

The towns of Lenox, Pittsfield, Richmond, Stockbridge, Lee, Tyringham, Becket, Washington, Peru, Hinsdale, and Otis, constitute the middle district, and the office thereof shall be kept in the town of Lenox; the towns which lie north of the middle district constitute the northern district, and the office thereof shall be kept in the town of Adams; and the towns which lie south of the middle district constitute the southern district, and the office thereof shall be kept in the town of Great Barrington.

Districts in Berkshire.

Middle.  
Northern.  
Southern.  
R. S. 14, §§ 110, 111, 112, 113.  
1847, 172.  
1848, 4.  
1857, 123.

SECT. 83. The county of Bristol is divided into two districts for the registry of deeds, as follows: —

The city of New Bedford, and the towns of Westport, Dartmouth, and Fairhaven, constitute the southern district, and the office thereof shall be kept in New Bedford; the other towns in said county constitute the northern district, and the office thereof shall be kept in the town of Taunton.

in Bristol.

Southern. 1851 Ch. 83  
Northern.  
1837, 186.

SECT. 84. The county of Middlesex is divided into two districts for the registry of deeds, as follows: —

The city of Lowell, and the towns of Dunstable, Tyngsborough, Dracut, Tewksbury, Billerica, Chelmsford, Carlisle, Wilmington, Littleton, and Westford, constitute the northern district, and the office thereof shall be kept in the court house in Lowell; the other cities and towns in said county constitute the southern district, and the office thereof shall be kept in the city of Cambridge.

in Middlesex. 1860 Ch. 162

Northern.  
Southern.  
1855, 79.  
1856, 116.

SECT. 85. Each of the other counties shall continue to have an office for the registry of deeds for such county in a shire town thereof.

SECT. 86. Every register of deeds shall be sworn before one or more of the county commissioners, or in the county of Suffolk before one or more of the aldermen of Boston, and under their direction respectively shall give bond to the county for the faithful discharge of his duty.

in other counties.  
R. S. 14, § 103.  
Register to be sworn and give bond.  
R. S. 14, § 102.

SECT. 87. In case of the death, resignation, or removal, of a register of deeds, in the county of Suffolk the superior court, and in any other county the county commissioners at a meeting held at the place of their next regular meeting, shall forthwith appoint on their records some suitable person residing within the district to be register of deeds until the vacancy is filled by a new election, as provided in chapter ten.

may be appointed in certain cases.  
R. S. 14, § 106.  
1859, 196.

SECT. 88. When a register of deeds, upon presentment of the grand jury, is found guilty of misconduct in discharging his official duties, or by

may be removed.



R. S. 14, § 105.  
1859, 196.

reason of infirmity of body or mind is incapable of rightly discharging in person the duties of his office, the county commissioners, or in the county of Suffolk the superior court, shall upon reasonable notice remove him from office, and may order the books, papers, and other things belonging to the office, to be delivered to their clerk, or to a new register when appointed or elected.

Register must reside where office is kept.  
R. S. 14, § 103.  
1837, 186.  
1855, 79.

SECT. 89. Every register of deeds shall reside in the city or town where the office of his registry is required to be, and shall there keep all books, records, deeds, and papers, belonging to his office, and shall have such office open to the public every day except Sundays and public holidays.

Deeds, where to be recorded.  
R. S. 14, § 114.  
R. S. 59, § 22.  
1837, 186, §§ 1, 4.  
1856, 254.

SECT. 90. Instruments required to be recorded in the registry of deeds, shall be recorded in the registry of the county or district where the estate lies, and in all things relating to the register or registry of deeds, each district therefor shall be deemed to be a county.

Special provision respecting Barnstable.  
R. S. 14, § 115.

SECT. 91. In the county of Barnstable, all records, deeds, and other instruments, made in pursuance of chapter one hundred and eight of the statutes of the year one thousand eight hundred and twenty-seven, and chapter forty of the statutes of the year one thousand eight hundred and twenty-eight, shall have the same effect as the original records of such deeds and instruments in the registry of said county would have had.

Register to keep book for noting receipt of deeds.  
R. S. 59, § 23.

SECT. 92. Every register of deeds shall keep a book, each page of which shall be divided into six columns, with titles or heads, in the following form:—

Date of reception.	Grantors.	Grantees.	Town where the lands lie.	To whom delivered, after being recorded.	Fees received.
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Deeds to be noted therein when received.  
R. S. 59, § 24.

SECT. 93. He shall enter in said book all deeds and instruments left for record, and all copies left as cautions, in the order in which they are received; noting in the first column the day, hour, and minute, of reception, and the other particulars in the appropriate columns; and every instrument shall be considered as recorded at the time so noted.

Manner of recording instruments, &c.  
1844, 104.

SECT. 94. Every register shall record in a fair and legible handwriting or in print, and in continuous successive lines, upon the pages of the record book, all instruments he is required to record; and shall note on the record, before attesting the same, all erasures and interlineations made therein.

Certificate to be made on deed when recorded.  
R. S. 59, § 25.

SECT. 95. He shall certify upon every instrument recorded by him, the time when it was received, the number of the book, and the page where it is recorded.

Form of index.  
1845, 205, § 1.

SECT. 96. He shall keep two sets of indexes, each divided into five columns, with titles or heads in one set as follows:—

Date of reception.	Grantors.	Grantees.	Book.	Leaf or page.
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And in the other set as follows:—

Date of reception.	Grantees.	Grantors.	Book.	Leaf or page.
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Entries to be made within twenty-four hours, &c.

SECT. 97. He shall, within twenty-four hours after a deed or other instrument which he is by law required to record is left for record, cause the name of each and every grantor, grantee, or other party, thereto, to

be entered at length and alphabetically in its appropriate index, and shall also, within a reasonable time after the same is recorded, affix to such entry the number of the book and leaf or page where it is recorded.

1845, 205, § 2.

SECT. 98. When the real estate of another person is sold or conveyed by a sheriff, coroner, constable, collector, or by any other authority given by law, except in the cases mentioned in the following section, the person who owned the estate and from whom it passes shall, for the purposes of the two preceding sections, be considered as the grantor, if his name appears in the instrument; and if it does not so appear, the grantor shall be entered as unknown, under the letter U.

Provisions respecting entry of name of grantor of estates conveyed by sheriffs, &c. 1845, 205, § 3.

SECT. 99. When a deed or other conveyance by executors, administrators, guardians, or persons acting under authority of an order of court, or of a resolve of the legislature, is left for record, the register shall enter in the entry books and indexes of the grantors, the names of the testators, intestates, wards, and persons, whose estates are conveyed, when the same appear by such deeds, and also the names of such executors, administrators, guardians, or other persons. When a decree for the partition of land, or commissioner's return thereon, is so left for record, the register shall enter in the entry books and indexes of the grantors and grantees the names of all the persons whose estates plainly appear to be affected thereby.

Deeds of executors, &c., and partitions of land, how indexed. 1856, 292, § 1.

SECT. 100. Every register of deeds shall annually on or before the fifteenth day of October, return to the secretary of the commonwealth a statement of the whole number of deeds and other instruments recorded by him during the year ending the last day of the preceding month, the amount of fees received by him for recording deeds and other instruments; the number of legal pages of records covered by the registry of said deeds and instruments; and the expenses of his office over and above what is paid by the county during the same time; and if a register omits or neglects to make such return, he shall forfeit fifty dollars.

Registers to make annual returns to secretary, of number of instruments recorded, &c. Penalty. 1836, 241, § 1. 1847, 282. 1857, 40. 1858, 46.

SECT. 101. The particulars required by the preceding section shall be given in the following tabular form:—

No. of deeds recorded.	No. of other instruments.	Amount of fees received for deeds.	Amount received for other instruments.	No. of legal pages covered.	Expenses of office above what is paid by county.
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Form of such returns. 1836, 241, § 2.

SECT. 102. The secretary shall annually prepare and lay before the legislature an abstract of the returns made to him under the two preceding sections.

Abstract to be laid before legislature. 1836, 241, § 3. See Ch. 4, § 2. Copies of indexes to be made annually, with surnames assorted alphabetically, &c. 1856, 292, § 2. 1857, 38. 1857, 277.

SECT. 103. There shall be made within the first six months of each year, or within such further time during the year as the commissioners or aldermen think proper, at the expense of the several counties, by competent persons employed by the county commissioners, or in the county of Suffolk by the aldermen of Boston, copies of the indexes to the instruments recorded in their respective counties during the preceding year, in which the grantors and grantees shall respectively be assorted into distinct lists by their respective surnames, arranged in such lists in the order in which the deeds and other conveyances to which they refer are left for record, and such lists shall be placed in alphabetical order. The commissioners and aldermen may cause the Christian names of the grantors and grantees, as well as their surnames, to be arranged in alphabetical order in such lists, when in their opinion references to the records will be facilitated thereby. Such copies shall in other respects be in the form required for the indexes to the records.

SECT. 104. When they deem it expedient they may cause copies of the indexes, or new indexes, to the records existing in the registries of

Copies of indexes, or new indexes, may be

made and printed for sale, &c. 1856, 292, §§ 3, 4.

deeds in their respective counties, or of any part thereof, to be made by some competent person at the charge of their respective counties, upon such plan, and in such manner, as will in their judgment best facilitate references to the records; and may cause the copies of indexes, or new indexes, to be printed at the charge of their respective counties, for sale at a price not less than the cost of printing, paper, and binding.

## TITLE VII.

### OF TOWNS AND CITIES.

CHAPTER 18. — Of the Powers of Towns, and the Election, Qualification, and Duties, of Town Officers.

CHAPTER 19. — Of certain Powers and Duties of Cities.

CHAPTER 20. — Of the Census.

CHAPTER 21. — Of the Registry and Return of Births, Marriages, and Deaths.

CHAPTER 22. — Of Workhouses and Almshouses.

CHAPTER 23. — Of Watch and Ward.

CHAPTER 24. — Of Fires and Fire Departments.

CHAPTER 25. — Of Fences and Fence Viewers, Pounds, and Field Drivers.

## CHAPTER 18.

### OF THE POWERS OF TOWNS, AND THE ELECTION, QUALIFICATION, AND DUTIES, OF TOWN OFFICERS.

POWERS AND DUTIES OF TOWNS.	MEETINGS.
<p>SECTION</p> <ol style="list-style-type: none"> <li>1. Towns, to be bodies corporate as heretofore.</li> <li>2. Bounds of towns.</li> <li>3. Perambulations and renewal of boundaries, every five years.</li> <li>4. Notice of perambulation to adjoining towns. Penalty for neglect to give notice.</li> <li>5. Monuments to be erected, except, &amp;c.</li> <li>6. Perambulations of towns adjoining other states.</li> <li>7. Penalty for neglect of selectmen.</li> <li>8. Towns may sue and be sued, &amp;c.</li> <li>9. may hold property, make contracts, &amp;c.</li> <li>10. may grant money for certain purposes.</li> <li>11. may make by-laws, and affix penalties.</li> <li>12. Penalties, how recovered.</li> <li>13. Towns may provide that a duty imposed in a by-law may be done by an officer, &amp;c.</li> <li>14. By-laws to be approved by superior court.</li> <li>15. to bind all persons in the town.</li> <li>16. to be published.</li> <li>17. Towns to provide book-case, for books, &amp;c., received from state.</li> <li>18. Recognizances by towns, how entered into.</li> </ol>	<p>SECTION</p> <ol style="list-style-type: none"> <li>19. Qualifications of voters in town affairs.</li> <li>20. Annual and other meetings may be adjourned.</li> <li>21. Warrants shall issue for all meetings—may include two or more meetings.</li> <li>22. Contents of the warrant, &amp;c.</li> <li>23. If selectmen refuse, meeting may be called by a justice of the peace.</li> <li>24. If major part of selectmen die, resign, &amp;c., the rest may call meetings.</li> </ol> <p style="text-align: center;">MODERATORS.</p> <ol style="list-style-type: none"> <li>25. At certain meetings, moderator to be chosen.</li> <li>26. During election of moderator, town clerk to preside, &amp;c.</li> <li>27. Moderator's powers and duties.</li> <li>28. No person shall speak without leave of the moderator, &amp;c.</li> <li>29. Penalty for disorderly conduct in meetings.</li> <li>30. on moderator or other presiding officer for reading, &amp;c., ballots, before the poll is closed.</li> </ol>



ELECTION AND APPOINTMENT OF TOWN OFFICERS.

SECTION

- 31. Town officers to be chosen. Town clerk, &c. Officers to be sworn.
- 32. Certain officers to be chosen by ballot.
- 33. If person elected constable does not accept, new choice to be made.
- 34. Penalty for neglecting to choose selectmen, &c.
- 35. Meetings may be called by part of a board of selectmen, in certain cases.
- 36. County commissioners may appoint assessors in certain cases.
- 37. Officers to be appointed by selectmen. — Sealers of weights and measures, &c.
- 38. Selectmen may appoint police officers.
- 39. Town clerks, to give notice to persons elected, that they be sworn, &c.
- 40. Penalty for not taking the oath of office.
- 41. Town offices vacated by removal from town.
- 42. Selectmen to appoint a temporary treasurer and collector.
- 43. Vacancies in town offices may be filled by a new choice.
- 44. Exemption from liability to hold town offices.

CLERK.

- 45. Town clerk shall record all votes.
- 46. administer oaths, and make record of their administration.
- 47. Town clerk *pro tem.*, when chosen.
- 48. In case of death, &c., the selectmen may appoint a clerk, &c.

SELECTMEN.

- 49. Penalty for selectmen acting, if not under oath.
- 50. Selectmen to be assessors and overseers of the poor, in case, &c.

ASSESSORS OF TAXES.

- 51. Assessors' oath.
- 52. Assistant-assessors, to be sworn.
- 53. Penalty on assessor neglecting to take oath.

TREASURER.

- 54. Town treasurer's duty. To give bond.
- 55. may sue on bonds, &c., to his predecessors — to prosecute for all forfeitures, except, &c.
- 56. to prosecute for trespasses on public property.

SECTION

- 57. Town treasurer may be collector of taxes, power and duty as collector.
- 58. to render accounts annually — compensation of.

CONSTABLES.

- 60. Penalty for refusing to serve as constable, &c.
- 61. Constables who give bonds may serve civil processes in certain cases.
- 62. Time of filing bond to be noted. Remedies to parties injured by breaches of the bond, &c.
- 63. Constables may serve writs and processes where their towns, &c., are parties.
- 64. may serve certain demands and notices.
- 65. may require aid — not to act as counsel, &c.
- 66. shall execute warrants of selectmen.
- 67. to complain of breaches of certain laws.
- 68. may convey persons and property taken, to the jail, &c., out of their town.
- 69. may serve warrants, in certain cases, in any place in commonwealth.
- 70. may serve process in unincorporated places, annexed.

COLLECTORS OF TAXES.

- 71. Constables to be collectors of taxes when, &c.
- 72. to give bond.
- 73. Town may give collector certain powers of treasurer in collecting taxes.

SURVEYORS OF HIGHWAYS.

- 74. Penalty for refusing to serve as surveyor of highways.
- 75. Penalty on surveyors for neglect of duty.
- 76. Surveyors shall be liable to towns for such deficiencies, in case, &c.

DISTRICTS.

- 77. Districts to have the powers of towns given by this chapter.
- 78. Provisions for the district of Marshpee.

ABUSE OF CORPORATE POWERS.

- 79. Towns, how restrained from illegal appropriations of money, &c.

FINES AND FORFEITURES.

- 80. Fines and forfeitures.

POWERS AND DUTIES OF TOWNS.

SECTION 1. Towns shall continue to be bodies corporate with all the powers heretofore exercised by them, and subject to all the duties to which they have heretofore been subject.

SECT. 2. The boundary lines of towns shall remain as now established.

SECT. 3. There shall be a perambulation of town lines, and they shall be run and the marks renewed, once in every five years, by two or more of the selectmen of each town, or such substitutes as they in writing appoint for that purpose. After every such renewal the proceedings shall be recorded in the records of the respective towns.

SECT. 4. Previously to a perambulation, the selectmen of the most ancient of the contiguous towns shall give ten days' notice, in writing, to the selectmen of the adjoining town, of the time and place of meeting for such perambulation; and selectmen who neglect to give such notice or to attend either personally or by their substitutes, shall severally forfeit twenty dollars, to be recovered on complaint to the use of

Towns to be bodies corporate.  
R. S. 15, § 8.  
13 Mass. 193.  
Town lines.  
R. S. 15, § 1.  
Pereambulation of town lines.  
R. S. 15, § 2.  
1861 Ch. 64

notice of to adjoining towns.  
penalty for neglect.  
R. S. 15, § 3.  
1839, 135.

the commonwealth, or by action of tort to the use of the town whose selectmen perform their duty.

Monuments to be erected, except, &c.  
R. S. 15, § 4.

SECT. 5. The selectmen of the contiguous towns shall erect at the joint and equal expense of such towns, permanent monuments to designate their respective boundary lines at every angle thereof, except where such lines are bounded by the ocean or some permanent stream of water. The monuments shall be of stone, well set in and at least four feet high from the surface of the ground; and the initial letter of the respective names of such contiguous towns shall be plainly and legibly cut thereon; but it shall not be necessary to erect a new monument in a place where a permanent stone monument two feet in height above the surface of the ground already exists.

Perambulations of towns adjoining other states.  
R. S. 15, § 6.

SECT. 6. The selectmen of towns bordering on another state, where the lines between the states are settled and established, shall once in every five years give notice to the selectmen or other proper municipal officers of such towns in the other state as adjoin their towns, of their intention to perambulate the lines between their adjoining towns. Where such state lines are in dispute, the perambulations shall be made once in every five years after the lines are settled and established. If such notice and proposal are accepted by the officers to whom they are made, a perambulation shall be made in the same manner as between towns in this state. No boundary erected by authority of this state and an adjoining state, shall be removed by such selectmen or other municipal officers.

Penalty for neglect.  
R. S. 15, §§ 4, 5, 6, 7.

SECT. 7. A selectman who refuses or neglects to perform any duty required of him by the three preceding sections, shall forfeit twenty dollars to the use of the commonwealth.

Towns may sue and be sued, &c.  
R. S. 15, § 10.  
1 Met. 473.

SECT. 8. Towns may in their corporate capacity sue and be sued by the name of the town, and may appoint all necessary agents and attorneys in that behalf.

may hold property, make contracts, &c.  
R. S. 15, § 11.  
3 Mass. 360.  
12 Mass. 417.  
2 Pick. 351, 352.

SECT. 9. They may hold real estate for the public use of the inhabitants, and may convey the same, either by a vote of the inhabitants or by a deed of their committee or agent; may hold personal estate for the public use of the inhabitants, and alienate and dispose of the same by vote or otherwise; may hold real and personal estate in trust for the support of schools and for the promotion of education within the limits of the town; may make contracts necessary and convenient for the exercise of their corporate powers; and may make orders for the disposal or use of their corporate property as they may judge necessary or expedient for the interest of the inhabitants.

may grant money.  
R. S. 15, §§ 12, 16; 23, § 9; 24, §§ 70, 78; 25, §§ 8, 9; 46, § 1; 54, § 3.  
1838, 58.  
1854, 429.  
15 Mass. 272.  
6 Pick. 101.  
12 Pick. 227.  
19 Pick. 485.  
21 Pick. 64.  
23 Pick. 71.  
3 Met. 163.  
10 Met. 508.  
3 Cush. 530.  
10 Cush. 252.  
4 Gray, 502.

SECT. 10. They may, at legal meetings, grant and vote such sums as they judge necessary for the following purposes:—

For the support of town schools;

For the relief, support, maintenance, and employment, of the poor;

For laying out, discontinuing, making, altering, and repairing, highways and town ways, and for labor and materials to be used thereon;

For procuring the writing and publishing of their town histories;

For burial grounds;

For encouraging the destruction of noxious animals;

For all other necessary charges arising therein;

may make by-laws, and affix penalties.

R. S. 15, § 13.  
1847, 166.  
3 Pick. 462.  
1 Met. 130.  
1 Cush. 494.  
2 Cush. 562.

SECT. 11. They may make such necessary orders and by-laws, not repugnant to the laws of the state, for directing and managing the prudential affairs, preserving the peace and good order, and maintaining the internal police thereof, as they may judge most conducive to the welfare of the town; and may affix penalties for breaches of such orders and by-laws not exceeding twenty dollars for one offence.

Penalties, how recovered.  
R. S. 15, § 13.  
See Ch. 122, § 11.

SECT. 12. All penalties for breaches of the orders and by-laws of a town may be recovered on complaint before a police court or a justice of the peace, and shall inure to the town, or to such uses as the town may direct.

SECT. 13. When a town in a by-law imposes a duty and affixes a penalty for refusal or neglect to perform the same, they may therein provide that in case of such refusal or neglect the duty may be performed by officers therein named, at the expense of the party liable to perform the same, and such expense may be recovered of him by the town in an action of contract in the name of the treasurer, but the amount recovered shall not exceed the penalty fixed in the by-law.

Duties imposed in by-laws, how performed. 1855, 257.

SECT. 14. Before any by-law takes effect, it shall be approved by the superior court, or in vacation by a justice thereof, and shall with such approval be entered and recorded in the office of the clerk of the courts in the county where the town is situated, or in the county of Suffolk in the office of the clerk of the superior court for civil business.

By-laws to be approved by superior court. R. S. 15, § 13. 1847, 166. 1855, 222, §§ 1, 2. 1857, 82. 1859, 196. 2 Cush. 335.

SECT. 15. Such by-laws shall be binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof.

to bind all persons in town. R. S. 15, § 14. 6 Pick. 187. 2 Cush. 576.

SECT. 16. All by-laws made by a town shall be published in one or more newspapers printed in the county where the town is situated.

to be published. R. S. 15, § 15. Towns to provide book-case, &c. 1858, 106, §§ 1, 2.

SECT. 17. Each town shall provide at its own expense some suitable cabinet or book-case for the safe preservation of such books, reports, and laws, as they receive from the commonwealth, and for every month's neglect shall forfeit ten dollars to the use of the commonwealth.

Recognizances by towns. R. S. 15, §§ 88, 89. Act of amendment, § 4.

SECT. 18. When a town is required to enter into a recognizance, the selectmen may by an order or vote authorize any person to enter into the recognizance in the name and behalf of the town, and it shall be binding like any other contract made by such town. No surety shall be required in such recognizance.

MEETINGS.

SECT. 19. Every male citizen of twenty-one years of age and upwards, (except paupers, persons under guardianship, and persons excluded by articles twenty and twenty-three of the amendments to the constitution,) who has resided within the state one year, and within the town in which he claims a right to vote six months, next preceding a meeting for the transaction of town affairs, and who has paid by himself, or his parent, master, or guardian, a state or county tax, which within two years next preceding such meeting has been assessed upon him in any town; and every citizen who is by law exempted from taxation, and in all other respects qualified as aforesaid, shall have a right to vote at such town meetings, upon all questions concerning town affairs; and no other person shall be entitled to vote at such meeting.

Qualifications of voters in town affairs. Amend. const. arts. 3, 20, 23. R. S. 15, § 17. 11 Pick. 538. 5 Met. 162, 298, 591. 7 Gray, 299.

SECT. 20. The annual meeting of each town shall be held in February, March, or April; and other meetings at such times as the selectmen may order. Meetings may be adjourned from time to time, and to any place within the town.

Annual and other meetings. may be adjourned. R. S. 15, §§ 18, 25. 1837, 52.

SECT. 21. Every town meeting shall be held in pursuance of a warrant under the hands of the selectmen, directed to the constables or some other persons appointed by the selectmen for that purpose, who shall forthwith notify such meeting in the manner prescribed by the by-laws or a vote of the town. The selectmen may by the same warrant call two or more distinct town meetings for distinct purposes.

Warrants to issue for all meetings. may include two or more meetings. R. S. 15, §§ 19, 20. 10 Mass. 105. 13 Pick. 306. 6 Met. 340.

SECT. 22. The warrant shall express the time and place of the meeting, and the subjects to be there acted upon; the selectmen shall insert therein all subjects which may, in writing, be requested of them by any ten or more voters of the town, and nothing acted upon shall have a legal operation, unless the subject matter thereof is contained in the warrant.

11 Cush. 294. Contents of warrant, &c. R. S. 15, §§ 21, 22. 1 Cush. 496. 11 Cush. 298, 487.

SECT. 23. If the selectmen unreasonably refuse to call a meeting, any justice of the peace of the county, upon the application of ten or more legal voters of the town, may call such meeting by a warrant under his

3 Gray, 526. If selectmen refuse, meeting may be called



by a justice of the peace.  
R. S. 15, § 23.

hand directed to the constables of the town, if any, otherwise to any of the persons applying therefor, directing them to summon the inhabitants qualified to vote in town affairs to assemble at the time and place and for the purposes expressed in the warrant.

If major part of selectmen die, &c., the rest may call meetings.  
R. S. 15, § 24.

SECT. 24. If by reason of death, resignation, or removal from town, a major part of the selectmen thereof originally chosen vacate their office, those who remain in office may call a town meeting.

#### MODERATORS.

Moderators, how chosen.  
R. S. 15, § 26.  
during election, town clerk to preside, &c.  
R. S. 15, § 27.  
9 Mass. 262.

SECT. 25. At every town meeting, except for the election of national, state, district, and county officers, a moderator shall first be chosen.

powers and duties.  
R. S. 15, §§ 23, 32.

SECT. 26. During the election of a moderator, the town clerk if present shall preside; if he is absent or there is no town clerk, the selectmen shall preside; and the town clerk and selectmen respectively shall in such case have the powers and perform the duties of a moderator.

SECT. 27. The moderator shall preside in the meeting, may in open meeting administer the oaths of office to any town officer chosen thereat, shall regulate the business and proceedings of the meeting, decide all questions of order, and make public declaration of all votes passed. When a vote so declared by him is immediately upon such declaration questioned by seven or more of the voters present, he shall make the vote certain by polling the voters or dividing the meeting, unless the town has by a previous vote or their by-laws otherwise provided.

no person to speak without leave of, &c.  
R. S. 15, § 29.

SECT. 28. No person shall speak in the meeting without leave of the moderator, nor while another person is speaking by his permission; and all persons shall at his request be silent.

Penalty for disorderly conduct in meetings.  
R. S. 15, § 30.  
16 Mass. 385.

SECT. 29. If a person behaves in a disorderly manner, and after notice from the moderator persists therein, the moderator may order him to withdraw from the meeting; and, on his refusal, may order the constables or any other persons to take him from the meeting and confine him in some convenient place until the meeting is adjourned. The person so refusing to withdraw shall for such offence forfeit a sum not exceeding twenty dollars.

on moderator, &c., for reading, &c., ballots, before poll is closed.  
R. S. 15, § 31.

SECT. 30. A moderator or other presiding officer who at a town meeting, before the poll is closed and without the consent of the voter, reads, examines, or permits to be read or examined, the names written on such voter's ballot, with a view to ascertain the candidate voted for by him, shall forfeit a sum not exceeding fifty dollars.

#### ELECTION AND APPOINTMENT OF TOWN OFFICERS.

Town officers to be chosen.  
R. S. 15, § 33.  
R. S. 19, § 16.  
1858, 164.  
Town clerk.

SECT. 31. At the annual meeting every town shall choose from the inhabitants thereof, the following town officers, who shall serve during the year, and until others are chosen and qualified in their stead:—

Selectmen.  
Assessors.  
6 Met. 498.

A town clerk, who if present shall be forthwith sworn, either by the moderator or a justice of the peace;

Overseers of the poor.  
Treasurer.  
Surveyors of highways.  
Constables and collectors.

Three, five, seven, or nine selectmen;  
Three or more assessors, and, if the town deems it expedient, three or more assistant-assessors;

Field drivers.  
Fence viewers.  
Surveyors of

Three or more overseers of the poor;  
A town treasurer;  
One or more surveyors of highways;  
Constables, who shall also be collectors of taxes unless other persons are specially chosen collectors;  
Field drivers;  
Two or more fence viewers;  
One or more surveyors of lumber; except that surveyors of lumber

shall not be so chosen in towns included in the district established by chapter forty-nine, section one hundred twenty-[six] [one]:

Measurers of wood and bark, unless the town authorizes the selectmen to appoint them; and

All other usual town officers.

All the town officers designated by name in this section shall be sworn.

SECT. 32. The election of town clerks, selectmen, assessors, treasurer, constables, and the moderator of the meetings held for the choice of town officers, shall be by written ballots; and the election of all other town officers in such mode as the meeting determines, except in cases otherwise provided by law.

SECT. 33. Every person chosen constable shall, if present, forthwith declare his acceptance or refusal of the office. If he does not accept, the town shall proceed to a new election until some one accepts the office and takes the oath.

SECT. 34. A town which neglects to make choice of selectmen or assessors shall forfeit to the use of the commonwealth a sum not exceeding five hundred nor less than one hundred dollars, as the county commissioners shall order.

SECT. 35. If a town, at the annual meeting, fails to elect a full board of selectmen, or if any of the persons chosen refuse to act or omit to be qualified according to law, the selectmen or selectman chosen and qualified may sign warrants for town meetings until a full board is elected.

SECT. 36. If a town neglects to choose selectmen or assessors, or if the persons chosen do not accept the trust, or having accepted it shall not perform the duties, the county commissioners may appoint three or more suitable persons within the county, to be assessors of taxes for such town; who shall have the powers, perform the duties, and receive the compensation, of assessors chosen by a town.

SECT. 37. The selectmen of each town shall annually in March or April, appoint the following town officers, unless the inhabitants at their annual meeting choose them: —

One sealer of weights and measures, and as many more as the inhabitants at their annual meeting determine, and they may also appoint a gauger of liquid measures; and the selectmen may at any time remove such sealers or gangers, and appoint others in their places;

One measurer of wood and bark, and as many more as the inhabitants at their annual meeting determine;

And in every town which has town scales for the weighing of hay, one or more persons to have the superintendence thereof.

SECT. 38. They may at any time appoint police officers, with all or any of the powers of constables except the power of serving and executing civil process, who shall hold their offices during the pleasure of the selectmen by whom they are appointed.

SECT. 39. After the election or appointment of town officers who are required to take an oath of office, the town clerk shall forthwith make out a list, containing the names of all such persons not sworn by the moderator, and a designation of the offices to which they are chosen, and deliver the same with his warrant to a constable, requiring him within three days to summon each of such persons to appear and take the oath of office before the town clerk within seven days after such notice; and the constable shall within seven days make return of the warrant to the town clerk.

SECT. 40. If a person so chosen and summoned, who is not exempt by law from holding the office to which he is elected, shall not within seven days take the oath of office before the town clerk, or before a justice of the peace, and file with the town clerk a certificate thereof under the hand of such justice, he shall, unless the office to which he is chosen is

lumber.  
1859, 224.

Measurers of wood, &c.

Other officers.  
Officers to be sworn.

Certain officers to be chosen by ballot.  
R. S. 15, § 34.  
1851, 94, § 3.  
7 Gray, 131.

If person elected constable does not accept.  
R. S. 15, § 67.

Penalty for not choosing selectmen, &c.  
R. S. 15, § 35.

Town meetings, how called in certain cases.  
1855, 8.

County commissioners may appoint assessors in certain cases.  
R. S. 15, §§ 36, 37.

Town officers appointed by selectmen.  
R. S. 15, § 38.  
R. S. 30, §§ 12, 13.

Sealer of weights and measures, &c.

Measurers of wood and bark.

Superintendent of hay-scales.

Selectmen may appoint police officers.  
1851, 162.  
4 Gray, 34.

Town clerks, to give notice to persons elected, that they may be sworn, &c.  
R. S. 15, § 39.  
6 Gray, 387.  
7 Gray, 131.

Penalty for not taking the oath of office.  
R. S. 15, § 40.  
7 Gray, 131.

that of constable or some other for which a different penalty is provided, forfeit five dollars.

SECT. 41. A person removing from the town in which he holds a town office, thereby vacates such office.

SECT. 42. When the office of treasurer or collector of taxes is vacant by reason of death, removal, or other cause, or when the treasurer or collector is prevented from performing the duties of his office, the selectmen of the town may by writing under their hands appoint a treasurer or collector *pro tempore*, who shall be sworn and give bonds in like manner as treasurers and collectors chosen by towns, and hold his office until another is chosen.

SECT. 43. When a vacancy occurs in a town office by reason of the non-acceptance, death, removal, insanity, or other disability, of a person chosen thereto, or by reason of a failure to elect, the town may fill such vacancy by a new choice at any legal meeting.

SECT. 44. No person shall be obliged to serve in the same town office two years successively; and no person in commission for any office of this state or of the United States, or who is a minister of the gospel, or a member of the council, senate, or house of representatives, or an engineman or member of a fire department, or who has been a constable or collector of taxes of a town within seven years next preceding, shall be obliged to accept the office of constable.

## CLERK.

SECT. 45. The town clerk shall record all votes passed at the meeting at which he is elected, and at the other meetings held during his continuance in office.

SECT. 46. He shall administer the oaths of office to all town officers who appear before him for that purpose, and shall make a record thereof, and of oaths of office taken before justices of the peace, of which certificates are filed.

SECT. 47. When at a town meeting there is a vacancy in the office of town clerk, or he is not present, the selectmen shall call upon the qualified voters present to elect a clerk *pro tempore*, in like manner as town clerks are chosen. The selectmen shall sort and count the votes and declare the election of such clerk, who shall be sworn to discharge the duties of said office at such meeting; and be subject to like penalties for not discharging them as town clerks are for neglect of the like duties.

SECT. 48. When other duties than those mentioned in the preceding section are required to be performed by the town clerk, and by reason of death, removal, or other cause, there is a vacancy in such office, or such clerk is prevented from performing such duties, the selectmen may in writing under their hands appoint a clerk for the performance thereof, who shall be sworn, and immediately after entering upon the duties of his office make a record of such election or appointment.

## SELECTMEN.

SECT. 49. Every person elected selectman, who enters upon the performance of his duties before taking the oath of office, shall forfeit for each offence a sum not exceeding one hundred dollars.

SECT. 50. The selectmen shall be assessors of taxes and overseers of the poor in towns where other persons are not specially chosen to those offices, and when acting as assessors they shall take the oath required of assessors.

Offices vacated by removal from town.

R. S. 15, § 41.

1 Pick. 129.

Selectmen to appoint temporary treasurer and collector, when, &c.

1838, 43.

1 Met. 524.

4 Gray, 233.

Vacancies in town offices, how filled.

R. S. 15, § 42.

1855, 8.

Exemption from liability to hold town offices.

R. S. 15, §§ 43,

69.

R. S. 18, § 17.

Clerk to record all votes.

R. S. 15, § 44.

13 Pick. 305.

to administer oaths and make record thereof.

R. S. 15, § 45.

Town clerk *pro tem.*, when chosen.

R. S. 15, § 49.

When selectmen may appoint town clerk, &c.

R. S. 15, §§ 50,

51.

Penalty for selectmen acting if not under oath.

R. S. 15, § 54.

Selectmen to be assessors, &c., in case, &c.

R. S. 15, §§ 52,

53.



ASSESSORS OF TAXES.

SECT. 51. The assessors' oath of office shall be in substance as follows:—

You, being chosen assessors, [or an assessor,] for the town of \_\_\_\_\_ for the year ensuing, do swear that you will impartially, according to your best skill and judgment, assess and apportion all such taxes as you are during that time directed to assess, and that you will faithfully discharge all other duties of said office.

Assessors' oath.  
R. S. 15, § 55.

SECT. 52. Assistant-assessors, when chosen, shall be sworn, and shall in their respective wards or districts assist the assessors in taking a list of the ratable polls, in estimating the value of the real and personal estate in said wards or districts, and in making out lists of persons qualified to vote at elections.

Assistant-assessors, to be sworn.  
R. S. 15, § 56.

SECT. 53. If a person chosen assessor, having notice of his election, neglects to take the oath of office, he shall forfeit a sum not exceeding fifty dollars.

Penalty on assessor neglecting to take oath.  
R. S. 15, § 57.

TREASURER.

SECT. 54. The town treasurer shall give bond in such sum as the selectmen require, with sureties to their satisfaction, for the faithful discharge of the duties of his office; shall receive and take charge of all sums of money belonging to his town, and pay over and account for the same according to the order of such town or the officers thereof duly authorized in that behalf.

Town treasurer, duties of.  
R. S. 15, § 58.  
6 Cush. 229.  
12 Cush. 112.

SECT. 55. He may in his own name and official capacity prosecute suits upon bonds, notes, or other securities, given to him or his predecessors in office, and where no other provision is specially made, shall prosecute for all fines and forfeitures which inure to his town or the poor thereof.

to bring suit, &c.  
to prosecute for forfeitures, except, &c.  
R. S. 15, §§ 59, 63.

SECT. 56. He shall prosecute for trespasses committed on any public building or enclosure belonging to his town; and when a public building is owned partly by the town and partly by the county, such prosecution may be made either by the town or county treasurer, whichever shall first institute the same.

for trespasses on public property.  
R. S. 14, § 54.  
R. S. 15, § 62.

SECT. 57. A town may at any meeting appoint its treasurer collector of taxes; and he may appoint deputies, who shall give such bonds for the faithful discharge of their duty, as the selectmen think proper. Such collector and deputies shall have the same powers as are vested in collectors of taxes.

may be collector of taxes.  
R. S. 15, § 60.  
8 Met. 102.

SECT. 58. A treasurer so appointed collector, may issue his warrant to the sheriff of the county, or his deputy, or to any constable of the town, directing them to distrain the property or take the body of any person who is delinquent in the payment of taxes, and to proceed in like manner as collectors are required to do in like cases.

power and duty as collector.  
R. S. 15, § 61.

SECT. 59. The treasurer shall annually render a true account of all his receipts and payments, and other official doings, to the town, and shall receive such compensation for his services as the town may determine.

to account annually. Pay.  
R. S. 15, §§ 64, 65.

CONSTABLES.

SECT. 60. A person chosen to the office of constable, able to perform the duties thereof and not exempt, who refuses to take the oath and to serve in such office, shall forfeit twenty dollars. If he is present in town meeting and declares his refusal or neglects for seven days after being summoned to take the oath of office or to pay such fine, he shall be prosecuted therefor by the treasurer.

Penalty for refusing to serve as constable, &c.  
R. S. 15, §§ 66, 68.

SECT. 61. Any constable who gives to the inhabitants of the town for which he is chosen, a bond with sureties in a sum not less than five hundred dollars to the satisfaction of the selectmen, with condition for

Constables giving bonds may serve civil process in certain cases.

1847, 98, § 2.  
1851, 94, §§ 1, 2.  
13 Met. 302.  
2 Gray, 209.

the faithful performance of his duties in the service of all civil processes committed to him, and causes the same, with the approval of the selectmen indorsed thereon, to be filed in the office of the town clerk, may, within his town, serve any writ or other process in a personal action in which the damages are not laid at a greater sum than one hundred dollars, and any process in replevin in which the subject matter does not exceed in value one hundred dollars, and any writ or other process under the provisions of chapter one hundred and thirty-seven; and no constable shall serve any process in a civil action until he gives such bond.

1860 Cl. 127.  
Time of filing  
bond to be not-  
ed. Remedies  
on bond, &c.  
1845, 70, §§ 1, 2,  
3.  
1851, 94, §§ 2, 3.

SECT. 62. The town clerk shall note upon every bond given by a constable the time when the same was filed. Any person injured by a breach of the condition of such bond, may at his own expense institute a suit thereon in the name of the town, and like proceedings shall be had as in a suit by a creditor on an administration bond. The writ shall be indorsed by the persons for whose benefit the suit is brought, and if neither of them is an inhabitant of this state, it shall also be indorsed by some other responsible indorser residing in this state. If judgment is for the defendants, execution shall issue for costs against the indorsers, as if they were plaintiffs of record.

Constables may  
serve certain  
writs, &c.  
R. S. 15, § 72.

SECT. 63. Constables may serve such writs and processes as are described in section sixty-one, and warrants and other processes in criminal cases, although their town, parish, religious society, or school district, is a party or interested.

may serve cer-  
tain demands  
and notices.

SECT. 64. They may serve by copy by them attested, all demands, notices, and citations, and their returns of service thereof shall be *prima facie* evidence; but this provision shall not exclude the service thereof by other parties.

may require  
aid — not to act  
as counsel, &c.  
R. S. 14, §§ 72,  
79, 80.  
R. S. 15, § 77.  
6 Pick. 483.

SECT. 65. They may, like sheriffs, require aid in the execution of their duties. They shall not appear in court or before a justice of the peace as attorney or counsel for any party. The provisions of sections sixty-four and sixty-seven of chapter seventeen shall apply to constables.

to execute  
warrants of se-  
lectmen.

SECT. 66. They shall serve all warrants and other processes, lawfully directed to them by the selectmen of their town, for notifying town meetings or for other purposes.

R. S. 15, § 70.  
to complain of  
breaches of cer-  
tain laws.

SECT. 67. They shall take due notice of and prosecute all violations of the laws respecting the observance of the Lord's day, to prevent profane swearing, and against gaming.

may convey  
persons, &c.,  
to jail, &c., out  
of their town.  
R. S. 15, § 75.

SECT. 68. A constable in the execution of a warrant or writ directed to him, may convey beyond the limits of his town, prisoners and property in his custody under such process, either to the justice who issued it, or to the common jail or house of correction of his county.

may serve  
warrants in cer-  
tain cases, in  
any place in  
state.  
1847, 98, § 1.

SECT. 69. If a person against whom a warrant is issued for an alleged offence committed within any town, before or after the issuing of the warrant, escapes from or is out of the town, any constable of such town to whom the warrant is directed, may pursue and apprehend him in any place in the commonwealth.

may serve  
process in unin-  
corporated  
places, &c.  
R. S. 15, § 74.

SECT. 70. When an unincorporated place is annexed to a town for the purpose of taxation, the constables of such town shall have and exercise in such unincorporated place the same powers as if it were a part of their town.

#### COLLECTORS OF TAXES.

Collectors of  
taxes, when  
constables to be.  
R. S. 15, §§ 60,  
78. 6 Gray, 387,  
502. 7 Gray, 132.

SECT. 71. Towns may choose suitable persons to be collectors of taxes therein. If the persons chosen refuse to serve, or if no person is elected or appointed, the constables of the town shall be the collectors of taxes.

to give bond.  
R. S. 15, § 80.  
9 Met. 499.  
6 Cush. 229.  
2 Gray, 298.  
12 Cush. 112.

SECT. 72. Every collector shall give bond to the town, in such sum as the selectmen require, and with sureties to their satisfaction, for the faithful discharge of the duties of his office.

SECT. 73. Any town, at a meeting notified for that purpose, may authorize their collector to use all means of collecting the taxes which a town treasurer when appointed collector may use.

Town may give collector certain powers of treasurer, in collecting taxes.  
1850, 57.

SURVEYORS OF HIGHWAYS.

SECT. 74. If a person chosen surveyor of highways refuses to serve, he shall forfeit a sum not exceeding ten dollars; but no person shall be obliged to serve oftener than once in three years.

Penalty for refusing to serve as surveyor of highways.

SECT. 75. A surveyor of highways who neglects the duties of his office, shall forfeit ten dollars for each neglect; and he may be prosecuted by indictment for any deficiency in the highways within his limits occasioned by his fault or neglect.

R. S. 15, § 81.  
Penalty on surveyors for neglect of duty.  
R. S. 15, §§ 82, 83.

SECT. 76. If a town is sentenced to pay a fine for a deficiency in the highways or town ways therein, any surveyor through whose fault or neglect such deficiency existed, shall be liable for the amount of such fine and all costs, to be recovered by the town in an action of tort.

10 Met. 108.  
Surveyors liable to towns for deficiencies, in case, &c.  
R. S. 15, § 84.  
1852, 312.

DISTRICTS.

SECT. 77. All places now incorporated by the name of districts, except Marshpee in the county of Barnstable, shall have all the powers and privileges, and be subject to all the duties, to which towns are entitled or subject by the provisions of the chapter.

Districts to have powers of towns.  
R. S. 15, § 9.

SECT. 78. The district of Marshpee, excepting such parts thereof as are for the purpose of taxation or otherwise annexed to the towns of Falmouth and Sandwich, shall continue to be a district, with all the powers, privileges, duties, and liabilities, mentioned in the act establishing said district, and acts specially relating thereto.

Provisions for the district of Marshpee.  
1834, 166.  
R. S. 15, § 87.

ABUSE OF CORPORATE POWERS.

SECT. 79. When a town votes to raise by taxation or pledge of its credit, or to pay from its treasury, any money, for a purpose other than those for which it has the legal right and power, the supreme judicial court may upon the suit or petition of not less than ten taxable inhabitants thereof, briefly setting forth the cause of complaint, hear and determine the same in equity. Any justice of said court may in term time or vacation issue injunctions and make such orders and decrees as may be necessary or proper to restrain or prevent any violation or abuse of such legal right and power, until the final determination of the cause by said court.

Towns, how restrained from illegal appropriations of money, &c.  
1847, 37.  
3 Cush. 530.  
10 Cush. 252.  
1 Allen 105.

FINES AND FORFEITURES.

SECT. 80. Fines and forfeitures imposed by this chapter, except in cases otherwise provided for, may be recovered by complaint or indictment to the use of the commonwealth, or by action of tort to the use of the town where the offence is committed.

Fines and forfeitures.  
R. S. 15, §§ 5, 30, 31, 40, 54, 57, 66, 81, 82.  
1839, 135.



CHAPTER 19.

OF CERTAIN POWERS AND DUTIES OF CITIES.

SECTION

- 1. Powers, &c., of cities to continue.
- 2. Laws relating to towns to apply to cities, &c.
- 3. Constables may be removed for misconduct.
- 4. When wards are divided, officers to act in same numerical wards till others are chosen.
- 5. Officers elected after division to hold till next annual meeting, &c.
- 6. Vacancies in board of mayor and aldermen by non-election — how filled.
- 7. If mayor is not elected, who to perform the duties.
- 8. Vacancies in city or ward offices — how filled.

SECTION

- 9. Ward officers, duties of, and proceedings in case of absence of.
- 10. Removal from ward not to disqualify city officers.
- 11. Five preceding sections to be in force only where adopted.
- 12. Mayor and aldermen, &c., may hold other offices.
- 13. City councils may regulate erection of balustrades, &c.
- 14. Regulations of carriages.
- 15. City officers may prosecute, &c.
- 16. Divisions of wards in cities.
- 17. "Mayor and aldermen," in Boston, how construed.

Powers, &c., of cities to continue. R. S. 15, § 86.

SECTION 1. The several cities shall continue to have and exercise all the powers and privileges, and be subject to all duties and liabilities, mentioned in the acts establishing such cities and in the several acts relating thereto.

Laws relating to towns to apply to cities, &c. R. S. 2, § 6, cl. 17.

SECTION 2. Chapter eighteen and all other laws relating to towns, shall apply to cities so far as they are not inconsistent with the general or special provisions relating thereto; and cities shall be subject to the liabilities, and city councils shall have the powers, of towns; the mayor and aldermen shall have the powers and be subject to the liabilities of selectmen, and the city clerks, treasurers, and other city officers, those of corresponding town officers, if no other provisions are made in relation thereto.

Mayor may remove constable. 1839, 294.

SECTION 3. The mayor of a city may, with consent of the board of aldermen, remove from office a constable for gross misconduct.

When wards are divided, officers of, how to act. 1851, 167, § 1.

SECTION 4. At the first election held after a new division of wards in a city, the ward officers chosen under the preceding division shall officiate in the numerical ward for which they were chosen, and shall continue to act there until others are chosen and qualified in their stead.

Officers elected after division to hold till, &c. 1851, 167, § 2.

SECTION 5. Officers chosen at a meeting called by the mayor and aldermen of a city, after such new division into wards, shall hold their offices until the next annual meeting, and until others are chosen and qualified in their stead.

Vacancies in board of mayor and aldermen by non-election, how filled. 1845, 217, §§ 1, 2. See § 11.

SECTION 6. If, at or after the time for the mayor and aldermen of a city to enter upon the discharge of their duties, it appears that the mayor or the full number of aldermen are not elected, such of said officers as are elected shall issue warrants for the election of a mayor or such aldermen as may be necessary. If neither of said officers is elected, the president of the common council shall issue such warrants.

If mayor is not elected, who to perform duties. 1845, 217, § 4. See § 11.

SECTION 7. If by reason of non-election there is no mayor of a city, the chairman of the board of aldermen shall discharge the duties of the office until a mayor is chosen and sworn.

Vacancies in city or ward offices, how filled. 1845, 217, § 2. See § 11.

SECTION 8. When it appears to the mayor and aldermen, that there is a vacancy either in their board, the common council, or any city or ward office, to be filled by popular election, they shall issue their warrant for elections to fill such vacancy at such time and place as they deem advisable.

Ward officers, duties of. 1845, 217, § 3. See § 11.

SECTION 9. Ward officers authorized to act at elections, shall attend and perform their respective duties at the times and places appointed for elections of officers, whether of the United States, state, city, or

wards, and shall make and sign the regular returns of the same. If a ward officer is absent from a meeting, the office may be filled, *pro tempore*, by the voters present, by nomination and hand vote if they so determine.

Ward officers *pro tempore*.

SECT. 10. City officers who were residents of the ward at the time of their election, shall discharge the duties of their offices notwithstanding their removal afterwards into any other ward of the city.

Removal from ward not to disqualify city officers. 1845, 217, § 5. See § 11.

SECT. 11. The five preceding sections shall be in force in those cities only which have adopted chapter two hundred and seventeen of the statutes of eighteen hundred and forty-five, or which shall adopt said sections.

Five preceding sections where in force. 1845, 217, § 1. Mayor, &c., may hold other offices, &c. 1851, 70, §§ 1, 2.

SECT. 12. The mayor and any alderman or member of the common council of a city which has adopted chapter seventy of the statutes of eighteen hundred and fifty-one, or which shall adopt this section, may at the same time hold any other office under the city government to which he may be chosen, except one of emolument.

SECT. 13. The city council of each city may make such rules and regulations for the erection and maintenance of balustrades, or other projections upon the roofs or sides of buildings therein, as the safety of the public requires, with penalties for the violation thereof, not exceeding twenty dollars for each offence; but no such rule or regulation shall take effect until the same has been published at least sixty days in some newspaper printed in the city or in the county in which the city is situated.

City councils may regulate erection of balustrades, &c. 1848, 278.

SECT. 14. The mayor and aldermen of a city may make rules and orders for the regulation of all carriages and vehicles used either wholly or in part therein, whether with or without animal power, with penalties for violations thereof, not exceeding twenty dollars for one offence; and may receive annually one dollar and no more for each license, granted by them to a person to set up and use any carriage or vehicle within such city. Such rules shall not take effect until they have been published at least one week in some newspaper published in the city or in the county in which the city is situated. This section shall not impair the right of a city to make by-laws relating to the subject.

Regulations of carriages, &c. 1847, 224, §§ 1, 2. 1850, 275. 2 Cush. 562.

SECT. 15. The city marshal or other principal police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city or the poor thereof, and may also prosecute for trespasses committed on any public building or enclosure within the limits of the city.

City officers may prosecute, &c. R. S. 15, § 63. 1854, 87. 1854, 419.

SECT. 16. No new division of wards in any city comprising more than one representative district, shall be made previously to the next apportionment of senators and representatives.

Division of wards in cities. 1857, 309, § 2.

SECT. 17. In laws relating to cities, the words mayor and aldermen shall in their application to the city of Boston, unless provision is otherwise made, be construed to mean board of aldermen.

"Mayor and aldermen," in Boston, how construed. 1854, 448, § 33.

## CHAPTER 20.

### OF THE CENSUS.

SECTION

1. Census of inhabitants and voters, to be taken in 1865 and every tenth year after.
2. by whom taken. Returns, &c.

SECTION

3. Secretary to furnish blanks, &c.
4. Penalties.

SECTION 1. There shall be taken in the several cities and towns, in the year one thousand eight hundred and sixty-five and every tenth year thereafter, a census of the inhabitants, ratable polls, and voters as they were on the first day of May of the same year; distinguishing in

Census to be taken in 1865, and every tenth year after, &c.

Amend. const. arts. 12, 13, 21, 22.  
1855, 430, § 2.  
1857, 60, § 1.

Census, by whom taken. Returns, &c. 1857, 60, § 2.

Secretary to furnish blanks, &c. 1857, 60, § 4.

Penalties. 1857, 60, § 3.

the enumeration of the inhabitants, the males and females, the color of each, the ages within decennial periods, the natives, the foreigners, naturalized voters, and the country in which the foreigners were born; and in the enumeration of the voters of cities, the number in each ward.

SECT. 2. The census shall be taken in cities by agents appointed by the mayor and aldermen, and in towns by the assessors. Such agents and assessors shall be sworn, shall make out in words at length a return of the result of said census, and shall sign and make oath to the truth thereof; and a certificate of the oath by the magistrate administering it shall be annexed thereto. They shall, on or before the twentieth day of June of the same year, deliver the return to the sheriff of the county, who shall transmit it to the office of the secretary of the commonwealth on or before the last day of said June; or the agents or assessors may themselves transmit the return to the office of the secretary on or before the day last named.

SECT. 3. The secretary shall, on or before the first day of May of each year in which the census is to be taken, transmit to the clerks of the several cities and towns, printed forms for the returns required by this chapter, and shall annex thereto a notice that the returns must be made into his office on or before the last day of June.

SECT. 4. If an agent or assessor wilfully refuses or neglects to perform any duty required of him by this chapter, he shall forfeit a sum not exceeding five hundred dollars, and if he is guilty of wilful deceit or falsehood in the discharge of his duty, he shall forfeit a sum not exceeding two thousand dollars or be imprisoned not exceeding one year. A sheriff who wilfully refuses or neglects to perform the duty required of him by this chapter, shall forfeit not exceeding one thousand dollars.

## CHAPTER 21.

### OF THE REGISTRY AND RETURNS OF BIRTHS, MARRIAGES, AND DEATHS.

#### SECTION

1. City and town clerks to record births, marriages, and deaths.
2. Parents and others to give notice of births and deaths.
3. Physician to certify, &c. Penalty.
4. Sextons and others to make returns to city and town clerks. Clerks to give certificates. Penalties.
5. Clerk to transmit copies of records to secretary.
6. record of, to be evidence.

#### SECTION

7. Clerk, fees of, &c. Penalty.
8. Superintendents of state almshouses to record, return, &c., facts in relation to births, &c.
9. Secretary to furnish blank books and forms for returns.
10. to cause returns to be bound, &c.; to report to legislature, &c.
11. Registrars may be chosen in certain cases.
12. Secretary to prosecute for penalty.
13. Towns may make additional rules, &c.

City and town clerks to record births, marriages, and deaths. R. S. 15, § 46. 1844, 159, § 1. 1849, 202, § 1.

SECTION 1. The clerk of each city and town shall receive or obtain, and record and index, the following facts concerning the births, marriages, and deaths, therein, separately numbering and recording the same in the order in which he receives them, designating in separate columns;

In the record of births, the date of the birth, the place of birth, the name of the child, (if it have any,) the sex and color of the child, the names and the places of birth of the parents, the occupation of the father, the residence of the parents, and the date of the record;

In the record of marriages, the date of the marriage, the place of marriage, the name, residence, and official station of the person by whom married, the names and the places of birth of the parties, the residence of each, the age and color of each, the condition of each, (whether single or widowed,) the occupation, the names of the parents, and the date of the record;



In the record of deaths, the date of the death, the name of the deceased, the sex, the color, the condition, (whether single, widowed, or married,) the age, the residence, the occupation, the place of death, the place of birth, the names and places of birth of the parents, the disease or cause of death, the place of burial, and the date of the record.

SECT. 2. Parents shall give notice to the clerk of their city or town of the births and deaths of their children; every householder shall give like notice of every birth and death happening in his house; the eldest person next of kin shall give such notice of the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital, or almshouse, except the state almshouses at Tewksbury, Bridgewater, and Monson, and the master or other commanding officer of any ship shall give like notice of every birth and death happening among the persons under his charge. Whoever neglects to give such notice for the space of six months after a birth or death, shall forfeit a sum not exceeding five dollars.

Parents and others to give notice of births and deaths.  
R. S. 15, § 47.  
1839, 135.  
1855, 366.

SECT. 3. Any physician having attended a person during his last illness, shall, when requested within fifteen days after the decease of such person, forthwith furnish for registration a certificate of the duration of the last sickness, the disease of which the person died, and the date of his decease, as nearly as he can state the same. If any physician refuses or neglects to make such certificate, he shall forfeit and pay the sum of ten dollars to the use of the town in which he resides.

Physician to certify, &c.  
Penalty.

SECT. 4. Every sexton, undertaker, or other person having charge of a burial-ground, or the superintendent of burials having charge of the obsequies or funeral rites preliminary to the interment of a human body, shall forthwith obtain and return to the clerk of the city or town in which the deceased resided or the death occurred, the facts required by this chapter to be recorded by said officer concerning the deceased, and the person making such return shall receive from his city or town the fee of ten cents therefor.

Sextons and others to make returns to city and town clerks.  
Penalties.  
1844, 159, § 4.  
1849, 202, § 3.

The clerk, upon recording such facts, shall forthwith give to the person making such return, a certificate that such return has been made, which certificate such person shall deliver to the person having charge of the interment, if other than himself, before the burial when practicable, otherwise within seven days thereafter. When a burial takes place and no certificate is delivered as aforesaid, the sexton, undertaker, or other person having charge of the interment, shall forthwith give notice thereof to the clerk under penalty of twenty dollars.

Clerk to give certificate.

SECT. 5. The clerk of each city and town shall annually on or before the first day of February, transmit to the secretary of the commonwealth, certified copies of the records of the births, marriages, and deaths, which have occurred therein during the year ending on the last day of the preceding December.

to transmit copies to secretary of state.  
Penalty.  
1844, 159, § 1.  
1849, 202, § 5.

SECT. 6. The record of the town clerk relative to any birth, marriage, or death, shall be *prima facie* evidence, in legal proceedings, of the facts recorded. The certificate signed by the town clerk for the time being shall be admissible as evidence of any such record.

record of, to be evidence.

SECT. 7. The clerk shall receive from his city or town for obtaining, recording, indexing, and returning to the secretary of the commonwealth, the facts in relation to a birth, twenty cents; a marriage, ten cents; a death, twenty cents for each of the first twenty entries, and ten cents for each subsequent entry, as the same shall be certified by the secretary of the commonwealth; but a city or town containing more than ten thousand inhabitants may limit the aggregate compensation allowed to their clerk. He shall forfeit a sum not less than twenty nor more than one hundred dollars for each refusal or neglect to perform any duty required of him by this chapter.

fees of, &c.  
Penalty.  
1849, 202, §§ 2, 3.

SECT. 8. The superintendents of the state almshouses at Tewksbury, Bridgewater, and Monson, shall obtain, record, and make return of, the

Superintendents of state almshouses to

record, return, &c., facts, in relation to births, &c.  
1855, 366.

Secretary to furnish blank books and forms for returns.  
1844, 159, §§ 6, 7.  
1849, 202, § 5.

to cause returns to be bound, &c.  
to report to legislature, &c.  
1844, 159, § 7.  
1849, 202, § 5.

Registrars may be chosen in certain cases.  
1849, 202, § 1.

Secretary to prosecute for penalty.

Towns may make additional rules, &c.

facts in relation to the births and deaths which occur in their respective institutions, in like manner as is required of town clerks. The clerks of said towns shall, in relation to the births and deaths of persons in said almshouses, be exempt from the duties otherwise required of them by this chapter.

SECT. 9. The secretary shall at the expense of the commonwealth prepare and furnish to the clerks of the several cities and towns, and to the superintendents of the state almshouses, blank books of suitable quality and size to be used as books of record under this chapter, blank books for indexes thereto, and blank forms for returns, on paper of uniform size; and shall accompany the same with such instructions and explanations as may be necessary and useful. City and town clerks shall make such distribution of blank forms of returns furnished by the secretary as he shall direct.

SECT. 10. The secretary shall cause the returns received by him for each year to be bound together in one or more volumes with indexes thereto. He shall prepare from the returns such tabular results as will render them of practical utility, make report thereof annually to the legislature, and do all other acts necessary to carry into effect the provisions of this chapter.

SECT. 11. Any city or town containing more than ten thousand inhabitants, may choose a person other than the clerk to be registrar, who shall be sworn, and to whom all the provisions of this chapter concerning clerks shall apply. The returns and notices required to be made and given to clerks shall be made and given to such registrar under like penalties.

SECT. 12. The secretary of this commonwealth shall prosecute, by an action of tort, in the name of the commonwealth, for the recovery of any penalty or forfeiture imposed by this [chapter] [act].

SECT. 13. Any city or town may make rules and regulations to enforce the provisions of this chapter, or to secure a more perfect registration of births, marriages, and deaths, therein.

## CHAPTER 22.

### OF WORKHOUSES AND ALMSHOUSES.

#### SECTION

1. Cities and towns may provide workhouses or almshouses. Persons who may be committed thereto.
2. not to erect almshouse, &c., in any other place without consent, &c.
3. Directors of workhouse, master, &c.
4. Meetings of directors.
3. Cities and towns may provide a workhouse, &c., in common.
6. Joint board of directors.
7. Each place to choose three directors, &c.
8. Quarterly and other meetings of the directors.
9. Board may choose moderator and clerk.
10. may make by-laws, &c. May allow compensation to master and assistants.
11. may act upon other matters.
12. Compensation of master, &c., to be paid by places interested.

#### SECTION

13. Remedy against places neglecting to pay.
14. Cities and towns not to send more than their proportion, in case, &c.
15. Any place refusing to contribute to expenses shall not use the house.
16. Each place may furnish materials, &c., for persons committed by its authority.
17. Masters to keep register of persons committed, &c.
18. Controversies between master and overseers, how determined.
19. Profits and earnings, how appropriated.
20. How persons may be discharged.
21. Persons committed to be kept employed. Discipline.
22. Provisions respecting foreigners committed.
23. Workhouses may be discontinued.
24. Construction of this chapter.

Cities and towns may provide work-

SECTION 1. A city or town may erect or provide a workhouse or almshouse for the employment and support of poor and indigent per-

sons who are maintained by or receive alms from the city or town; persons who, being able of body to work and not having estate or means otherwise to maintain themselves, refuse or neglect to work; persons who live a dissolute, vagrant life, and exercise no ordinary calling or lawful business; persons who spend their time and property in public houses to the neglect of their proper business, or who, by otherwise misspending what they earn to the impoverishment of themselves and their families, are likely to become chargeable to the city or town; and other persons sent thereto under any provisions of law.

houses or almshouses. Persons who may be committed thereto. R. S. 16, § 1. R. S. 46, § 4. 1857, 153.

SECT. 2. No city or town shall erect or maintain an almshouse or house of correction within the limits of any other place, without the consent of such other place.

Towns, &c., not to erect almshouse, &c., in other place, &c. 1848, 291.

SECT. 3. Every city or town having a workhouse or almshouse may annually choose three, five, seven, or more directors, who shall have the inspection and government thereof, and who may appoint a master and necessary assistants, for the more immediate care and superintendence of the persons received or employed therein. Where such directors are not specially chosen, the overseers of the poor shall be the directors.

Directors of workhouse, master, &c. R. S. 16, §§ 2, 3.

SECT. 4. Once in every month, and at other times as occasion may require, the directors shall hold meetings for the purpose of determining the most eligible mode of discharging their duties. At such monthly meetings they may make needful orders and regulations for the house, which shall be binding until the next meeting of the town or of the city council, when the same shall be submitted to such meeting, and if approved shall remain in force until revoked by the town or the city council.

Meetings of directors. R. S. 16, § 4.

SECT. 5. Any number of cities or towns may at their joint charge and for their common use erect or provide a workhouse or almshouse, and purchase land for the use thereof.

Towns may jointly provide workhouse. R. S. 16, § 5. R. S. 46, § 4. Joint board of directors. R. S. 16, § 6.

SECT. 6. The ordering, governing, and repairing, of such house, the appointment of a master and necessary assistants, and the power of removing them for misconduct, incapacity, or other sufficient cause, shall be vested in a joint board of directors, who shall be chosen annually by the several places interested.

SECT. 7. Unless all the places interested in such house shall agree to choose a different number, each of them shall choose three members of the board; and in case of the death of a director, or of his removal from the place for which he was chosen, the vacancy may be supplied by such place. If a place neglects to choose directors, those chosen by the other places shall have the whole charge of the house.

Each place to choose three directors, &c. R. S. 16, §§ 7, 8.

SECT. 8. Stated quarterly meetings of the board shall be holden on the first Tuesdays of January, April, July, and October, at the workhouse or almshouse under their charge, for the purpose of inspecting the management and directing the business thereof. Meetings of the board may be called at other times by the directors chosen by any place interested, they giving notice of the time and purpose thereof to the other members of the board in such manner as shall have been agreed upon at a stated meeting.

Quarterly and other meetings of directors. R. S. 16, § 9.

SECT. 9. The board of directors may choose a moderator; and at their first general meeting they shall appoint a clerk, who shall be sworn and shall record all votes and orders of the board.

Board may choose moderator and clerk. R. S. 16, § 10.

SECT. 10. At a general quarterly meeting, if one-half of the members are present, they may make reasonable orders and by-laws not repugnant to the laws of the commonwealth for ordering and regulating the house under their charge, and may agree with the master and assistants, and order a suitable compensation for their services.

may make by-laws, &c. may allow compensation to master, &c. R. S. 16, §§ 11, 12.

SECT. 11. Other matters may be acted upon at any other meeting duly notified, if one-third of the members are present; but the doings of such meetings may be altered or revised at any general stated meeting.

may act upon other matters. R. S. 16, § 12.



Compensation of master, &c., to be paid by places interested.  
R. S. 16, § 13.

SECT. 12. The yearly compensation of the master and assistants, (in addition to the allowance hereafter provided in this chapter for their services,) and also the expense of keeping the house in repair, shall be paid by the several places interested, in proportion to their state tax at the time when the expense may have been incurred, or in such proportion as the places interested shall agree.

Remedy against places neglecting to pay.  
R. S. 16, § 14.  
1852, 312.

SECT. 13. If a place refuses or neglects to advance or reimburse its proportion of the sums of money mentioned in the preceding section, or of any other charges mentioned in this chapter, after the same have been adjusted by the joint board of directors, the same may be recovered of such delinquent place in an action of contract brought by any person whom the board shall in writing appoint for that purpose.

Towns not to send more than their proportion, &c.  
R. S. 16, § 15.

SECT. 14. No greater number of persons belonging to a city or town shall be received into such workhouse or almshouse, than such city's or town's proportion of such house, when the receiving of them would exclude or be inconvenient to such as belong to the other places interested.

Any place refusing to contribute to expenses, shall not use house.  
R. S. 16, § 16.

SECT. 15. If any place refuses or neglects to provide its proportion of the necessary expenses of such house, or of the materials, implements, or other means, for performing the work there required, according to its agreement or the directions of the joint board of directors, such place shall be deprived of the privilege of sending any person thither during the time of such neglect or refusal.

Each place may furnish materials, &c., for persons committed by its authority.  
R. S. 16, § 17.

SECT. 16. Each place may furnish such additional materials, implements, and means of work, as the overseers of the poor thereof may choose, for the employment of any person committed to such house; and the master of the house shall receive the same, and keep them separate from those of the other places, and shall be accountable to each place interested, as well for the cost as for all profits and earnings made by the labor of the persons committed to said house from such place.

Masters to keep register of persons committed, &c.  
R. S. 16, § 18.

SECT. 17. The master of each workhouse and almshouse shall keep a register of the names of the persons committed or received, the places to which they belong, the dates of their reception and discharge, and of their respective earnings, to be submitted to the overseers of the poor upon their request.

Controversies between masters and overseers, how determined.  
R. S. 16, § 19.

SECT. 18. Controversies between the masters and the overseers of the poor of any place respecting the accounts or other official doings of the masters, shall be determined by the directors of the house at their general or quarterly meeting.

Profits and earnings, how appropriated.  
R. S. 16, § 23.

SECT. 19. The profits and earnings arising from the work of persons committed to the workhouse or almshouse, with the stock remaining on hand, shall be disposed of as the overseers of the poor of the several places shall think proper, either to the use of their cities or towns, the persons committed, or their families.

How persons may be discharged.  
R. S. 16, § 20.  
1859, 196.

SECT. 20. No person committed to the workhouse shall be discharged within the time for which he was committed, except by the police court or justice who made the commitment, the directors of the house at their general or quarterly meeting, or by the superior court, at any term held in the county where such house is situated, for good cause shown upon application for that purpose.

Persons committed to be kept employed. Discipline.  
R. S. 16, § 21.

SECT. 21. Every person committed to a workhouse shall if able to work be kept diligently employed in labor during the term of his commitment. If he is idle and does not perform such reasonable task as is assigned, or is stubborn and disorderly; he shall be punished according to the orders and regulations established by the directors.

Provisions respecting foreigners committed.  
R. S. 16, § 22.  
1852, 275.

SECT. 22. When a person not having a legal settlement in this state shall become idle or indigent, he may be committed to the workhouse to be there employed, if able to labor, in the same manner and under the same rules as other persons there committed.

SECT. 23. A workhouse or almshouse may be discontinued or appropriated to any other use, when the place or places interested so determine.

Workhouses may be discontinued.  
R. S. 16, § 24.

SECT. 24. Nothing contained in this chapter shall affect any powers or privileges heretofore granted to cities or towns, or the overseers of the poor thereof, by acts specially relating to workhouses or almshouses therein.

Construction of this chapter.  
R. S. 16, § 25.

## CHAPTER 23.

### OF WATCH AND WARD.

SECTION

1. Watch, cities, &c., may establish.
2. duties and powers of.
3. badges and weapons of.
4. Selectmen, &c, may order watch, &c., where none is established.
5. Persons liable to watch, &c.
6. Persons exempt.
7. Penalty on persons liable, &c., refusing, &c.
8. Watch districts may be established in villages.
9. Selectmen, &c., to notify meeting, upon application in writing, &c.
10. Proceedings when village is situated in two or more towns.

SECTION

11. Clerk.
12. Prudential committee.
13. Annual meetings for choice of officers.
14. Meetings, how called, &c.
15. Districts may raise money, which shall be under charge of prudential committee, &c.
16. Clerk shall certify to assessors amount to be raised.
17. Duty of assessors, when district is situated in two or more towns.
18. Territory adjoining a district, how annexed.
19. Watch districts heretofore organized.

SECTION 1. A city or town may establish and keep a watch and determine the number and qualifications of the persons to be employed for that purpose. The mayor and aldermen or selectmen shall appoint a suitable person to be officer of the watch, and direct the manner in which watchmen shall be equipped. The expense of the watch shall be defrayed in like manner as other town charges.

Watch, cities, &c., may establish.  
R. S. 17, §§ 7, 8.

SECT. 2. The watch shall see that all disturbances and disorders are prevented and suppressed. During the night time they may examine all persons abroad whom they have reason to suspect of any unlawful design, demand of them their business abroad and whither they are going; may disperse any assembly of three or more such persons, and enter any building for the purpose of suppressing a riot or breach of the peace therein. Persons so suspected and not giving a satisfactory account of themselves, persons so assembled and not dispersing when ordered, and persons making, aiding, or abetting in a riot or disturbance, may be arrested by the watch, and shall thereupon be safely kept, by imprisonment or otherwise, until the next morning, and then taken before a police court or some trial justice, to be examined and proceeded against.

duties and powers of.  
R. S. 17, § 4.  
1850, 186.

SECT. 3. Officers and members of the watch, when on duty, may carry a club of not more than eighteen inches in length; shall wear such badge of office as the mayor or selectmen direct, and shall walk the rounds in and about the streets, lanes, wharves, and principal inhabited parts of the city or town, to prevent danger by fire, and to see that good order is kept.

badges and weapons of.  
R. S. 17, §§ 5, 6.  
1855, 118.

SECT. 4. The mayor and aldermen or selectmen of any place wherein no watch as above provided is established, may, from time to time, order a suitable watch to be kept in their place, and warn all persons liable to watch and ward duty to perform the same. They may direct the number of the watch, the places and hours for keeping the same, may order in writing any constable or officer of the watch to warn such

Selectmen, &c., may order watch, &c., where none is established.  
R. S. 17, §§ 3, 9

watch, either by himself or by some person therefor by him appointed, and to see that all persons so warned attend and perform their duty.

Persons liable to watch, &c.  
R. S. 17, § 1.

SECT. 5. Every male person of the age of eighteen years or upwards, being able of body, or having sufficient estate to hire a substitute, and not exempt, shall be liable to watch and ward in his city or town, and shall perform the duties, be subject to the liabilities, and have the powers of watchmen as the same are defined in this chapter.

Persons exempt.  
R. S. 17, § 2.

SECT. 6. Justices of the peace, mayors, aldermen, selectmen, sheriffs, settled ministers of the gospel, and persons living more than two miles from the place where such watch and ward is kept, shall be exempt.

Penalty on persons liable, &c., refusing, &c.  
R. S. 17, §§ 9, 10.  
1839, 135.  
1852, 312.

SECT. 7. Persons liable to watch and ward, and without reasonable excuse neglecting or refusing to appear and do duty personally or by sufficient substitute, and constables or officers or members of the watch refusing to execute and observe proper orders, shall forfeit ten dollars, to be recovered by complaint to the use of the commonwealth, or by action of tort to the use of the city or town.

#### WATCH IN VILLAGES AND DISTRICTS.

Watch districts may be established in villages.  
1855, 274, §§ 1, 5.

SECT. 8. Watch districts may be established and organized in villages containing not less than one thousand persons, for the protection of property against fire, thieves, and robbers, and for keeping the streets quiet in the night time.

Selectmen, &c., to notify meeting, upon application in writing, &c.  
1855, 274, § 2.

SECT. 9. The selectmen of a town, upon the application in writing of not less than seven freeholders, inhabitants of such village the limits of which shall be defined in the application, requiring them to notify a meeting of the persons in such district qualified to vote in town affairs, for considering the expediency of establishing such watch district, shall forthwith give notice to such voters, in the manner in which notice of town meetings is given, to assemble at some suitable place within the district for said purpose, the substance of which shall be expressed in the notification. If the selectmen refuse or neglect to give notice of such meeting, any justice of the peace in the county may so notify the same.

Proceedings when village is situated in two or more towns.  
1855, 274, § 3.

SECT. 10. When such village belongs to two or more towns, the voters thereof may organize such district at a meeting called and notified as provided in the preceding section by any justice of the peace for the county in which either town is situated, to whom application has been made by at least five voters of each town who are inhabitants of such district.

Clerk.  
1855, 274, §§ 4, 5.

SECT. 11. If at any such meeting the voters present determine to establish such district, a clerk shall be chosen, who shall be sworn to keep a true record of the proceedings of all meetings and to perform all duties of clerk of the district so long as he holds the office. He may be removed by the district, or may resign, and in case of a vacancy another may be chosen.

Prudential committee.  
1855, 274, §§ 5, 6.  
Annual meetings for choice of officers.  
1855, 274, § 9.

SECT. 12. A prudential committee of not less than three nor more than five persons shall be chosen by ballot, and shall be sworn.

SECT. 13. The prudential committee shall annually issue their warrants to the clerk, requiring him to call a meeting in the month of March for the purpose of choosing officers. Such officers shall perform the duties of their offices until others are chosen.

Meetings, how called, &c.  
1855, 274, §§ 2, 3, 7.

SECT. 14. Meetings of the district shall be called by the clerk when requested in writing by the prudential committee or seven voters of the district. He shall give notice thereof by posting written notifications in at least six public places in the district, not less than seven days prior to the meeting, which notifications shall contain a brief statement of the purposes of the meeting. At each of the meetings a moderator shall be chosen, who shall have the powers of the moderator of a town



meeting. After the choice of a clerk he shall preside at subsequent meetings with like powers until a moderator is chosen.

SECT. 15. The district may, at meetings called for the purpose, vote to raise money for the payment of watchmen and other necessary expenses. The prudential committee shall have the superintendence and control of the watchmen, have charge of and be responsible for the property employed, have the custody and management of the money raised, expend the same for the purposes specified in the votes of the district, be accountable to the district for the money received by them, and be liable to a suit for such money or other property of the district, in the name of the inhabitants thereof.

Districts may raise money, which shall be under charge of prudential committee, &c. 1855, 274, §§ 1, 8.

SECT. 16. The clerk shall certify to the assessors of the town all sums of money voted to be raised, which shall be assessed and collected, by the officers of the town in the same manner that the town taxes are assessed and collected, and be paid over to the treasurer, who shall hold the same subject to the order of the prudential committee. The assessors, treasurer, and collector, of any town in which such district is organized shall have the powers and perform the duties, in reference to the assessment and collection of said taxes, which they have and perform in the assessment, collection, and abatement, of town taxes; but the sum so voted shall be assessed upon the property real and personal located within such district.

Clerk shall certify to assessors amount to be raised. 1855, 274, § 10. 11 Act. 374.

SECT. 17. When a district is composed of parts of two or more towns, the assessors of such towns shall transmit to the clerk of the district the amount of taxable property in such part of their respective towns as is within the limits of the district; the prudential committee shall thereupon apportion the money voted to be raised by the district among the respective towns according to the returns thus transmitted, and the same shall be collected and held in the manner provided in the preceding section.

Duty of assessors, when district is situated in two or more towns. 1855, 274, § 11.

SECT. 18. When the freeholders of a territory adjoining a watch district present to the clerk thereof a petition describing their territory and requesting to be annexed to such district, the clerk shall give notice of the petition at the next annual meeting of the district, when by a vote of the meeting the inhabitants of such territory may be annexed to the district.

Territory adjoining a district, how annexed. 1855, 274, § 12.

SECT. 19. Watch districts heretofore legally organized shall continue, and be subject to the provisions of this chapter in relation to watch districts.

Watch districts heretofore organized.

## CHAPTER 24.

### OF FIRES AND FIRE DEPARTMENTS.

#### EXTINGUISHMENT OF FIRES.

##### SECTION

1. Firewards to be chosen, &c.
2. Penalty for not accepting or refusing.
3. Firewards shall attend at fires.
4. selectmen, &c., may order buildings to be pulled down, &c.
5. Owners of buildings, &c., pulled down, to be indemnified, except, &c.
6. Firewards may command assistance.
7. may give orders to enginemen and others, &c.
8. Embezzling, &c., of property at a fire to be deemed larceny.

#### ENGINEMEN.

9. Selectmen, &c., to appoint enginemen.

##### SECTION

10. Number of enginemen to each engine.
11. Axe-men, &c., to be appointed.
12. Annual meeting of enginemen in May. Rules may be made and penalties annexed.
13. Meetings of engine companies.
14. Selectmen, &c., to appoint enginemen to private engines.
15. If selectmen, &c., refuse, commissioners may appoint.
16. Enginemen to live near engines.
17. if negligent, may be discharged.
18. compensation of.
19. Chief engineer, &c., to certify to assessors. Assessors shall examine and certify lists. Treasurers shall pay. Remedy.

## SECTION

20. Penalty for refusing certificate, &c., or making false one.
21. Three preceding sections not to apply unless adopted.
22. Penalty for injuring fire engines.

## FIRE DEPARTMENTS.

23. Fire departments may be organized, &c.
24. Engineers, selectmen to appoint, &c.
25. organization of.
26. to have powers of firewards; to appoint enguemen, &c.
27. Organization of enginemen, &c., their by-laws, &c.
28. Privileges and duties of engineers, &c.
29. Engineers to have care of engines, and other fire apparatus.
30. may make rules, as to carrying fire, lighted matches, &c., in streets, &c.
31. Other general powers, as to preventing, &c., fires.
32. Future acts establishing fire departments, &c.

## FIRE DISTRICTS.

33. Fire departments in villages and districts.
34. proceedings before establishment of.
35. Selectmen, or justice of the peace, may call meeting of district, upon request of seven freeholders.

## SECTION

36. Who to vote at such meetings; clerk to be chosen; his duties.
37. At such meeting, fire department may be established.
38. Engineer, &c., how chosen.
39. Meetings of fire district, how called and conducted.
40. Board of engineers to make rules and regulations, appoint enginemen, &c.
41. Power of engineers, and liability of district for their acts.
42. Privileges, &c.; compensation.
43. Money may be raised, to be under charge of prudential committee, to be chosen, &c.
44. Assessment and collection of money voted to be raised by fire district.
45. By-laws, imposing penalties, to be approved by superior court.
46. Penalties, how recovered, &c.
47. District may exclude, &c., particular persons or estates.
48. Districts heretofore organized.

## SPECIAL PROVISIONS.

49. Fire clubs not to be established, unless, &c.
50. Penalty for joining without permission.
51. Two preceding sections to be in force only, &c.

## EXTINGUISHMENT OF FIRES.

SECTION 1. The inhabitants of each town at their annual meeting, and the city council of each city, may elect such number of suitable persons to be firewards therein as they deem necessary.

SECT. 2. Each person elected shall forthwith have notice thereof, and within three days after such notice shall enter his acceptance or refusal of the office with the town clerk; whoever after such notice neglects so to enter his acceptance or refusal shall, unless excused by the city or town, forfeit ten dollars, and another may be elected in his place.

SECT. 3. When a fire breaks out in any place, the firewards shall immediately repair thereto, and shall carry a suitable staff or badge of their office.

SECT. 4. The firewards or any three of them present at a place in immediate danger from a fire and where no firewards are appointed, the selectmen or mayor and aldermen present, or in their absence two or more of the civil officers present, or in their absence two or more of the chief military officers of the place present, may direct any house or building to be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire.

SECT. 5. If such pulling down or demolishing of a house or building is the means of stopping the fire, or if the fire stops before it comes to the same, the owner shall be entitled to recover a reasonable compensation from the city or town; but when such building is that in which the fire first broke out, the owner shall receive no compensation.

SECT. 6. Such firewards or other officers may during the continuance of a fire require assistance for extinguishing the same and removing furniture, goods, or merchandise, from a building on fire or in danger thereof; and may appoint guards to secure the same. They may also require assistance for pulling down or demolishing any house or building when they judge it necessary; and may suppress all tumults and disorders at such fire.

SECT. 7. They may direct the stations and operations of the enginemen with their engines, and of all other persons for the purpose of

Firewards, to be chosen, &c.  
R. S. 18, § 1.

Penalty for not accepting or refusing.  
R. S. 18, § 2.

Firewards shall attend at fires.  
R. S. 18, § 3.  
5 Cush. 269.

selectmen, &c., may order buildings to be pulled down, &c.  
R. S. 18, § 4.

Owners to be indemnified, except, &c.  
R. S. 18, § 7.  
8 Met. 462.  
5 Cush. 269.  
11 Cush. 433.

Firewards may command assistance.  
R. S. 18, § 5.

may give orders to enginemen and others, &c.  
R. S. 18, § 6.

extinguishing the fire; and whoever refuses or neglects to obey such orders shall forfeit for each offence a sum not exceeding ten dollars.

SECT. 8. Whoever purloins, embezzles, conveys away, or conceals, any furniture, goods or chattels, merchandise or effects, of persons whose houses or buildings are on fire or endangered thereby, and does not within two days restore or give notice thereof to the owner if known, or if unknown, to one of the firewards, mayor and aldermen, or selectmen, of the place, shall be deemed guilty of larceny.

Embezzling, &c., of property, at a fire, to be deemed larceny.  
R. S. 18, § 8

ENGINEMEN.

SECT. 9. The mayor and aldermen or selectmen of places provided with fire engines may appoint suitable persons for enginemen; who shall continue in office during the pleasure of the authority appointing them.

Selectmen, &c., to appoint enginemen.  
R. S. 18, § 9.

SECT. 10. Such engines shall be manned as follows: each common engine, or suction engine when used as a common engine only, with not exceeding thirty men; each suction engine, when used as such, with not exceeding forty-five men: but this provision shall not affect the present right of any place to have a greater number of enginemen appointed than is herein prescribed.

Number of enginemen to each engine.  
R. S. 18, § 10.

SECT. 11. The mayor and aldermen or selectmen may select from the enginemen any number for each engine, who shall under the direction of the firewards attend fires with axes, fire-hooks, fire-sails, and ladders, and do such further duty as the mayor and aldermen or selectmen shall from time to time prescribe; and they shall be entitled to all exemptions and privileges of other enginemen.

Axe-men, &c., to be appointed.  
R. S. 18, § 11.

SECT. 12. Each company of enginemen so appointed shall meet annually in May and choose a foreman, or director, and a clerk, and establish such rules and regulations not repugnant to the laws of the commonwealth respecting their duty as enginemen, as shall be approved by the mayor and aldermen or selectmen; and they shall annex penalties thereto not exceeding ten dollars, which may be recovered by the the clerk in an action of tort.

Annual meeting of enginemen in May. Rules may be made and penalties annexed.  
R. S. 18, § 12.

SECT. 13. Such companies shall meet together once a month, and oftener if necessary, for the purpose of examining the engine and its appendages and seeing that they are in good repair and ready for use. They shall by night and day, under the direction of the firewards, use their best endeavors to extinguish any fire that may happen in their city or town or the vicinity thereof.

Meetings of engine companies.  
R. S. 18, § 13.

SECT. 14. When the proprietors of an engine apply to the mayor and aldermen or selectmen of a city or town in which the engine is owned, setting forth that they desire that the same should be employed for the benefit of such place, the mayor and aldermen or selectmen may appoint enginemen in the same manner, with the same privileges, and subject to the same regulations, as if the engine belonged to the place; and if the proprietors do not agree as to where the engine shall be kept, the mayor and aldermen or selectmen shall determine the same.

Selectmen, &c., to appoint enginemen to private engines.  
R. S. 18, § 14.

SECT. 15. If the mayor and aldermen or selectmen upon such application refuse or delay for the space of fourteen days so to appoint enginemen, the proprietors may apply therefor in writing to the county commissioners, giving notice in writing to such mayor and aldermen or selectmen seven days at least before the sitting of the commissioners, that they may appear and show cause, if any they have, why such enginemen should not be appointed; and if sufficient cause is not shown by them the commissioners may appoint the number of enginemen prescribed in section ten.

If selectmen, &c., refuse, commissioners may appoint.  
R. S. 18, § 15.

SECT. 16. Enginemen appointed under the two preceding sections shall, if such can be obtained, be persons living at or near the place

Enginemen to live near engines.  
R. S. 18, § 16.



where the engine is kept, and they shall enjoy all the privileges and exemptions of other enginemen.

Enginemen, if negligent, may be discharged.  
R. S. 18, § 18.

SECT. 17. If an engineman is negligent in his duties the mayor and aldermen or selectmen shall discharge him and appoint another in his stead.

compensation of.  
R. S. 18, § 19.  
1838, 71, § 2.  
See § 21.

SECT. 18. Persons appointed enginemen or members of the fire department in any place, and who have done duty as such for one year preceding the first day of May in any year, shall be entitled to receive from the treasurers of their respective towns a sum equal to the poll tax for state, county, and town taxes, (exclusive of highway taxes,) paid by them, or by their parents, masters, or guardians, and such further compensation as the town determines.

Chief engineer, &c., to certify to assessors. Assessors shall examine and certify lists. Treasurers shall pay. Remedy.  
R. S. 18, § 20.  
1852, 312.  
See § 21.

SECT. 19. The chief engineer or the officer who holds the first office in any fire department, and the foreman or director of each company in any place where no fire department is established by law, shall annually on or before the first day of May make out and certify to the assessors of their respective places a list of all persons in their department or companies who through the year preceding have performed all the duties therein required by law. The assessors shall within ten days thereafter examine such lists and certify to the treasurers of their respective places the amount to be paid to each person named therein. Such treasurers shall after deducting all taxes due from the persons so named pay the same to them, or if minors to their parents, masters, or guardians; and upon refusal of the treasurer to pay any sums so certified and returned, the persons entitled may severally recover the same from such places in an action of contract.

Penalty for refusing certificate, &c., or making false one.  
R. S. 18, § 21.  
1839, 135.  
1852, 312.  
See § 21.

SECT. 20. If such chief engineer or other officer wilfully refuses to make such certificate, he shall forfeit for each person whose name ought to have been so certified, a sum not exceeding five dollars, to be recovered in an action of tort to his use, or on complaint to the use of the commonwealth; and if such engineer or other officer makes a false certificate in such case, he shall forfeit a sum not exceeding fifty nor less than twenty dollars, to be recovered in an action of tort to the use of the city or town, or on complaint to the use of the commonwealth.

Three preceding sections not to apply unless adopted.  
R. S. 18, § 22.

SECT. 21. The provisions of the three preceding sections shall be in force only in those cities and towns which have adopted or may adopt the same at the annual meeting of the town or by the city council of the city. When such adoption shall be revoked by the town at an annual meeting, or by the city council of a city, said provisions shall cease to be in force therein.

Penalty for injuring fire engines.  
R. S. 18, § 23.

SECT. 22. Whoever wantonly or maliciously injures a fire engine or the apparatus belonging thereto, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, and be further ordered to recognize with sufficient surety or sureties for his good behavior during such term as the court shall order.

#### FIRE DEPARTMENTS.

Fire departments may be organized, &c.  
1839, 138, § 1.  
1855, 128.

SECT. 23. The selectmen of any town may establish a fire department therein in the manner hereinafter provided, and such department and every other fire department, unless different provisions are specially made therefor, shall be organized in the manner, and the members thereof may exercise the powers and shall be subject to the liabilities, hereinafter mentioned.

Engineers, selectmen to appoint, &c.  
1839, 138, § 2.

SECT. 24. The selectmen of such town shall annually in April appoint for such department as many engineers not exceeding twelve as they may think expedient, for the term of one year from the first day of May following and until others are appointed in their stead; and the selectmen shall fill all vacancies.

SECT. 25. They shall immediately after such appointment issue a notice to each of said engineers to meet at a time and place designated in the notice; at which meeting the engineers shall choose a chief engineer, a clerk, and such other officers as they may deem necessary for their complete organization.

Engineers, or organization of. 1839, 138, § 3.

SECT. 26. The engineers in relation to the extinguishment of fires shall exercise the powers which firewards may by law have and exercise, and in relation to the nomination and appointment of enginemen shall exercise the powers and perform the duties of selectmen. They may appoint such number of men to the engines, hose, hook, ladder, and sail carriages, and to constitute fire companies for securing property endangered by fire, as they may think expedient; but the number of men appointed shall not exceed to each suction fire engine, fifty; to each common engine, thirty-five; to each hose-carriage, five; to each hook and ladder and sail carriage, twenty-five; and to each fire company, twenty-five.

to have powers of firewards; to appoint enginemen, &c. 1839, 138, § 4.

SECT. 27. The engine, hose, hook and ladder, and sail carriage men, and fire companies, may organize themselves into distinct companies, elect the necessary officers, and establish such rules, regulations, and by-laws, as may be approved by the board of engineers; and may annex penalties to the breach of the same, not exceeding ten dollars in any case; and the same may be recovered by the clerk in an action of tort to the use of the company.

Organization of enginemen, &c., their by-laws, &c. 1839, 138, § 5. 1832, 312.

SECT. 28. The engineers and all persons appointed by them shall be subject to the same duties and liabilities and entitled to the same privileges and exemptions as enginemen appointed by selectmen.

Privileges and duties of engineers, &c. 1839, 138, § 6.

SECT. 29. The board of engineers shall have the care and superintendence of the public engines, hose, fire-hooks, ladder-carriages, and ladders, in their respective towns, together with the buildings, fixtures, and appendages, belonging thereto, and all pumps, reservoirs for water, and apparatus, owned by the town and used for extinguishing fires; and shall cause the same to be kept in repair, and when worn out to be replaced; and, from time to time, shall make such alterations therein and additions thereto as they shall deem necessary; but such alterations, additions, or repairs, shall not in any one year exceed the sum of one hundred dollars, unless the town has authorized a larger appropriation.

Engineers to have care of engines, and other fire apparatus. 1839, 138, § 7.

SECT. 30. They may at any meeting establish such rules and regulations as they judge proper to prohibit or regulate the carrying of fire, firebrands, lighted matches, or other ignited materials, openly in the streets or thoroughfares of such town, or such parts thereof as they may designate, or to prohibit owners or occupants of buildings within their town, or such part thereof as they may designate, from erecting or maintaining any defective chimney, hearth, oven, stove, or stove-pipe, fire-frame, or other fixture, deposit of ashes, or any mixture or other material which may produce spontaneous combustion, or whatever else may give just cause of alarm or be the means of kindling or spreading fire.

may make rules as to carrying fire, lighted matches, &c., in streets, &c. 1839, 138, § 8.

SECT. 31. They may make and ordain rules and regulations not repugnant to the constitution and laws of the state, for their own government and the conduct of citizens at fires, and annex penalties for the breach thereof not exceeding twenty dollars for one offence; which may be recovered by the chief engineer in an action of tort and appropriated by the engineers to the improvement of the fire apparatus of the town; but such rules and regulations shall not be binding until approved by the inhabitants of the town at a meeting held for the purpose, and published as the town shall direct.

Other general powers, as to preventing, &c., fires. 1839, 138, § 8. 1852, 312.

SECT. 32. No act hereafter passed establishing a fire department in any town, shall take effect until it is accepted and approved by the inhabitants of such town at a meeting held for the purpose.

Future acts establishing fire departments, &c. 1839, 138, § 9.

## FIRE DISTRICTS.

Fire departments, in villages and districts.  
1844, 152, § 1.

SECT. 33. Fire departments may be established in villages or districts containing not less than one thousand inhabitants, the officers of which shall have charge of and be responsible for the engines and other apparatus for the extinguishment of fire therein, in the same manner as firewards and enginemmen of towns.

proceedings to establish.  
1844, 152, § 2.

SECT. 34. Before a district is constituted and organized, a petition shall be presented to the town at a legal meeting, stating the limits of the proposed district and requesting the town to raise taxes for the establishment and maintenance of a sufficient fire department for the reasonable protection from fire of the inhabitants and property within said limits. If the town refuses or neglects so to do, the inhabitants of the proposed district may proceed to constitute and organize the same and to establish a fire department therein as hereinafter provided.

Selectmen, &c., to call meeting upon request of seven freeholders.  
1844, 152, § 3.

SECT. 35. The selectmen upon the application in writing of not less than seven freeholders, inhabitants of such proposed district, setting forth the limits thereof, and requiring them to notify a meeting of the inhabitants thereof duly qualified to vote in town affairs, for the purpose of considering the expediency of organizing such district and establishing a fire department, shall forthwith give notice to such inhabitants, in the manner of notifying town meetings, to assemble at some suitable place within the district for said purpose, the substance of which shall be expressed in the notification. If the selectmen refuse or neglect to notify such meeting, any justice of the peace in the county may notify the same.

Who to vote at such meetings; clerk to be chosen, his duties.  
1844, 152, § 4.

SECT. 36. If at any such meeting the voters present determine to organize such district, they shall choose a clerk, who shall be sworn to keep a true record of the proceedings of all meetings and to perform all the duties of clerk so long as he holds the office. He may be removed by the district, or may resign, and in case of a vacancy another may be chosen.

At such meeting fire department may be established.  
1844, 152, § 5.

SECT. 37. The district at such meeting may vote to establish a fire department to consist of a chief engineer, and as many assistant-engineers, enginemmen, hosemen, and hook and ladder men, as they may deem necessary, not exceeding for each suction engine, seventy-five, for each common engine, thirty-five, for each one hundred and fifty feet of leading hose kept for use within the district, five and not exceeding twenty-five hook and ladder men; each of said officers and members shall be furnished with a certificate under the hands of the chief engineer and clerk, declaring his station in the department.

Certificates.

Engineers, how chosen.  
1844, 152, § 6.

Meetings of fire district, how called and conducted.  
1844, 152, § 7.

SECT. 38. The chief engineer and assistant-engineers shall be chosen by the district and shall be sworn.

SECT. 39. Meetings of the district shall be called by the clerk when requested in writing by the chief engineer, or two assistant-engineers, or seven voters of the district; and he shall give notice of the same by posting written notifications in at least six public places in the district not less than seven days prior to the meeting, or by publishing the same in a newspaper, if one is printed in the town where the district is situated, which notifications shall briefly state the purposes of the meeting. At each of the meetings a moderator shall be chosen, who shall have the powers of the moderator of a town meeting. After the choice of a clerk, he shall preside at subsequent meetings with like powers until a moderator is chosen.

Board of engineers to make rules, &c.  
1844, 152, §§ 8, 11  
See § 46.

SECT. 40. The board of engineers may from time to time make and publish rules and regulations for their own government, and that of other members of the department, and of persons present at fires, and for regulating or prohibiting the carrying of fire or ignited substances in or through the streets or ways of the district, and prescribe penalties



for the violation thereof, not exceeding twenty dollars for each offence. The board may appoint enginemen, hosemen, hook and ladder men, remove them, and fill vacancies in the companies.

Engineers to appoint enginemen.

SECT. 41. Engineers shall have and exercise the same powers and authority relative to the extinguishment of fires, and the demolishing of buildings for that purpose within the district, as firewards of towns; and the inhabitants of districts shall be liable for acts done by such engineers, or by their orders, in the same manner as towns are liable for acts done by firewards.

power of, and liability of district for their acts.  
1844, 152, § 9.

SECT. 42. Engineers and other members of the fire department of such district shall have the immunities and privileges of firewards and enginemen of towns, and shall receive such compensation as the district determines.

Privileges, &c. Compensation.  
1844, 152, §§ 10, 14.

SECT. 43. Such districts may, at meetings called for the purpose, raise money for the purchase of engines and other articles necessary for the extinguishment of fires, for the purchase of land and erection and repairs of necessary buildings, and other incidental expenses of the fire department. They shall choose a prudential committee, who shall have the care, custody, and management, of the money so raised, and shall expend the same for the purposes prescribed by votes of the district; and such committee shall be accountable to the district for such money received by them, which may maintain a suit therefor in the name of the inhabitants thereof.

Money raised to be under charge of prudential committee, to be chosen, &c.  
1844, 152, § 12.

SECT. 44. The clerk shall certify to the assessors of the town all sums of money voted to be raised by the district, which shall be assessed and collected by the officers of the town in the same manner that the town taxes are assessed and collected, and be paid over to the treasurer, who shall hold the same subject to the order of the prudential committee. The assessors, treasurer, and collector, of any town in which such district is organized shall have the powers and perform the duties in reference to the assessment and collection of the money voted by the fire district, as they have and exercise in reference to the assessment, collection, and abatement, of town taxes, but the sums so voted shall be assessed upon the property real and personal within the district.

Assessment and collection of money voted to be raised by fire district.  
1844, 152, § 13.  
11 Met. 374.

SECT. 45. No by-law, rule, or regulation, adopted by the district, and having a penalty attached to it, shall be in force until it is approved by the superior court for the county in which such fire district is.

By-laws, imposing penalties, to be approved.  
1844, 152, § 15.  
1850, 196.

SECT. 46. Penalties under the provisions of the twelve preceding sections may be recovered by action of tort in the name of the chief engineer and appropriated to pay the expenses of the fire department of the district, or on complaint or indictment to the use of the commonwealth. If the chief engineer shall die, resign, or remove, during the pendency of such suit, it shall not abate, but his successor shall be admitted to prosecute it. No inhabitant of the district shall be disqualified to act as judge, magistrate, juror, or officer, in a suit brought for such penalties.

Penalties, how recovered, &c.  
1830, 135.  
1844, 152, §§ 8, 15.  
1852, 312.

Suit not to abate, &c.

SECT. 47. Such district, at a meeting called for that purpose, may alter the limits thereof so as to include any adjacent territory and its inhabitants, if the voters of said territory have petitioned therefor, setting forth the limits of the territory to be annexed; or exclude any person, or the estate of any person, who has thus petitioned, if the town within which the district is situated has assented thereto.

District may exclude, &c., particular persons, or estates.  
1845, 237, § 1.

SECT. 48. Fire districts heretofore legally organized shall continue and be subject to the provisions of this chapter in relation to fire districts.

Districts heretofore organized.

SPECIAL PROVISIONS.

SECT. 49. No association, society, or club, organized as firemen, shall

Fire clubs not to be establish-

ed, unless, &c.  
1855, 161, § 1.

Penalty for  
joining without  
permission.  
1855, 161, § 2.

Two preceding  
sections to be  
in force only  
where, &c.  
1855, 161, § 3.

be allowed in any city or town except by the written permission of the mayor and aldermen or selectmen.

SECT. 50. Whoever joins, belongs to, or assembles with, such association, society, or club, existing without such permission, shall be punished by fine not less than five nor more than one hundred dollars, or by imprisonment in the house of correction for a term not exceeding three months.

SECT. 51. The provisions of the two preceding sections shall be in force in those cities and towns only which have adopted or may adopt the same.

## CHAPTER 25.

### OF FENCES AND FENCE VIEWERS, POUNDS, AND FIELD DRIVERS.

SECTION	FENCES.	SECTION	POUNDS, AND IMPOUNDING OF CATTLE; FIELD DRIVERS.
1.	What shall be a legal fence.	18.	Pounds to be provided by towns. Penalty for neglect.
2.	Adjoining occupants to maintain fences.	19.	Penalty for injuring pounds.
3.	Proceedings when a party neglects, &c.	20.	Pound keeper to be appointed.
4.	Remedy against adjoining owner, &c., for repairing, &c., deficient fence.	21.	Field drivers to take up beasts going at large without keeper. Beasts going at large on Lord's day, &c.
5.	Controversies between parties about repairing, &c., how determined.	22.	Beasts taken up to be impounded.
6.	Double damages in case, &c.	23.	Fees to field driver and pound keeper.
7.	Fence viewers may order compensation for repairing more than just share.	24.	to be paid by owner of beasts.
8.	Partition fences, how kept.	25.	Beasts doing damage, may be distrained.
9.	how and where made when lands are bounded by water.	26.	to be impounded.
10.	Where lands have been improved without partition fences, division may be made.	27.	Person distraining to state demand.
11.	Fences to be maintained by agreement of parties or assignment of fence viewers. Lands may be laid common by giving notice.	28.	Beasts not to be delivered until costs, &c., are paid.
12.	When one party lays open enclosed lands, the other may purchase right in fence.	29.	Notice to be given to owner or keeper.
13.	Where unimproved lands are afterwards enclosed, &c., party benefited shall pay, &c.	30.	or posted up and published in a newspaper, in case, &c.
14.	Fence viewers, when fences are on town lines.	31, 32.	Sum due from owner, how determined.
15.	Where water fence is necessary, how made.	33.	if not paid, beasts to be sold.
16.	Penalty for fence viewer's neglect of duty.	34.	proceeds, how disposed of.
17.	Fees of fence viewers, how recovered.	35.	Beasts escaped or rescued, may be retaken.
		36.	Penalty for rescuing beasts distrained.
		37.	Legality of distress to be tried only by replevin.
		38.	Rams and he goats, when not to go at large.

### FENCES.

What shall be a  
legal fence.  
R. S. 19, § 1.

Adjoining occu-  
pants to main-  
tain fences.  
R. S. 19, § 2.  
2 Met. 180.  
4 Met. 589.  
4 Gray, 220.

Proceedings  
when a party  
neglects, &c.  
R. S. 19, § 3.  
14 Pick. 276.  
11 Met. 496.

SECTION 1. Fences four feet high and in good repair, consisting of rails, timber, boards, or stone, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things which the fence viewers within whose jurisdiction the same shall lie shall consider equivalent thereto, shall be deemed legal and sufficient fences.

SECT. 2. The respective occupants of lands enclosed with fences, shall so long as both parties improve the same keep up and maintain partition fences between their own and the next adjoining enclosures, in equal shares.

SECT. 3. If a party refuses or neglects to repair or rebuild a partition fence which he ought to maintain, the aggrieved party may complain to two or more fence viewers of the place, who after due notice to each party shall survey the same, and if they determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant, and direct him to repair or rebuild the same within such



time as they judge reasonable, not exceeding fifteen days; and if the fence shall not be repaired or rebuilt accordingly, the complainant may make or repair the same.

SECT. 4. When a deficient fence built up or repaired by a complainant as provided in the preceding section is after due notice to each party adjudged sufficient by two or more of the fence viewers, and the value thereof with their fees ascertained by a certificate under their hands, the complainant may demand, either of the occupant or owner of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the same so due, for one month after demand, he may recover the same with interest at one per cent. a month, in an action of contract.

Remedy against adjoining owner, &c., for repairing, &c., deficient fence.  
R. S. 19, § 4.  
1852, 312.  
6 Mass. 95.  
5 Pick. 503.  
14 Pick. 276.

SECT. 5. When a controversy arises about the rights of the respective occupants in partition fences and their obligation to maintain the same, either party may apply to two or more fence viewers of the places where the lands lie, who after due notice to each party may in writing assign to each his share thereof, and direct the time within which each party shall erect or repair his share, in the manner before provided; which assignment, being recorded in the city or town clerk's office, shall be binding upon the parties and upon the succeeding occupants of the lands; who shall thereafter maintain their respective parts of said fence.

Controversies between parties about repairing, &c., how determined.  
R. S. 19, § 5.  
11 Met. 496.  
11 Cush. 450.

SECT. 6. If a party refuses or neglects to erect and maintain the part of a fence assigned to him by the fence viewers, the same may in the manner before provided be erected and maintained by any aggrieved party; and he shall be entitled to double the value thereof ascertained and recovered in the manner aforesaid.

Double damages in case, &c.  
R. S. 19, § 6.  
11 Met. 496.

SECT. 7. When in a controversy between adjoining occupants as to their respective rights in a partition fence, it appears to the fence viewers that either of the occupants had before any complaint made to them voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay the value of so much thereof as may be assigned to him to repair or maintain, to be ascertained and recovered as provided in this chapter.

Fence viewers may order compensation for repairing more than just share.  
R. S. 19, § 7.  
14 Pick. 276.  
11 Met. 496.

SECT. 8. Partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise agree.

Partition fences, how kept.  
R. S. 19, § 8.

SECT. 9. When lands of different persons which are required to be fenced, are bounded upon or divided from each other, by a river, brook, pond, or creek, if the occupant of the land on one side refuses or neglects to join with the occupant of the land on the other side in making a partition fence on the one side or the other, or shall disagree respecting the same, then two or more fence viewers of the place or places wherein such lands lie, on application made to them, shall forthwith view such river, brook, pond, or creek; and if they determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence on the true boundary line without unreasonable expense, they shall, after giving notice to the parties to be present, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on the one side and partly on the other side, as to them shall appear just, and shall reduce their determination to writing; and if either of the parties refuses or neglects to make and maintain his part of the fence according to the determination of the fence viewers, the same may be made and maintained as before provided, and the delinquent party shall be subject to the same costs and charges to be recovered in like manner.

how and where made when lands are bounded by water.  
R. S. 19, § 9.  
11 Met. 496.

SECT. 10. When lands belonging to two persons in severalty have been occupied in common without a partition fence between them, and one of the occupants desires to occupy his part in severalty, and the

Where lands have been improved without partition fences,



division may be made.  
R. S. 19, § 10.

1863 *etc* 190.

Fences to be maintained by agreement of parties or assignment of fence viewers. Lands may be laid common by giving notice.  
R. S. 19, § 15.  
1 Cush. 15.

When one party lays open enclosed lands, the other may purchase right in fence.  
R. S. 19, § 11.

Where unimproved lands are enclosed, &c., party benefited shall pay, &c.  
R. S. 19, § 12.  
1847, 102.  
1852, 312.  
1 Cush. 11.

Fence viewers, when fences are on town lines.  
R. S. 19, § 13.

Water fences, how made.  
R. S. 19, § 14.  
11 Met. 496.

Penalty for fence viewer's neglect of duty.  
R. S. 19, § 17.  
1839, 135.

Fees of fence viewers, how recovered.  
R. S. 19, § 18.  
1852, 312.

other occupant refuses or neglects on demand to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by two or more fence viewers of the same place in the manner provided in this chapter; and the fence viewers may in writing assign a reasonable time, having regard to the season of the year, for making the fence; and if the occupant complained of does not make his part of the fence within the time so assigned, the other party may, after having made up his part of the fence, make up the part of the other, and recover therefor double the expense thereof, together with the fees of the fence viewers, in the manner provided in this chapter.

SECT. 11. Where a division of fence between the owners of improved lands has been made either by fence viewers or under an agreement in writing between the parties, recorded in the office of the clerk of the city or town, the several owners of such lands and their heirs and assigns shall erect and support said fences agreeably to such division; but if a person lays his lands common and determines not to improve any part of the same adjoining the fence divided as aforesaid, and gives six months' notice of his determination to all the adjoining occupants of lands, he shall not be required to keep up or support said fence during the time that his lands lie common and unimproved.

SECT. 12. When one party ceases to improve his land or lays open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining to the next enclosure, *provided* the owner or occupant thereof will allow and pay therefor so much as two or more fence viewers in writing determine to be the reasonable value thereof.

SECT. 13. When land which has lain unenclosed is afterwards enclosed or used for depasturing, the occupant or owner thereof shall pay for one-half of each partition fence standing upon the line between the same land and the land of the enclosures of any other occupant or owner, the value thereof to be ascertained in writing (in case they do not agree between themselves,) by two or more of the fence viewers of the same place wherein such partition fence stands; and if such occupant or owner, after the value has been so ascertained, neglects or refuses, for thirty days after demand made, to pay for one-half of the partition fence, the proprietor of the fence may maintain an action of contract for such value, and the costs of ascertaining the same; but the occupant or owner of unenclosed land on the island of Nantucket, used for depasturing only, shall not be subject to the foregoing provisions of this section.

SECT. 14. Where the line upon which a partition fence is to be made or divided is the boundary line of one or more cities or towns, or partly in one and partly in another, a fence viewer shall be taken from each place.

SECT. 15. When a water fence, or fence running into the water, is necessary to be made, the same shall be done in equal shares unless otherwise agreed by the parties; and in case either party refuses or neglects to make or maintain the share to him belonging, similar proceedings shall be had as in other cases of the like kind respecting other fences before mentioned.

SECT. 16. Any fence viewer duly chosen and sworn who when requested unreasonably neglects to view a fence, or to perform any other duties required of him in this chapter, shall forfeit five dollars, to be recovered by action of tort to the use of the place, or on complaint to the use of the commonwealth, and he shall also be liable for all damages to the party injured.

SECT. 17. Each fence viewer shall be paid by the person employing him at the rate of two dollars a day for the time he is so employed; and if such person neglects to pay him within thirty days after the service has been performed, he may recover in an action of tort double the amount of such fees.

POUNDS AND IMPOUNDING OF CATTLE; FIELD DRIVERS.

SECT. 18. Each city and town shall at its own expense and in such places therein as the city council of the city or the inhabitants of the town direct, maintain one or more sufficient pounds. A city or town that for three months neglects to provide or maintain a sufficient pound, shall forfeit fifty dollars.

Pounds to be provided by towns.  
Penalty for neglect.  
R. S. 19, §§ 19, 20. 1848, 272.

SECT. 19. Whoever wilfully injures a city or town pound, shall be punished by fine not exceeding fifty dollars or by imprisonment in the common jail not exceeding ninety days.

Penalty for injuring pounds.  
R. S. 19, § 24.

SECT. 20. Each city and town shall annually appoint a suitable keeper of each pound therein.

Pound keeper.  
R. S. 19, § 21.

SECT. 21. Every field driver within his city or town, shall take up at any time, swine, sheep, horses, asses, mules, goats, or neat cattle, going at large in the public highways or townways or on common and unimproved lands, and not under the care of a keeper; and for any such cattle or beasts so going at large on the Lord's day, the field driver or any other inhabitant of the city or town may in an action of tort recover for each beast the same fees which the field driver is entitled to receive for like beasts when distrained and impounded.

Beasts going at large without keeper to be taken up, &c.  
R. S. 19, § 22. 1852, 312.  
21 Pick. 187.  
23 Pick. 251.  
12 Met. 198.  
2 Gray, 180.  
4 Gray, 314, 345.

SECT. 22. When beasts are so taken up and distrained by a field driver, they shall be forthwith impounded in the city or town pound, and the keeper shall furnish them with suitable food and water while they are detained in his custody.

to be impounded.  
R. S. 113, § 1.  
5 Cush. 263.  
4 Gray, 312.  
12 Cush. 98.

SECT. 23. The field driver shall be entitled to fifty cents per head for horses, asses, mules, and neat cattle, and ten cents per head for sheep, goats, and swine, so taken up by him, and the pound keeper shall be entitled to four cents per head for the animals so impounded; but if more than ten sheep are taken up at the same time, the fees for all above that number shall be only one-half of the above fees.

Fees of field driver and pound keeper.  
R. S. 113, § 2.

SECT. 24. The pound keeper shall not deliver to the owner any beasts so impounded, until the owner pays him his fees, the expense of keeping the beasts, and the fees of the field driver, which latter when received he shall pay to the field driver.

to be paid by owner of beasts.  
R. S. 113, § 3.  
21 Pick. 181.

SECT. 25. When a person is injured in his land by sheep, swine, horses, asses, mules, goats, or neat cattle, he may recover his damages in an action of tort against the owner of the beasts, or by distraining the beasts doing the damage, and proceeding therewith as hereinafter directed; but if the beasts were lawfully on the adjoining lands and escape therefrom in consequence of the neglect of the person who suffered the damage to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage.

Beasts doing damage, may be distrained.  
R. S. 113, § 4. 1852, 312.  
5 Greenl. 356.  
6 Mass. 90.  
16 Mass. 37.  
4 Met. 589.  
13 Met. 407.

SECT. 26. The beasts so distrained for doing damage shall be impounded in the city or town pound, or in some suitable place, under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water while they remain impounded.

to be impounded.  
R. S. 113, § 5.  
13 Met. 407.

SECT. 27. If the beasts are impounded in the city or town pound, the distrainer shall leave with the pound keeper a memorandum in writing under his hand stating the cause of impounding, and the sum that he demands from the owner for the damage done by the beasts, and also for the daily charges of feeding them; and if they are impounded in any other place, he shall give a like memorandum to the owner of the beasts if demanded by him.

Person distraining to state demand.  
R. S. 113, § 6.  
21 Pick. 187.  
23 Pick. 251.  
12 Met. 193.  
13 Met. 407.

SECT. 28. The pound keeper, when the beasts are in his custody, shall not deliver them to the owner until the owner pays him his fees, the sum so demanded by the distrainer for the damages and charges aforesaid, the expense of advertising the beasts if they are advertised, and all other legal costs and expenses.

Beasts not to be delivered until costs, &c., are paid.  
R. S. 113, § 7.



Notice to be given to owner or keeper.  
 R. S. 113, § 8.  
 21 Pick. 187.  
 23 Pick. 251.  
 12 Met. 118, 198.  
 7 Cush. 355.  
 2 Gray, 178.

or posted up, and published in a newspaper, in case, &c.  
 R. S. 113, § 9.

Sum due from owner, how determined.  
 R. S. 113, § 10.

Same subject.  
 R. S. 113, § 11.  
 21 Pick. 55.

if not paid, beasts to be sold.  
 R. S. 113, § 12.  
 21 Pick. 55.

proceeds, how disposed of.  
 R. S. 113, § 13.

Beasts escaped or rescued may be retaken.  
 R. S. 113, § 14.

Penalty for rescuing beasts distrained.  
 R. S. 113, § 15.  
 1852, 312.  
 1 Mass. 168.  
 17 Mass. 342.  
 4 Mass. 471.  
 5 Cush. 267.

SECT. 29. When beasts are impounded, the person impounding them shall within twenty-four hours thereafter give notice thereof in writing to the owner or person having the care of them, if known and living within six miles from the place of impounding, which notice shall be delivered to the party or left at his place of abode, and shall contain a description of the beasts and a statement of the time, place, and cause, of impounding.

SECT. 30. If there is no person entitled to notice according to the provisions of the preceding section, the person impounding the beasts shall within forty-eight hours thereafter cause to be posted in some public place in the city or town, and in a public place in each of any two adjoining cities or towns, if within four miles from the place where they were taken, a written notice containing a description of the beasts and a statement of the time, place, and cause, of impounding them; and in such case, if the value of the beasts exceeds thirty dollars, and if no person appears to claim them within seven days after the day of impounding, a like notice shall be published three weeks successively in some public newspaper if there is any published within twenty miles from the place of impounding, the first publication to be within fifteen days after the day of impounding.

SECT. 31. If the owner or keeper of the beasts is dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable ascertained and determined by two disinterested and discreet persons, to be appointed and sworn for that purpose by a justice of the peace or by the city or town clerk; and the sum so determined by them shall be received instead of the sum demanded by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof.

SECT. 32. If the sum for which the beasts are impounded and detained is not paid within fourteen days after notice of the impounding has been given as before directed, or after the last publication of such notice in a newspaper, the person who impounded them shall apply to a justice of the peace, or to the city or town clerk, and obtain a warrant to two disinterested and discreet persons, to be appointed and sworn by the justice or clerk, and the persons so appointed shall ascertain and determine the sum, due from the owner or keeper of the beasts for the damages, costs, and expenses, for which they are impounded and detained, including a reasonable compensation for their own services.

SECT. 33. If the sum so found to be due is not forthwith paid, the person who impounded the beasts shall cause them to be sold by auction, in the city or town where they are impounded, first advertising the sale by posting up a notice thereof twenty-four hours beforehand at some public place in the same city or town.

SECT. 34. The proceeds of such sale after paying all said damages, costs, expenses, and charges for advertising and selling the beasts, shall be deposited in the treasury of the city or town, for the use of the owner of the beasts, in case he substantiates his claim thereto within two years from the sale.

SECT. 35. If beasts lawfully distrained or impounded escape or are rescued, the pound keeper, field driver, or other person, who distrained them, may at any time within seven days thereafter retake the beasts and hold and dispose thereof as if no such escape or rescue had taken place.

SECT. 36. Whoever rescues beasts lawfully distrained or impounded for any cause whatever, shall be liable in an action of tort brought by any person injured to pay all damages which such person sustains thereby, and the fees and charges incurred before the rescue; and he shall also forfeit a sum not less than five nor more than twenty dollars, to be recovered by complaint.



SECT. 37. The defendant in an action brought for rescuing beasts distrained or impounded shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance to show that the distress or impounding was illegal; but if there is such ground of objection to the proceeding of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin.

Legality of distress, how tried.  
R. S. 113, § 16.  
4 Mass. 471.  
5 Pick. 514.  
See Ch. 146.

SECT. 38. If the owner of a ram or he goat suffers it to go at large out of his enclosure between the first day of July and the twenty-fifth day of December, he shall forfeit five dollars for each offence, if prosecuted within thirty days next after such ram or he goat is found going at large, to be recovered on complaint in the county in which such owner lives.

Rams and he goats, when not to go at large.  
R. S. 19, § 23.

## TITLE VIII.

### OF THE PUBLIC HEALTH AND BURIALS.

CHAPTER 26. — Of the Preservation of the Public Health.

CHAPTER 27. — Of the Promotion of Anatomical Science.

CHAPTER 28. — Of Cemeteries and Burials.

## CHAPTER 26.

### OF THE PRESERVATION OF THE PUBLIC HEALTH.

SECTION

1. Towns to choose board of health or health officer; or selectmen to act.
2. City council to appoint board of health, or make either or both branches, or a committee, the board.
3. Board may appoint physician.
4. Compensation of physician, &c.

NUISANCES, CONTAGION, &c.

5. Board to make regulations respecting nuisances, &c.
6. to give notice of their regulations.
7. to examine into and abate nuisances, &c.
8. to order nuisances, &c., abated; penalty on owner of land, &c., for refusing.
9. Order of abatement, how served.
10. Owner not complying, board to remove the nuisance at his expense.
11. Board may notify occupants of unfit dwelling place to quit, &c.
12. When a party is convicted of nuisance, court may order it destroyed.
13. Superior court may issue injunctions in cases of nuisance.

SECTION

14. Board may make compulsory examination of premises, when refused, &c.
15. may grant permits for the removal of infected articles or sick persons.
16. to make necessary provision for persons infected with dangerous diseases.
17. If infected person cannot be removed, others may be.
18. Persons may be stationed on borders of other states, to examine, &c.
19. Two justices of the peace may issue warrant to remove sick persons.
20. One justice may issue warrant to sheriff to secure infected articles, who may impress aid.
21. Justice may take up houses and stores, &c., for safe keeping of goods, &c.
22. Officers may break open houses, shops, &c., and command aid.
23. Expenses to be paid by owners of goods.
24. Town to make compensation for houses, &c., or services impressed.
25. Removal of prisoners attacked with disease.
26. Return of removal to be made to court; such removal not an escape.

VACCINATION.

SECTION

- 27. Parents, &c., to cause children and wards to be vaccinated. Penalty for neglect.
- 28. Selectmen, &c., to enforce vaccination and revaccination. Penalty for neglect.
- 29. Towns to provide means for vaccination.
- 30. Inmates of manufactories, almshouses, &c., to be vaccinated.
- 31. Towns may make further provision for vaccination.

QUARANTINE.

- 32. Towns may establish quarantine ground.
- 33. Two or more towns may establish a common quarantine ground.
- 34. Board of health may establish the quarantine of vessels.
- 35. Quarantine regulations to extend to all persons, &c.
- 36. Penalty for violation after public notice.
- 37. Vessels suspected of infection to be ordered to quarantine ground.
- 38. Penalty if master, seaman, &c., refuse to make answer on oath, &c.
- 39. Quarantine expenses to be paid by person or owner.

HOSPITALS AND DANGEROUS DISEASES.

- 40. Hospitals may be provided by towns.
- 41. to be under orders of board of health.
- 42. not to be established within one hundred rods of house in adjoining town, unless, &c.
- 43. Physicians and others in hospitals to be subject to board of health.

SECTION

- 44. Board of health to provide hospital or other place when, &c.; may cause sick and infected persons to be removed to hospital.
- 45. Selectmen to give notice, by suitable signals, of infected places.
- 46. Penalty on physicians and others in hospitals, &c., for violating regulations
- 47. Every householder to give notice of dangerous disease in his family. Penalty.
- 48. Penalty on physician for not giving notice of dangerous disease.
- 49. Expenses recoverable of individuals, how sued for.
- 50. Fines and forfeitures to inure to use of town
- 51. Certain provisions not to apply to small-pox.

OFFENSIVE TRADES.

- 52. Board to assign places for exercising offensive trades, and may prohibit.
- 53. Superior court may, on complaint, revoke such assignment.
- 54. Action for damages from nuisance.
- 55. Orders of prohibition, &c., to be served on occupant. If he refuses to obey, board may prevent. Penalty.
- 56. Appeal by person aggrieved. Proceedings.
- 57. Trade not to be exercised pending proceedings.
- 58. Verdict of jury may alter, &c., order; to be returned for acceptance.
- 59. Costs,—how and when assessed, on whom, and to what amount.
- 60. Chapter extends to cities.

Towns to choose board of health, or health officer; or selectmen to act.  
R. S. 21, § 1.  
8 Cush. 68.

City council to appoint board of health, or, &c.  
1849, 211, §§ 1, 2.

Board may appoint physician.  
R. S. 21, § 3.  
Compensation of physician, &c.  
R. S. 21, § 4.

Board to make regulations respecting nuisances, &c.  
R. S. 21, §§ 5, 6

SECTION 1. A town respecting which no provision is made by special law for choosing a board of health, may, at its annual meeting or at a meeting legally warned for the purpose, choose a board of health, to consist of not less than three nor more than nine persons; or may choose a health officer. If no board or officer is chosen the selectmen shall be the board of health.

SECT. 2. Except where different provision is made by law, the city council of a city may appoint a board of health; may constitute either branch of such council, or a joint or separate committee of their body, a board of health, either for general or special purposes, and may prescribe the manner in which the powers and duties of the board shall be exercised and carried into effect. In default of the appointment of a board with full powers, the city council shall have the powers and perform the duties prescribed to boards of health in towns.

SECT. 3. Every board of health may appoint a physician to the board, who shall hold his office during its pleasure.

SECT. 4. The board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations.

NUISANCES, CONTAGION, &C.

SECT. 5. The board shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth, and causes of sickness, within its town, or on board of vessels within its harbor; and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into or conveyed from its town, or into or from any vessel. Whoever violates

any such regulation shall forfeit a sum not exceeding one hundred dollars.

SECT. 6. Notice shall be given by the board of all regulations made by it, by publishing the same in some newspaper of its town, or where there is no such newspaper by posting them up in some public place in the town. Such notice shall be deemed legal notice to all persons.

Board to give notice of regulations.  
R. S. 21, § 8.

SECT. 7. The board shall examine into all nuisances, sources of filth, and causes of sickness, within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and the same shall destroy, remove, or prevent, as the case may require.

to examine into and abate nuisances, &c.  
R. S. 21, § 9.

SECT. 8. The board or the health officer shall order the owner or occupant at his own expense to remove any nuisance, source of filth, or cause of sickness, found on private property, within twenty-four hours or such other time as it deems reasonable after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.

to order nuisances, &c., abated, penalty for refusing.  
1849, 211, § 3.  
1855, 369.  
See Ch. 87, § 5.  
Ch. 88, §§ 40, 42.

SECT. 9. Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit, personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the state. But if the premises are unoccupied and the residence of the owner or agent is unknown or without the state, the notice may be served by posting the same on the premises and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

Order for abatement, how served.  
1849, 211, § 4.  
See Ch. 87, § 5.  
Ch. 88, §§ 40, 42.

SECT. 10. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

Owner not complying, board to remove the nuisance at his expense.  
1849, 211, § 5.  
See Ch. 87, § 5.  
Ch. 88, §§ 40, 42.

SECT. 11. The board, when satisfied upon due examination that any cellar, room, tenement, or building, in its town, occupied as a dwelling place, has become by reason of the number of occupants, or want of cleanliness, or other cause, unfit for such purpose and a cause of nuisance or sickness to the occupants or the public, may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or if they see fit requiring the occupants to remove or quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not be again occupied as a dwelling place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit a sum not less than ten nor more than fifty dollars.

Board may notify occupants of unfit dwelling place to quit, &c.  
1850, 108.

SECT. 12. When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in their discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly.

When a party is convicted of a nuisance, court may order it destroyed.  
R. S. 21, § 12.

SECT. 13. The superior court, or a justice thereof in term time or vacation, may, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same until the matter shall be decided by a jury or otherwise;

Court may issue injunctions, in cases of nuisance.  
R. S. 21, § 13.  
1859, 196.



may enforce such injunction according to the course of proceedings in chancery; and may dissolve the same when the court or one of the justices shall think proper.

Board may make compulsory examination of premises, when refused, &c.  
R. S. 21, § 14.

SECT. 14. When the board think it necessary for the preservation of the lives or health of the inhabitants, to enter any land, building, or vessel, within its town, for the purpose of examining into and destroying, removing, or preventing, any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof, and the justices may thereupon issue a warrant directed to the sheriff or either of his deputies, or to any constable of such town, commanding him to take sufficient aid, and being accompanied by any two or more members of said board, at any reasonable time to repair to the place where such nuisance, source of filth, or cause of sickness, complained of may be, and the same to destroy, remove, or prevent, under the directions of such members of the board.

may permit removal of infected articles, &c.  
R. S. 21, § 15.  
shall make provision for persons infected.  
1837, 244, § 1.  
1848, 119.  
2 Cnsh. 52.  
See § 51.

SECT. 15. The board may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

SECT. 16. When any person coming from abroad or residing in any town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants, by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; and if he is not an inhabitant of any town, at the charge of the commonwealth.

If infected person cannot be removed, others may be, &c.  
R. S. 21, § 17.  
1838, 158.  
See § 51.

SECT. 17. If the infected person cannot be removed without danger to his health, the board shall make provision for him as directed in the preceding section in the house in which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

Persons may be stationed in places bordering on other states, to examine, &c.  
R. S. 21, § 18.

SECT. 18. The board of health of any town near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and if need be may restrain them from travelling until licensed thereto by the board of health of the town to which such person may come. A traveller coming from such infected place who shall without such license travel within this state, (except to return by the most direct way to the state from whence he came,) after he has been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars.

Two justices of the peace may issue warrant to remove sick persons.  
R. S. 21, § 19.

SECT. 19. Two justices of the peace may if need be make out a warrant directed to the sheriff of the county, or his deputy, or to any constable, requiring them under the direction of the board to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessaries, for the accommodation, safety, and relief, of the sick.

One justice may issue warrant to sheriff to secure infected articles, who may impress aid.  
R. S. 21, § 20.

SECT. 20. When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that any baggage, clothing, or goods, found within the town, are infected with the plague or other disease which may be dangerous to the public health, the justice shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing, or other goods, and

to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same, until due inquiry is made into the circumstances.

SECT. 21. The justice may by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

Justice may take houses and stores, &c., for safe keeping of goods, &c.  
R. S. 21, § 21.

SECT. 22. The officers, in the execution of the warrant, shall if need be break open any house, shop, or other place, mentioned in the warrant, where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

Officers may break open houses, shops, &c., and command aid.  
R. S. 21, § 22.

SECT. 23. The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

Expenses to be paid by owners of goods.  
R. S. 21, § 23.

SECT. 24. When a sheriff or other officer impresses or takes up any houses, stores, lodging, or other necessities, or impresses men, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed.

Town to make compensation for houses, &c., or services impressed.  
R. S. 21, § 24.

SECT. 25. When a person confined in a common jail, house of correction, or workhouse, has a disease which, in the opinion of the physician of the board or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall by its order in writing direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease he shall be returned to said prison or other place of confinement.

Removal of prisoners attacked with disease.  
R. S. 21, § 25.

SECT. 26. If the person so removed is committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

Return of removal to be made to court. Such removal not an escape.  
R. S. 21, § 26.

VACCINATION.

SECT. 27. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of two years, and revaccinated whenever the selectmen or mayor and aldermen shall after five years from the last vaccination require it. For every year's neglect the party offending shall forfeit the sum of five dollars.

Parents, &c., to cause children, &c., to be vaccinated. Penalty for neglect.  
1855, 414, §§ 1, 3.

SECT. 28. The selectmen and mayor and aldermen shall require and enforce the vaccination of all the inhabitants, and, whenever in their opinion the public health requires it, the revaccination of all the inhabitants who do not prove to their satisfaction that they have been successfully vaccinated or revaccinated within five years. All persons over twenty-one years of age, not under guardianship, who neglect to comply with any such requirement, shall forfeit the sum of five dollars.

Selectmen, &c., to enforce vaccination, &c. Penalty for neglect.  
1855, 414, §§ 3, 4.

SECT. 29. Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same.

Towns to provide means.  
1855, 414, § 6.

SECT. 30. Incorporated manufacturing companies; superintendents of almshouses, state reform, and industrial schools, lunatic hospitals, and other places where the poor and sick are received; masters of houses

Inmates of manufactories, almshouses, &c., to be vaccinated.



1855, 414, §§ 5, 6. of correction, jailers, keepers of prisons, the warden of the state prison; and superintendents or officers of all other institutions supported or aided by the state; shall at the expense of their respective establishments or institutions cause all inmates thereof to be vaccinated immediately upon their entrance thereto, unless they produce sufficient evidence of previous successful vaccination within five years.

Towns may make further provision for vaccination.  
R. S. 21, § 45.

SECT. 31. Each town may make further provision for the vaccination of its inhabitants, under the direction of the board or a committee chosen for the purpose.

#### QUARANTINE.

may establish a quarantine ground.  
R. S. 21, § 27.

SECT. 32. A town may establish a quarantine ground in a suitable place either within or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

two or more towns may establish a common quarantine ground.  
R. S. 21, § 28.

SECT. 33. Two or more towns may at their joint expense establish a quarantine ground for their common use in any suitable place either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be.

Board of health may establish quarantine of vessels.  
R. S. 21, § 29.

SECT. 34. The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor; and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants.

Quarantine regulations to extend to all, &c.  
R. S. 21, § 30.

SECT. 35. Such regulations shall extend to all persons, goods, and effects, arriving in such vessels, and to all persons who may visit or go on board of the same.

Penalty for violation after notice.  
R. S. 21, § 31.

SECT. 36. Whoever violates any such regulation after notice thereof has been given in the manner before provided in this chapter, shall forfeit a sum not less than five nor more than five hundred dollars.

Vessels suspected of infection to be ordered to quarantine.  
R. S. 21, § 32.

SECT. 37. The board in each seaport town may at all times cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same; and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders.

Penalty, if master, seaman, &c., refuse to answer on oath, &c.  
R. S. 21, § 33.

SECT. 38. If a master, seaman, or passenger, belonging to a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where any infectious distemper prevails that may endanger the public health, refuses to make answer on oath to such questions as may be asked him relating to such infection or distemper by the board of health of the town to which such vessel may come, (which oath any member of the board may administer,) such master, seaman, or passenger, shall forfeit a sum not exceeding two hundred dollars; and if not able to pay said sum he shall suffer six months' imprisonment.

Quarantine expenses, how paid by person or owner.  
R. S. 21, § 34.

SECT. 39. All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person or the owner of such vessel or goods respectively.

#### HOSPITALS AND DANGEROUS DISEASES.

Hospitals may be provided by towns.  
R. S. 21, § 35.

SECT. 40. Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health.

to be under

SECT. 41. Such hospitals shall be subject to the orders and regula-



tions of the board, or of a committee of the town appointed for that purpose.

SECT. 42. No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an adjoining town, without the consent of such town.

SECT. 43. When a hospital is so established, the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of the same, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose.

SECT. 44. When a disease dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants; which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless the condition of such person will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided.

SECT. 45. When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety.

SECT. 46. If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with, the same, violates any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property, he shall for each offence forfeit a sum not less than ten nor more than one hundred dollars.

SECT. 47. When a householder knows that a person within his family is taken sick of small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells. If he refuses or neglects to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

SECT. 48. When a physician knows that any person whom he is called to visit is infected with small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town; and if he refuses or neglects to give such notice, he shall forfeit for each offence a sum not less than fifty nor more than one hundred dollars.

SECT. 49. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, and which are recoverable of a private person or corporation by virtue of any provisions of law, may be sued for and recovered in an action of contract.

SECT. 50. Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town relating to health, shall inure to the use of such town.

SECT. 51. The provisions of sections sixteen, seventeen, forty-four, forty-five, and forty-six, shall not apply to small-pox.

orders of board of health.  
R. S. 21, § 36.  
Hospitals not to be within, &c.  
R. S. 21, § 37.

Physicians, &c., in hospitals subject to board of health.  
R. S. 21, § 39.

Board of health to provide hospital, &c., and remove sick, &c.  
1837, 244, § 2.  
1848, 119.  
See § 51.

Selectmen to give notice of infected places.  
R. S. 21, § 41.  
1838, 158.  
See § 51.

Penalty on persons in hospitals, &c., for violating regulations.  
R. S. 21, § 42.  
1838, 158.  
See § 51.

Householders to give notice of dangerous diseases.  
Penalty.  
R. S. 21, § 43.

Penalty on physician for not giving notice of dangerous disease.  
R. S. 21, § 44.

Expenses recoverable of individuals; how sued for.  
1849, 211, § 6.

Fines and forfeitures to inure to use of town.  
1849, 211, § 7.

Small-pox.  
1838, 158; 1840, 39; 1848, 119.

OFFENSIVE TRADES.

SECT. 52. The board shall from time to time assign certain places for the exercising of any trade or employment which is a nuisance or hurtful to the inhabitants, or dangerous to the public health, or the ex-

Board to assign places for exercising offensive trades, and may prohibit.

R. S. 21, § 47.  
1855, 391, § 1.  
See § 53.

ercise of which is attended by noisome and injurious odors, or is otherwise injurious to their estates, and may prohibit the exercise of the same in places not so assigned; the board may also forbid the exercise of such trade or employment within the limits of the town or in any particular locality thereof. All such assignments shall be entered in the records; and may be revoked when the board shall think proper.

Superior court may, on complaint, revoke such assignment.  
R. S. 21, § 48.  
1859, 196.

SECT. 53. When it appears on a trial before the superior court for the county, upon a complaint made by any person, that any place or building so assigned has become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the court may revoke such assignment and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

Action for damages from nuisance.  
R. S. 21, § 49.

SECT. 54. A person injured either in his comfort or the enjoyment of his estate by such nuisance, may have an action of tort for the damage sustained thereby.

Orders of prohibition, &c., to be served on occupant. If he refuses to obey, board may prevent.  
Penalty.  
1855, 391, § 2.

SECT. 55. Orders of prohibition under section fifty-two shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If the party upon whom such order is served, for twenty-four hours after such service refuses or neglects to obey the same, the board shall take all necessary measures to prevent such exercise; and the person so refusing or neglecting shall forfeit a sum not less than fifty nor more than five hundred dollars.

Appeal, by person aggrieved. Proceedings.  
1855, 391, § 3.  
1859, 196.

SECT. 56. Any person aggrieved by such order may appeal therefrom, and shall within three days from the service thereof upon him apply to the superior court, if in session in the county where such order is made, or in vacation to any justice of said court, for a jury; and such court or justice shall issue a warrant for a jury, to be impanelled at a time and place expressed in the warrant, in the manner provided in regard to the laying out of highways.

Trade not to be exercised meanwhile.  
1855, 391, § 4.

SECT. 57. During the pendency of the appeal such trade or employment shall not be exercised contrary to the order; and upon any violation of the same the appeal shall forthwith be dismissed.

Verdict of jury may alter, &c., order; to be returned for acceptance, &c.  
1855, 391, § 5.

SECT. 58. The verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance as in case of highways; and said verdict when accepted shall have the authority and effect of an original order from which no appeal had been taken.

Costs, — how and when assessed; on whom; and to what amount.  
1855, 391, § 6.

SECT. 59. If the order is affirmed by the verdict, the town shall recover costs against the appellant; if it is annulled, the appellant shall recover damages and costs against the town; and if it is altered, the court may render such judgment as to costs as in their discretion may seem just.

Chapter extends to cities.

SECT. 60. The provisions of this chapter extend to cities so far as the same are not inconsistent with their several charters or acts in amendment thereof.

CHAPTER 27.

OF THE PROMOTION OF ANATOMICAL SCIENCE.

SECTION

1. Overseers of the poor, &c., to permit physicians to take dead bodies in certain cases.
2. Physicians, &c., to give bond on receiving a dead body.

SECTION

3. Persons having charge of poorhouse, &c., to give notice of death.
4. Dead bodies not to be given to physicians if claimed by friends, or if deceased requested to be buried, &c.

SECTION 1. The overseers of the poor of a town, the mayor and aldermen of a city, and the inspectors and superintendent of a state almshouse, may to any physician or surgeon, upon his request, give permission to take the bodies of such persons dying in such town, city, or almshouse, as are required to be buried at the public expense, to be by him used within the state for the advancement of anatomical science; preference being given to medical schools established by law, for their use in the instruction of students.

Overseers of poor, &c., to give dead bodies to physicians in certain cases.  
1845, 242, § 1.  
1855, 323, § 1.

SECT. 2. Every physician or surgeon, before receiving any such dead body, shall give to the board of officers surrendering the same to him, a sufficient bond that each body shall be used only for the promotion of anatomical science within this state, and so as in no event to outrage the public feeling; and that, after having been so used, the remains thereof shall be decently buried.

Physicians, &c., to give bond on receiving a dead body.  
R. S. 22, § 12.

SECT. 3. Persons having charge of a poorhouse, workhouse, or house of industry, in which a person required to be buried at the public expense dies, shall forthwith give notice of such death to the overseers of the poor of the town or to the mayor and aldermen of the city in which such death occurs; and except in case of necessity the body of such person shall not be buried until such notice is given, and permission therefor granted by such overseers or mayor and aldermen; nor without their permission shall the body be surrendered for dissection or mutilation.

Persons having charge of poorhouse, &c., to give notice of death.  
1845, 242, § 1.

SECT. 4. If the deceased person during his last sickness, of his own accord requested to be buried, or if, within twenty-four hours after his death, any person claiming to be and satisfying the proper authorities that he is a friend or of kindred to the deceased, asks to have the body buried, or if such deceased person was a stranger or traveller who suddenly died, the body shall not be so surrendered, but shall be buried.

When dead bodies are not to be given to physicians, &c.  
1845, 242, § 2.

CHAPTER 28.

OF CEMETERIES AND BURIALS.

SECTION

1. Cemetery corporations may be organized.
2. Powers, duties, and liabilities.
3. Lots to be indivisible, but inheritable; representative of, how designated.
4. Towns to provide burial places.
5. Private land not to be used for burial purposes, except, &c.
6. Boards of health to make necessary regulations, &c.

SECTION

7. Boards of health to give notice of regulations.
8. Notice to be given before closing tombs, &c., by order of board.
9. Appeal from order of board.
10. to be tried by a jury. Costs.
11. Penalty for interments in violation of this chapter.
12. for injury to tombs or cemeteries, &c.

SECTION 1. Ten or more persons desirous of procuring, establishing, and preparing, a cemetery or burial place, or being the majority in inter-

Cemetery corporations may be organized.



1841, 114, § 1.  
1852, 56, §§ 1, 2.

est of the proprietors of an existing cemetery, may organize as a corporation in the manner provided in chapter sixty-seven. But in the case of an existing cemetery, the corporation shall not make sale of nor impair the right of any proprietor.

Powers, duties,  
and liabilities.  
1841, 114, §§ 2,  
3, 4.  
1852, 56, § 2

SECT. 2. Such corporation shall have the powers and privileges, and be subject to the duties, restrictions, and liabilities, of chapter sixty-eight, and to the provisions of the first sixteen sections of chapter sixty-seven; may take and hold so much real and personal estate as may be necessary for the objects of its organization, which shall be applied exclusively to the furtherance of such objects; may lay out such real estate into lots, and upon such terms, conditions, and regulations, as the corporation shall prescribe, may grant and convey the exclusive right of burial in and of erecting tombs or cenotaphs upon any lot, and of ornamenting the same.

Lots to be indivisible, but inheritable. Representative of, how designated.  
1841, 114, § 5.

SECT. 3. Lots in such cemetery shall be held indivisible, and upon the decease of a proprietor, his heirs at law, or the devisees of such lot if devised, shall succeed to his privileges. If there is more than one heir or devisee, they shall within nine months from such decease designate in writing to the clerk of the corporation which of their number shall represent the lot; and on their failure so to designate, the board of trustees or directors of the corporation shall enter of record which of said heirs or devisees shall represent the lot while such failure continues.

Burial places.  
1855, 257, § 1.

SECT. 4. Each town and city shall provide one or more suitable places for the interment of persons dying within its limits.

private land not to be used for, except, &c.  
1855, 257, §§ 2, 3,  
10. See § 11.

SECT. 5. Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same is situated.

Boards of health to make regulations, &c.  
R. S. 21, § 7.  
1855, 257, § 5.  
s Cush. 68.

SECT. 6. Boards of health may make all regulations which they judge necessary concerning burial grounds and interments within their respective limits; may prohibit the use of tombs by undertakers, (as places of deposit for bodies committed to them for burial,) for the purpose of speculation, and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

to give notice of regulations.  
R. S. 21, § 8.  
1855, 257, § 6.  
See § 11.

SECT. 7. Notice of such regulations shall be given by publishing the same in some newspaper of the town, or city, or, if there is no such newspaper, by posting a copy in some public place therein; which shall be deemed legal notice to all persons.

Notice to be given before closing tombs, &c., by order of board.  
1855, 257, § 9.

SECT. 8. Before a tomb, burial ground, or cemetery, is closed by order of the board of health, for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial ground or cemetery, and notice shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are, published in the county.

Appeal from order of board.  
1855, 257, § 7.  
1859, 196.

SECT. 9. The owner of a tomb aggrieved by the order of the board of health closing any tomb, burial ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the board shall remain in force until a decision shall be had on the appeal.

to be tried by a jury. Costs.  
1855, 257, § 7.

SECT. 10. Appeals shall be tried in regular course before a jury, and if the jury find that the tomb, burial ground, or cemetery, so closed, was not a nuisance, nor injurious to the public health at the time of the order, the court shall rescind the same so far as it affects such tomb, burial ground, or cemetery, and execution for costs of the appeal shall

issue in favor of the appellant against the town or city in which the same was situated. But if the order is sustained, execution shall issue for double costs against the appellant in favor of the board of health for the use of the town or city.

SECT. 11. For every interment in violation of section five in a town or city in which the notice prescribed in section seven has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars. Penalty for violation of this chapter. 1855, 257, § 4.

SECT. 12. Whoever wrongfully destroys, impairs, injures, or removes, a tomb, gravestone, building, fence, railing, or other thing, lawfully erected in or around a place of burial or cemetery, or a tree, shrub, or plant, situate within its limits; or wrongfully injures a walk or path therein, or places rubbish or offensive matter within a place of burial or cemetery, or commits any nuisance therein, or in any way desecrates or disfigures the same, shall forfeit for every such offence not less than five nor more than one hundred dollars. Upon the trial of a prosecution for the recovery of such penalty, use and occupation for the purposes of burial shall be deemed sufficient evidence of title. for injuring tombs, &c. 1841, 114, § 6. 1855, 257, § 8. Proof of title.

## TITLE IX.

### CHAPTER 29.

#### OF THE PUBLIC RECORDS.

SECTION

1. Linen paper to be used for records. American manufacture to be preferred.
2. County commissioners, &c., to have records bound and papers filed.
3. to provide fire-proof rooms, &c., for records, &c.
4. City governments and selectmen to provide fire-proof safe, &c.
5. Town may cause its records of grants, &c., to be transcribed.
6. or those of town from which set off.
7. Records becoming illegible, &c., may be transcribed; and records of other places.

SECTION

8. Transcripts compared and certified, &c., to have force of originals.
9. Records not to be removed, except, &c.
10. may be inspected and copied. Clerks, &c., to certify.
11. Town or city clerk to have custody of records, &c., after dissolution of proprietary.
12. of records of dissolved church or religious society.
13. Penalties.

SECTION 1. All matters of public record in any office shall be entered or recorded on paper made wholly of linen, of a firm texture, well sized, and well finished; and the clerks and registers of said offices shall give a preference to linen paper of American or domestic manufacture, if such paper is marked in water line with the word "linen," and also with the name of the manufacturer. Linen paper to be used for records. American manufacture to be preferred. R. S. 14, § 116.

SECT. 2. The county commissioners, city governments, and selectmen, of the respective counties, cities, and towns, shall have all books of public record or registry belonging thereto substantially bound, and other papers and documents within their respective departments duly filed and arranged conveniently for examination and reference, and shall also cause such of said public records as are left incomplete by any clerk or register to be made up and completed by his successor from the County commissioners, &c., to have records bound and papers filed. 1851, 161, § 1.



files and usual memoranda as far as practicable, and certified and preserved in the same manner and with the same effect as is provided for other cases in sections seven, eight, and ten, of this chapter.

County commissioners, &c., to provide fire-proof rooms, &c., for records, &c.  
R. S. 14, § 104.  
1851, 161, §§ 1, 2.

SECT. 3. The commissioners shall provide and maintain fire-proof rooms with suitable alcoves, cases, and boxes, for the safe keeping of all records, files, papers, and documents, belonging to the several registries of deeds; and a suitable place for the safe keeping and preservation of the other public records, and of valuable documents belonging to the county; and for their particular security and preservation; and such records and documents shall be securely kept in the places so provided.

City governments and selectmen to provide fire-proof safe, &c.  
1857, 97, § 1.

SECT. 4. City governments and selectmen shall provide at the expense of their respective cities and towns, fire-proof safes of ample size for the preservation of books of record or registry, and other important documents or papers belonging thereto; and the clerk of each city and town shall keep all such books, papers, and documents, in the safe so provided, at all times except when they are wanted for use.

Town may cause its records of grants, &c., to be transcribed.  
1857, 84, § 1.

SECT. 5. A city or town may cause to be carefully transcribed such of its records as relate to grants of lands, or the grants or divisions and allotments of land made by the original proprietors of the township, or to any easements, private rights, or ways, or any records of births and marriages kept by such city or town, or by any parish within the same.

or those of town from which set off.  
1857, 84, § 2.

SECT. 6. A city or town whose territory in whole or in part has been set off from any other city or town, may cause to be carefully transcribed such records named in the preceding section as relate to lands, easements, rights, or ways, situated in the territory so set off.

Records becoming illegible, &c., may be transcribed; and records of other places.  
1851, 161, §§ 2, 6.  
See § 2.

SECT. 7. When the records of a county, city, or town, are becoming worn, mutilated, or illegible, the county commissioners, city government, or selectmen, shall have fair legible copies seasonably made; and when the interests of any county, city, or town, require, the county commissioners, mayor and aldermen, selectmen, or overseers of the poor, may have copies of any records or parts of records, or of any papers or documents, in the legal custody of any other county, city, or town, so made at the expense of their respective counties, cities, or towns; which copies shall be certified by the register or clerk of the office where they are taken to be true copies of the originals, and they shall be preserved in like manner as the original records, papers, and documents, of the place for which they are made.

Transcripts compared and certified, &c., to have force of originals.  
1851, 161, § 2.  
1857, 84, §§ 1, 2.  
See § 2.

SECT. 8. A transcript made in pursuance of the provisions of the preceding sections, and compared and certified under oath by the clerk or register having the custody of the original to be a true copy, shall have the same force and effect when deposited among the records of the place for which it is made as if the same were an original record, or an original paper, or document, deposited there.

Records not to be removed, except, &c.  
R. S. 83, § 22.  
1849, 202, § 1.  
1851, 161, § 3.  
1852, 10.  
1856, 284, § 13.  
See § 13.

SECT. 9. Registers of deeds, registers of courts, and the registers and clerks of courts, cities, and towns, shall keep all records and documents belonging to their offices in their sole custody, and shall in no case, except upon summons in due form of law, or when the temporary removal of records and documents in their custody is necessary or convenient for the transaction of the business of the courts or the performance of the duties of their respective offices, cause or permit any record or document to be removed or taken away.

may be inspected and copied. Clerks, &c., to certify.  
1851, 161, §§ 4, 6.  
1857, 84, § 3.  
See § 2.

SECT. 10. Under the direction of the officers having the custody of the county, city, and town records and files, the same shall be open for public inspection and examination, and any person may take copies thereof. And the several clerks and registers shall, on payment of a reasonable fee therefor, compare and certify, in the manner herein mentioned, all transcripts properly and correctly made for any county, city, or town, in pursuance of the provisions of this chapter.

SECT. 11. The legal custody of the books of record and other docu-



ments of the ancient proprietors of townships or of common lands, when they have ceased to be a body corporate, shall, unless they have made other legal disposition thereof, be vested in the clerk of the city or town in which such lands or the larger portion of them are situated; who, if such records and documents are in the possession of any other person, shall demand the same, and may make and certify copies thereof in the same manner as the clerk of the proprietors might have done.

Town or city clerk to have custody of records when, &c. R. S. 43, § 17. 1851, 161, § 5. See § 13.

SECT. 12. When any church or religious society ceases to have a legal existence, and the care of its records and registries is not otherwise provided for by law, the person having possession of the same shall deliver them to the clerk of the city or town in which such church or society was situated, who may certify copies thereof.

of records of church ceasing to exist. 1851, 161, § 8. See § 13.

SECT. 13. Every county, city, and town, for each month it neglects or refuses to perform any duty required by this chapter, shall forfeit twenty dollars; a register or clerk who neglects or refuses to perform any duty required of him shall forfeit for each offence ten dollars; whoever takes and carries away any book of record, paper, or written document, belonging to the records or files of any county, city, or town, except as is provided in section nine, or defaces, alters, or mutilates, by mark, erasure, cutting, or otherwise, any such record, paper, or written document, shall forfeit a sum not exceeding fifty dollars; and whoever, after demand made by the clerk of the city or town entitled by law to have possession of the books of record and other documents mentioned in sections eleven and twelve, wrongfully detains the same, shall forfeit fifty dollars.

Penalties. 1851, 161, §§ 4, 5. 7, 8. 1857, 97, § 2.

## TITLE X.

### OF PARISHES AND RELIGIOUS SOCIETIES; AND OF RELIGIOUS, CHARITABLE, AND EDUCATIONAL FUNDS AND ASSOCIATIONS.

CHAPTER 30. — Of Parishes and Religious Societies.

CHAPTER 31. — Of Donations and Conveyances for Pious and Charitable Uses.

CHAPTER 32. — Of Associations for Religious, Charitable, and Educational Purposes.

CHAPTER 33. — Of Public Libraries.

## CHAPTER 30.

### OF PARISHES AND RELIGIOUS SOCIETIES.

SECTION

1. Religious societies to be bodies corporate. Powers of taxation conferred by special act not affected. Existing rights of property not impaired.
2. Rights, &c., of religious societies.
3. Churches to have accustomed privileges, &c.
4. Societies may organize themselves, &c. Powers, &c. Subject to revocation.
5. First meeting to be called by justice's war-

SECTION

- rant. Contents of warrant and proceedings thereon.
6. Membership of religious societies to be voluntary.
7. Societies may regulate admissions by by-laws.
8. Members alone may vote.
9. Annual meeting in March or April, or at times prescribed by by-laws, &c. Choice of officers.

## SECTION

10. Moderator, &c., elected by ballot. Clerks, &c., to be sworn. Other elections.
11. Prudential affairs, by whom managed.
12. If assessors refuse, &c., a justice of the peace may call, &c.
13. Warrant to contain matters desired by five or more voters. Action on matters not in warrant void.
14. Meetings, how warned.
15. Who to preside till moderator is chosen. Choice of clerk. Officers, how sworn.
16. Moderator's powers, &c. Penalties for disorderly conduct.
17. Collector to be sworn. If not present, to be summoned. Upon refusal or neglect, new election.
18. Vacancies in offices, how filled.
19. Officers of Protestant Episcopal Societies.
20. Objects for which a society may raise money.
21. Taxes to be assessed on property.
22. Corporations not to be taxed, nor trustees, &c.
23. Societies may appoint treasurers collectors, who shall have power of town collectors; may abate upon prompt payment.
24. Unincorporated societies may hold, &c., donations.
25. Trustees may be appointed; term of office, regulations for their government.
26. "Religious society," &c., includes parish.
27. Proprietors of churches, &c., may organize and have corporate powers.
28. Amount of estate which may be held.

## SECTION

29. Clerk to leave copy of record of organization with town clerk, &c., or organization to be void.
30. Proprietors of churches, &c., may assess for alterations, repairs, &c.
31. How proprietors' meetings may be called.
32. Assessment and collection of money.
33. Notice when pews are sold by treasurer.
34. Affidavit of notice of sales made evidence.
35. Proprietors may take down pews to alter churches, &c. Proceedings in such case.
36. Parishes and societies may take down pews or sell their house.
37. No compensation when church is unfit for use.
38. Pews personal estate. Dower, &c.
39. Pews in churches erected since March 25, 1845, may be assessed for support of public worship.
40. and in churches erected before that time, by consent or vote of two-thirds.
41. Pews to be purchased in such case at an appraisal.
42. Societies complying with preceding sections to have powers, &c.
43. Trustees of Methodist Episcopal Societies may organize and become corporations.
44. Powers of trustees. Annual income not to exceed \$4000.
45. First meeting, how called. Organization. Secretary to be sworn.
46. Copy of record of organization to be left with town clerk, or organization to be void.

Religious societies to be bodies corporate.

existing powers not affected.  
R. S. 20, §§ 1, 19, 21.

rights, &c., of.  
R. S. 20, § 2.

Churches to have privileges, &c.

R. S. 20, § 3.  
16 Mass. 488.  
10 Pick. 172.  
5 Cush. 412.

Societies not incorporated may organize, &c.

powers may be revoked.  
R. S. 20, §§ 26, 29.  
6 Met. 448.

First meeting, &c., how called.  
R. S. 20, §§ 27, 28.

6 Met. 448.  
See §§ 13, 31.

SECTION 1. Every religious society established or organized by virtue of any statute shall be and continue a body corporate with the powers given to corporations by chapter sixty-eight, and the powers, privileges, liabilities, and duties, set forth in this chapter; but this chapter shall not enlarge nor diminish the powers of taxation enjoyed by any religious society by virtue of a special law or act of incorporation, nor impair existing rights of property of any territorial parish.

SECT. 2. Religious societies, whether corporate or unincorporate, shall continue to have and enjoy their existing rights, privileges, and immunities, except so far as the same may be limited or modified by the provisions of this chapter.

SECT. 3. The respective churches connected and associated in public worship with such religious societies shall continue to have, exercise, and enjoy, all their accustomed privileges and liberties respecting divine worship, church order, and discipline, and shall be encouraged in the peaceable and regular enjoyment and practice thereof.

SECT. 4. A religious society that is not incorporated, or which may be unable to assemble in the usual manner, if it contains ten or more qualified voters, may organize and become a corporation with the powers, privileges, duties, liabilities, and requirements of such societies, and may hold so much estate, real or personal, as may be necessary for the objects of such organization, and no more; but all the powers derived from such organization may be revoked by the legislature.

SECT. 5. Any justice of the peace for the county in which such society may be, upon application in writing by five or more of the qualified voters thereof, may issue his warrant directed to some one of the applicants, stating the objects, and requiring him to warn the qualified voters of the society to meet at a time and place appointed in the warrant; and the same may be served by posting an attested copy thereof on the principal outer door of the meeting-house, or leaving such copy with or at the last and usual place of abode of such voters, seven days at least



before such meeting; and, upon due return thereof, the same justice or any other justice of the peace for the county may preside at the meeting for the choice and qualification of a clerk, who shall enter at large upon the records of the society the proceedings had in the organization thereof; and the society may thereupon proceed to choose a moderator and do such other things as parishes are by law authorized to do at their annual meetings: *provided* the subject matter thereof is inserted in the warrant.

SECT. 6. Persons belonging to a religious society shall be held to be members until they file with the clerk a written notice declaring the dissolution of their membership, and they shall not be liable for any grant or contract thereafter made or entered into by such society. No person shall be made a member of such society without his consent in writing.

SECT. 7. Every religious society may make by-laws not repugnant to the laws of the commonwealth, and therein prescribe the manner in which persons may become members.

SECT. 8. No person shall have a right to vote in the affairs of such society unless he is a member thereof.

SECT. 9. The qualified voters of every parish and incorporated religious society, and of every society organized according to the provisions of this chapter, shall hold an annual meeting in the month of March or April, or at such other time as they may prescribe by their by-laws, and if the by-laws do not otherwise determine at a time and place appointed by their assessors or standing committee; and at such meeting shall choose a moderator, clerk, two or more assessors, a treasurer and collector, and such other officers as they think necessary, all of whom, except the moderator, shall continue in office till the next annual meeting and till others are chosen and qualified in their stead.

SECT. 10. Moderators of meetings held for the choice of officers shall be elected by written ballots. Clerks, assessors, treasurers, and collectors, shall be elected by written ballot and shall be sworn. Other officers may be elected in such mode as the society may determine.

SECT. 11. The prudential affairs of such societies shall be managed by their assessors or a standing committee specially appointed for that purpose; and the assessors or committees shall have like authority for calling meetings as selectmen have for calling town meetings.

SECT. 12. If there are no assessors or committee, or if they unreasonably refuse to call a meeting, any justice of the peace for the county, upon the application of not less than five qualified voters, may call one in the manner provided in section five.

SECT. 13. The assessors or committee shall insert in the next warrant they issue for calling a meeting any matter which not less than five qualified voters of the society in writing request. Nothing acted upon shall have any legal operation, unless the subject matter thereof was inserted in the warrant.

SECT. 14. Meetings shall be warned in the manner provided by any by-law or vote of the society, and when no provision is made, in such manner as the assessors or standing committee in their warrant for such meeting direct.

SECT. 15. The clerk, or if there is no clerk or he is absent, the assessors or the standing committee, or any one of them, shall preside in the choice of a moderator; and a clerk may then be chosen, either *pro tempore* or to fill the vacancy, as the case may require. The moderator may administer the oath of office to the clerk; and the clerk to the assessors and collector; or said oaths may be administered by a justice of the peace; and they shall be substantially the same as are required to be taken by the clerk, assessors, and collectors, of towns.

SECT. 16. The moderator shall have the same power as the modera-

Membership.  
R. S. 20, § 4.  
17 Mass. 347.  
5 Pick. 498.  
13 Pick. 111.  
21 Pick. 148.  
5 Met. 73.  
8 Cush. 267.

Societies may regulate admissions.  
R. S. 20, § 5.

Who may vote.  
R. S. 20, § 6.

Annual meeting. Choice of officers.  
R. S. 20, § 7.  
1852, 175, § 1.  
1 Cush. 149.

Moderator, clerk, &c., how chosen, &c.  
R. S. 20, § 7.  
1858, 46.  
1 Cush. 149.

Prudential affairs, by whom managed.  
R. S. 20, § 14.

When justice may call meeting.  
R. S. 20, § 17.  
3 Pick. 242.  
6 Met. 448.  
8 Met. 301.  
4 Cush. 476.

Warrant, what to contain, &c.  
R. S. 20, § 16.  
9 Pick. 97.

Meetings, how warned.  
R. S. 20, § 8.  
7 Greenl. 426.

Who to preside. Clerk, &c. Officers, how sworn.  
R. S. 20, §§ 9, 10.  
5 Mass. 427.  
6 Greenl. 448.

Moderator's powers, &c.



Disorderly conduct.

R. S. 20, § 11.  
16 Mass. 385.

Collector.

R. S. 20, §§ 12,  
13.

Vacancies in offices, how filled.

R. S. 20, § 15.

Officers of Protestant Episcopal Societies.  
1858, 116.

Objects for which a society may raise money.

R. S. 20, § 18.  
1 Mass. 181.  
5 Mass. 547.  
10 Pick. 500.  
5 Met. 73.  
8 Cush. 267.

Taxes to be assessed on property.

R. S. 20, § 30.  
1 Cush. 149.

Corporations, &c., not to be taxed, &c.

R. S. 20, § 20.  
1848, 164, § 1.

Societies may appoint treasurers collectors.

may abate upon prompt payment.  
R. S. 20, §§ 23,  
24.

Unincorporated societies may hold, &c., donations.

R. S. 20, § 25.  
5 Met. 160.  
8 Met. 154.

tor of a town meeting; and persons guilty of disorderly behavior at a meeting shall be subject to the penalties and punishments provided for like offences in town meetings.

SECT. 17. If the person chosen collector is present and accepts the office, he shall forthwith be sworn. If not present, he shall be summoned to take the oath by a constable or any person whom the clerk or assessors may appoint for the purpose. Upon the refusal or neglect of a person present to accept the office at the time, and upon the neglect of a person so summoned, for the space of seven days, to appear and take the oath, the society shall proceed to a new choice; and so from time to time until some person accepts and is sworn.

SECT. 18. Vacancies in any of the annual offices, occurring after the annual meeting, may be filled at any other legal meeting.

SECT. 19. The rector or one of the wardens of religious societies belonging to the body of christians known as the Protestant Episcopal Church, organized under the laws of the commonwealth, may, unless it is otherwise provided in some by-law, preside at their meetings with all the powers of a moderator; and the wardens or wardens and vestry may exercise all the powers of a standing committee in accordance with the usage and discipline of said church. Unless they assess or collect a tax on the polls, estates, or pews, of the members thereof, such societies need not choose a collector or assessors; and they may in their by-laws provide, that the duties of assessors shall be performed by the wardens. But the officers upon whom the duties of standing committee or assessors may devolve shall in all cases be elected by ballot.

SECT. 20. The qualified voters of each religious society, at the annual meeting or at any other meeting regularly notified seven days at least before the holding thereof, may grant and vote such sums of money as they judge necessary for the settlement, maintenance, and support, of ministers or public teachers of religion; for the building or repairing of houses of public worship; for sacred music; for the purchase and preservation of burial grounds; and for all other necessary parish charges; which sums shall be assessed on the polls and estates of all the members of the society, in the same manner and proportion as town taxes are by law assessed.

SECT. 21. The assessors shall assess the taxes upon the property (not exempted by law from taxation) of all the members of the society, including their real estate within the state, in whatever part thereof it may be situated, and their personal estate wherever the same may be; and no citizen shall be liable to pay a tax for the support of public worship or other parish charges, to a society other than that of which he is a member.

SECT. 22. No corporation shall be taxed for any parochial purpose. Nor shall any person be taxed in a parish or religious society for property held by him as guardian or trustee.

SECT. 23. Every society may appoint its treasurer collector of taxes; who shall have like powers and proceed in like manner, in enforcing the collection of such taxes after the expiration of the time fixed by the society for the payment thereof, as provided in chapter twelve for the collection of taxes by collectors of towns; and any society may authorize its treasurer and collector to make an abatement of such sum as it may agree upon at its annual meeting, to those who make voluntary payment of their taxes within such periods as may be determined by the society.

SECT. 24. Unincorporated religious societies shall have like power to manage, use, and employ, any donation, gift, or grant, made to them, according to its terms and conditions, as incorporated societies have, by law; may elect suitable trustees, agents, or officers thereof; and sue for any right which may vest in them in consequence of such donation, gift, or grant; for which purposes they shall be corporations.

SECT. 25. Incorporated and unincorporated religious societies may appoint trustees, not exceeding five in number, to hold and manage trust funds for their benefit, who shall hold their offices five years and until others are appointed in their stead, with power to fill vacancies for an unexpired term occurring in their board. Such societies at or before the time of the first appointment of the trustees may establish rules and regulations for their government, which shall be considered as of the nature of a contract, and not subject to alteration or amendment except by all the trustees in office at the time and by a two-thirds vote of the society interested therein.

Trustees may be appointed; term of office; regulations for their government. 1853, 389, § 1.

SECT. 26. The terms "religious society" and "society" in the preceding sections shall include parishes.

"Religious society," &c., includes parish.

SECT. 27. Persons owning or proposing to build a house of public worship may organize themselves in the same manner as religious societies are authorized to do by the provisions of this chapter; and shall thereupon become a corporation with the powers, privileges, duties, restrictions, and liabilities, set forth in chapter sixty-eight, and in the following sections; but all the powers derived from such organization may be revoked by the legislature.

Proprietors of churches, &c., may organize and have corporate powers. 1840, 62, §§ 1, 2. See § 29.

SECT. 28. Every such corporation may hold so much real and personal estate, in addition to its meeting-house, as may be necessary for its objects, and as has been agreed and determined on at the meeting held for the purpose of organization; and the annual income thereof shall be applied to parochial purposes.

Amount of estate which may be held. 1840, 62, § 3.

SECT. 29. The clerk of every such corporation shall, within ten days of such meeting, leave with the clerk of the town or city in which such house of worship is situated, or is about to be built, a true copy of the record of the proceedings. If he fails so to do, the organization shall be void. The copy shall be recorded by the clerk receiving it in a book kept for the purpose, for which he shall receive the fee of the register of deeds for like services.

Clerk to leave copy of record with town clerk, &c. 1840, 62, § 4.

SECT. 30. When the proprietors deem it expedient to alter, enlarge, repair, rebuild, or remove, their house, or build a new one, they may, at a legal meeting called for that purpose, raise such sums of money as they may judge necessary for the purpose, and to purchase land necessary therefor.

Proprietors may assess for alterations, repairs, &c. R. S. 20, § 31.

SECT. 31. A meeting of the proprietors for any of the purposes aforesaid, may be called in the manner prescribed in the by-laws or votes of the corporation, or by a warrant granted by a justice of the peace on application in writing by any five of said proprietors, which warrant shall be directed to one of the applicants; or such meeting may be called by a notification by the clerk of the proprietors, who shall warn a meeting on a like application to him; and in either case the meeting may be warned by notification served as provided in section five.

How proprietors' meetings may be called. R. S. 20, § 35. 8 Met. 301. 9 Cush. 508.

SECT. 32. Money raised may be assessed on the pews in such house, and the assessment may be committed to the treasurer of the proprietors, who shall forthwith give notice by posting up an advertisement at the principal outer door of the house, stating the completion of such assessment and the day of delivery thereof to him; and if any part of said taxes remains unpaid for three months afterwards, the treasurer shall collect the same forthwith by sales at public auction of the pews whereon the same remains unpaid, in the manner provided in the following sections.

Assessment and collection of money. R. S. 20, § 32. See § 39.

SECT. 33. The treasurer shall post up a notification of the intended sale of a pew for taxes at the principal outer door of such house, at least three weeks before the time of sale, setting forth the number of the pew, if any, the name of the owner or occupant, if known, and the amount of the tax due thereon; and if any part of said tax remains un-

Notice when pews are sold by treasurer. R. S. 20, § 33. See § 39.



paid at the time, the treasurer shall sell the pew at public auction to the highest bidder, and shall execute and deliver to the purchaser a sufficient deed of conveyance. The money arising from the sale, beyond the taxes and incidental reasonable charges, shall be paid by the treasurer to the former owner of the pew, or to his assigns.

Affidavit of notice of sales made evidence. R. S. 20, § 34.

SECT. 34. An affidavit annexed to an original notification or to a copy thereof, made before a justice of the peace, and recorded on the proprietors' records within six months next after such sale, shall be allowed as one mode of proof of the posting up of the notifications herein before required.

Proprietors may take down pews to alter churches, &c. Proceedings in such case. R. S. 20, § 36. 4 N. Hamp. R. 180.

SECT. 35. Such proprietors, for the purpose of building a new house, or of altering, enlarging, repairing, rebuilding, or removing, their house already built, may sell their house or take down any pews therein; the pews taken being first appraised by three or more disinterested persons chosen by the proprietors for that purpose. The pews newly erected shall be sold by their treasurer at public auction to the highest bidder, and deeds thereof given in like manner as when pews are sold for the payment of taxes. The money arising from such sale shall be applied, so far as may be necessary, to paying the appraised value of the pews taken down; and the deficiency, if any, shall be paid by the proprietors of such house, within thirty days after the sale.

Parishes, &c., may sell house, &c. R. S. 20, § 37. 1853, 256. 19 Pick. 361.

SECT. 36. Under the regulations of the preceding section, a parish or religious society, whenever it deems it necessary for the purpose of building a new house or of altering, enlarging, removing, or rebuilding, its house already built, may take down any pews therein or sell the house.

No compensation in case, &c. R. S. 20, § 38. 17 Mass. 435. 1 Pick. 102. 3 Pick. 344. 7 Pick. 138. 9 Cush. 508.

SECT. 37. Nothing contained in the two preceding sections shall entitle a person to compensation for a pew so taken down, when such house is unfit for the purposes of public worship.

Pews personal estate, &c. 1855, 122, §§ 1, 2. in certain churches may be assessed, &c. 1845, 213, § 1.

SECT. 38. Pews shall be personal estate. But this provision shall not affect any existing right of dower.

SECT. 39. Corporations for religious purposes may assess upon the pews in a church or meeting-house which they have erected or procured for public worship since the twenty-fifth day of March eighteen hundred and forty-five, according to a valuation of said pews which shall first be agreed upon and recorded by the clerk, sums of money for the support of public worship and other parochial charges, and for the repairs of the house. Such assessments may be collected in the manner provided in sections thirty-two and thirty-three.

in other churches, &c. 1852, 319, § 1. 1854, 258, § 1. 1 Cush. 149.

SECT. 40. A corporation which had erected or procured such house prior to the twenty-fifth day of March, eighteen hundred and forty-five, may avail itself of the provisions of the preceding section, if the consent of all the pew owners is obtained, or two-thirds of the members present and voting at a regular meeting called for that purpose so determine.

to be purchased in certain cases at an appraisal. 1854, 258, § 2.

SECT. 41. A religious society which votes to avail itself of the provisions of section thirty-nine, shall, upon the application of a person owning one or more pews in its house, within one year after said vote, purchase the same at the appraised value. Such appraisal shall be made by three disinterested persons who may be chosen, one by the pew owner, one by the society, and the third by the two persons thus chosen.

Societies complying with preceding sections to have powers, &c. 1854, 258, § 3.

SECT. 42. Any religious society complying with the requisitions of the two preceding sections, shall be entitled to the privileges and subject to the liabilities incident to those religious societies which have erected or procured a meeting-house for public worship since the twenty-fifth day of March in the year eighteen hundred and forty-five.

Trustees of Methodist Episcopal societies may organ-

SECT. 43. The trustees of any society of the Methodist Episcopal Church, or of the African Methodist Episcopal Church, appointed according to the discipline or usages thereof respectively or as such



society chooses, may organize and become a corporation with powers, privileges, duties, and liabilities, of chapter sixty-eight, subject however to account to the quarterly meeting of such society according to such discipline and usages. But all powers derived from such organization may be revoked by the legislature.

ize and become corporations. 1847, 280, § 1. 1857, 48, § 1. See § 46.

SECT. 44. Such trustees may receive, hold, and manage, all the property, both real and personal, belonging to such society, and sell and convey the same, and hold in trust gifts, grants, bequests, or donations, made to such society for the support of public worship and other religious purposes: *provided*, that the annual income thereof, exclusive of the meeting-house, shall not exceed four thousand dollars.

Powers of trustees. Annual income not to exceed \$4000. 1847, 280, § 2. 1857, 48, § 2.

SECT. 45. The first meeting of such trustees may be called by a justice of the peace upon the application of three or more of the trustees; at which they may choose a secretary and other officers. The provisions of this chapter in relation to the warning and organization of meetings of religious societies shall, so far as the same are applicable, be in force in regard to meetings for the organization of such trustees. The secretary, before entering upon the duties of his office, shall be sworn to the faithful discharge of the same, and a record of such oath shall be kept in the records of their proceedings.

First meeting, how called. Organization. Secretary to be sworn. 1847, 280, § 3.

SECT. 46. An attested copy of the record of the proceedings at such organization shall be left with the town or city clerk, and recorded within the time and in the manner prescribed in section twenty-nine. If the secretary omits to leave such copy within the time specified the organization shall be void.

Copy of record of, to be left with town clerk, or organization to be void. 1847, 280, § 4.

## CHAPTER 31.

### OF DONATIONS AND CONVEYANCES FOR PIOUS AND CHARITABLE USES.

#### SECTION

1. Deacons, church wardens, &c., made bodies corporate to take donations.
2. When ministers, elders, &c., are joined in such donation, they shall be joined in the body corporate.
3. Ministers of all churches may take in succession any parsonage land.
4. No conveyance of church land valid without consent of church, &c.
5. Conveyance by minister to be valid only during his ministry, unless, &c.

#### SECTION

6. Churches, except, &c., may appoint committees to settle with deacons.
7. Income of such bodies corporate limited.
8. Overseers of monthly meetings of Friends or Quakers to hold lands, &c., as a corporation. Income limited.
9. Trustees who hold funds given to towns for charitable, &c., purposes, to report to selectmen.
10. Probate court may remove trustee.

SECTION 1. The deacons, church wardens, or other similar officers, of all churches or religious societies, if citizens of this commonwealth, shall be deemed bodies corporate, for the purpose of taking and holding in succession all grants and donations, whether of real or personal estate, made either to them and their successors, or to their respective churches, or to the poor of their churches.

Deacons, &c., bodies corporate, &c. R. S. 20, § 39. 12 Mass. 546. 12 Met. 250. 4 Cush. 281. 9 Cush. 181.

SECT. 2. When the ministers, elders, or vestry, of a church are, in the grants or donations mentioned in the preceding section, joined with such deacons or church wardens as donees or grantees, such officers and their successors, together with the deacons or church wardens, shall be deemed the corporation for the purposes of such grants and donations.

Ministers, &c., in certain cases to be joined in body corporate R. S. 20, § 40. 12 Met. 250. 4 Cush. 281.

SECT. 3. The minister of every church or religious society of whatever denomination, if a citizen of this commonwealth, shall be capable of taking in succession any parsonage land granted to the minister and his successors, or to the use of the ministers, or granted by any words of

Ministers may take in succession, &c. R. S. 20, § 41. 10 Mass. 93.

15 Mass. 464.  
6 Greenl. 355.

Conveyance of church lands, when not valid.  
R. S. 20, § 42.

by minister, when to be valid.  
R. S. 20, § 43.  
2 Mass. 500.  
14 Mass. 333.

Committees to settle with deacons.  
R. S. 20, § 44.  
9 Cush. 183.

Income of such bodies corporate limited.  
R. S. 20, § 45.

Overseers of monthly meetings of Friends or Quakers, to hold lands, &c., as a corporation.  
Income limited.  
R. S. 20, § 46.  
8 Cush. 431.

Trustees who hold funds given to towns for charitable, &c., purposes, to report to selectmen.  
1855, 302, § 1.

Probate court may remove trustee.  
1855, 302, § 2.

like import; and may prosecute and defend in all actions touching the same.

SECT. 4. No conveyance of the lands of a church shall be effectual to pass the same, if made by the deacons without the consent of the church, or of a committee of the church appointed for that purpose, or if made by the church wardens without the consent of the vestry.

SECT. 5. No conveyance by a minister of lands held by him in succession, shall be valid any longer than he continues to be such minister, unless such conveyance is made with the consent of the town, parish, or religious society, of which he is minister, or unless he is the minister of an episcopal church and makes the conveyance with the consent of the vestry.

SECT. 6. The several churches, other than those of the episcopal denomination, may choose committees for the purpose of settling the accounts of the deacons and other church officers, and, if necessary, to commence and prosecute suits in the name of the church against the deacons or other officers touching the same.

SECT. 7. The income of such grant or donation made to or for the use of a church, shall not exceed the sum of two thousand dollars a year, exclusive of the income of any parsonage lands granted to or for the use of the ministry.

SECT. 8. The overseers of each monthly meeting of the people called Friends or Quakers shall be a body corporate for the purpose of taking and holding in succession grants and donations of real or personal estate made to the use of such meeting, or to the use of any preparative meeting belonging thereto; and may aliene or manage such estate according to the terms and conditions of the grants and donations, and prosecute and defend in any action touching the same: *provided*, that the income of the grants and donations to any one of such meetings for the uses aforesaid shall not exceed the sum of five thousand dollars a year.

SECT. 9. All trustees, whether incorporated or not, who hold funds given or bequeathed to a city or town for any charitable, religious, or educational purpose, shall make an annual exhibit of the condition of such funds to the board of aldermen of the city, or the selectmen of the town, to which such funds have been given or bequeathed, and all transactions by the trustees concerning such funds shall be open to inspection by the board of aldermen of the city, or selectmen of the town, to which the returns are made.

SECT. 10. The probate court for the county in which the city or town is situated to which funds have been given or bequeathed as aforesaid, may on the petition of five persons cite all parties interested to appear before the court to answer all complaints which may then and there be made; and if a trustee has neglected or refused to render such annual exhibit, or is incapable of discharging the trust reposed, or unsuitable to manage the affairs of the same, the court may remove such trustee and supply the vacancy.

## CHAPTER 32.

### OF ASSOCIATIONS FOR RELIGIOUS, CHARITABLE, AND EDUCATIONAL PURPOSES.

**SECTION**

1. Seven or more persons associating for religious, &c., purposes, to be body corporate.
2. Purpose and location of corporation to be specified in articles of association.
3. To have usual corporate powers, &c.

**SECTION**

4. May hold estate not more than \$100,000.
5. Estate not exempt from taxation where dividends are made, or estate is used for other purposes.

SECTION 1. Seven or more persons within this state, having associated themselves by agreement in writing for educational, charitable, or religious purposes, under any name by them assumed, and complying with the provisions of this chapter, shall with their successors be and remain a body politic and corporate.

Seven or more persons associating, &c., to be body corporate. 1857, 56, § 1.

SECT. 2. The purpose of such corporation and the place within which it is established or located shall be distinctly specified in its articles of association; which articles, and all amendments thereto, shall be recorded in the office of the register of deeds for the county or district wherein such place is situated; and such corporation shall appropriate its funds to no other purpose.

Purpose and location to be specified in articles. 1857, 56, § 2.

SECT. 3. Corporations organized under this chapter shall have the powers and privileges, and be subject to the duties, liabilities, and restrictions, set forth in chapter sixty-eight, so far as the same may be applicable.

To have usual corporate powers, &c. 1857, 56, § 3.

SECT. 4. Such corporations may hold real and personal estate necessary for the purposes of their organization, to an amount not exceeding one hundred thousand dollars.

May hold estate not over, &c. 1857, 56, § 4.

SECT. 5. Their estate shall not be exempted from taxation in any case where part of the income or profits of their business is divided among members or stockholders, or where any portion of such estate is used or appropriated for other than educational, charitable, or religious purposes.

Estate not exempt from taxation, where used for other purposes. 1857, 56, § 5.

## CHAPTER 33.

### OF PUBLIC LIBRARIES.

**LAW LIBRARIES.**

**SECTION**

1. Law libraries heretofore organized, to exist under this chapter.
2. Attorneys may organize a Law Library Association in any county where none exists.
3. First meeting, how called.
4. Officers.
5. Inhabitants of county may use the books under prescribed regulations.
6. County treasurer to disburse, not exceeding, &c., to enlarge such libraries.
7. Treasurer to give bond and make return under oath.

**TOWN AND CITY LIBRARIES.**

**SECTION**

8. Towns and cities may establish libraries.
9. may appropriate money, and receive devises, bequests, and donations, for that purpose.

**SOCIAL LIBRARIES.**

10. Proprietors of library may constitute themselves a corporation, &c.
11. Warning meeting, choice of officers, &c.
12. Treasurer to give bond.
13. Assessments.

**LAW LIBRARIES.**

SECTION 1. Law library associations heretofore organized in any county except Suffolk, shall remain corporations in the same manner as if organized under this chapter.

Law libraries. 1842, 94, § 1. 1844, 157, § 1.



Law Library Associations, where may be organized. 1856, 184. 1859, 196.

First meeting, how called. 1842, 94, § 2. 1856, 184. 1859, 196.

Officers. 1842, 94, § 1.

Inhabitants of county may use books, &c. 1842, 94, § 2.

County treasurer to pay, not exceeding, &c., for such libraries. 1856, 71, § 1. 1859, 172.

Treasurer to give bond, &c. 1856, 71, § 2.

SECT. 2. The attorneys at law admitted to practice in the courts of the commonwealth and resident in a county for which there is no law library association, may organize themselves by the name of the Law Library Association for such county; and when so organized shall be a corporation for the purpose of holding and managing the law library belonging to the county, and may adopt by-laws for that purpose, subject to the approval of the justices of the superior court.

SECT. 3. The clerk of the courts in any county in which no association has been organized, upon the application of seven attorneys at law resident therein, may call a meeting for the purpose of such organization by posting up notifications thereof in some convenient place in any court-house of the county; which meeting shall be holden during the term of the superior court commencing next after ten days from the time of posting up such notification. The clerk shall preside at such meeting until a clerk of the association is chosen.

SECT. 4. The officers of such association shall be a clerk, treasurer, and librarian, whose duties shall be defined by the by-laws.

SECT. 5. Every inhabitant of a county in which such association is organized may use the books in the library, subject to such regulations as may be prescribed by the association with the approval of the superior court.

SECT. 6. County treasurers shall annually, on the first day of January, pay to the county law library associations in their respective counties one-quarter part, not exceeding one thousand dollars, of all sums which said treasurers have received from the clerks of the courts during the preceding year; and they may also pay such further sums, not exceeding the amount paid into the respective county treasuries by the clerks of the courts, as the county commissioners deem necessary and proper. All sums so paid shall be applied to maintain and enlarge such libraries for the use of the courts and citizens.

SECT. 7. The treasurer of a law library association, before receiving said money, shall give a bond with sureties to the satisfaction of the commissioners for the faithful application thereof, and that he will make a return annually to them, under oath, of the manner in which all such applications are made.

#### TOWN AND CITY LIBRARIES.

Towns and cities may establish libraries. 1851, 305, § 1.

may appropriate money and receive devises, &c., for that purpose. 1851, 305, §§ 2, 3. 1859, 25.

SECT. 8. Each town and city may establish and maintain a public library therein, with or without branches, for the use of the inhabitants thereof, and provide suitable rooms therefor, under such regulations for its government as may from time to time be prescribed by the inhabitants of the town, or the city council.

SECT. 9. Any town or city may appropriate money for suitable buildings or rooms, and for the foundation of such library a sum not exceeding one dollar for each of its ratable polls in the year next preceding that in which such appropriation is made; may also appropriate annually, for the maintenance and increase thereof, a sum not exceeding fifty cents for each of its ratable polls in the year next preceding that in which such appropriation is made, and may receive, hold, and manage, any devise, bequest, or donation, for the establishment, increase, or maintenance, of a public library within the same.

#### SOCIAL LIBRARIES.

Proprietors of library may be a corporation, &c. R.S.-41, §§ 1, 3, 6.

SECT. 10. Seven or more proprietors of a library may form themselves into a corporation, under such corporate name as they may adopt, for the purpose of preserving, enlarging, and using, such library; with the powers, privileges, duties, and liabilities, of corporations organized

according to the provisions of chapter sixty-eight, so far as the same may be applicable, and may hold real and personal estate to an amount not exceeding five thousand dollars in addition to the value of their books.

SECT. 11. Upon application of five or more of such proprietors, a justice of the peace may issue his warrant to one of them, directing him to call a meeting of the proprietors, at the time and place and for the purposes expressed in the warrant. The meeting shall be called by posting up the substance of the warrant in some public place in the town where the library is kept, seven days at least before the time of the meeting; at which, if not less than seven of the proprietors meet, they may choose a president, a clerk who shall be sworn, a librarian, collector, treasurer, and such other officers as they may deem necessary; and may determine upon the mode of calling future meetings.

Warning meeting, choice of officers, &c.  
R. S. 41, §§ 1, 2.

SECT. 12. The treasurer shall give bond with sufficient sureties, to the satisfaction of the proprietors, for the faithful discharge of his duties.

Treasurer to give bond.  
R. S. 41, § 4.

SECT. 13. Such proprietors may, by assessments on the several shares, raise such money as they judge necessary for the purposes of preserving, enlarging, and using, the library.

Assessments.  
R. S. 41, § 5.

## TITLE XI.

### OF PUBLIC INSTRUCTION AND REGULATIONS RESPECTING CHILDREN.

- CHAPTER 34. — Of the Board of Education.
- CHAPTER 35. — Of Teachers' Institutes and Associations.
- CHAPTER 36. — Of the School Funds.
- CHAPTER 37. — Of State Scholarships.
- CHAPTER 38. — Of the Public Schools.
- CHAPTER 39. — Of School Districts.
- CHAPTER 40. — Of School Registers and Returns.
- CHAPTER 41. — Of the Attendance of Children in the Schools.
- CHAPTER 42. — Of the Employment of Children and Regulations respecting them.

## CHAPTER 34.

### OF THE BOARD OF EDUCATION.

SECTION

1. Board of education, how organized; term of office; vacancies.
2. may take grants, devises, &c., in trust for educational purposes; to pay all moneys to treasurer.
3. shall prescribe form of school registers, and of blanks for returns; transmit ab-

18\*

SECTION

- stracts of returns, and report, to legislature.
4. may appoint secretary, who shall make abstracts, collect and diffuse information, &c.
5. Secretary shall suggest improvements, visit different places, collect books, receive reports, &c.

SECTION

- 6. Secretary shall give notice and attend meetings, and collect information, &c.
- 7. shall send blank forms and reports to clerks of towns and cities.
- 8. Compensation of secretary, and expenses of office.

SECTION

- 9. Board may appoint agents to make inquiry, &c.
- 10. Expenses of board, how paid.
- 11. Assistant state librarian may act as clerk.

Board of education, how organized; term of members; vacancies.  
1837, 241, § 1.

may take grants, &c., in trust for educational purposes, &c.  
Duty of treasurer.  
1850, 88.

shall prescribe form of school registers and blanks for returns, &c.  
1837, 241, §§ 2, 3.  
1838, 105, §§ 5-7.  
1846, 223, § 3.  
1849, 209.

\* may appoint secretary, who shall make abstracts, &c.  
1837, 241, § 2.  
1847, 183, § 1.  
1849, 215, § 1.

Secretary shall suggest improvements, &c.  
1849, 215, § 1.  
1858, 61.

shall give notice and attend meetings, &c.  
1838, 159, § 1.  
1842, 42.

SECTION 1. The board of education shall consist of the governor and lieutenant-governor, and eight persons appointed by the governor with the advice and consent of the council, each to hold office eight years from the time of his appointment, one retiring each year in the order of appointment; and the governor, with the advice and consent of the council, shall fill all vacancies in the board which may occur from death, resignation, or otherwise.

SECT. 2. The board may take and hold to it and its successors, in trust for the commonwealth, any grant or devise of lands, and any donation or bequest of money or other personal property, made to it for educational purposes; and shall forthwith pay over to the treasurer of the commonwealth, for safe keeping and investment, all money and other personal property so received. The treasurer shall from time to time invest all such money in the name of the commonwealth, and shall pay to the board, on the warrant of the governor, the income or principal thereof, as it shall from time to time require; but no disposition shall be made of any devise, donation, or bequest, inconsistent with the conditions or terms thereof. For the faithful management of all property so received by the treasurer he shall be responsible upon his bond to the commonwealth, as for other funds received by him in his official capacity.

SECT. 3. The board shall prescribe the form of registers to be kept in the schools, and the form of the blanks and inquiries for the returns to be made by school committees; shall annually on or before the third Wednesday of January lay before the legislature an annual report containing a printed abstract of said returns, and a detailed report of all the doings of the board, with such observations upon the condition and efficiency of the system of popular education, and such suggestions as to the most practicable means of improving and extending it, as the experience and reflection of the board dictate.

SECT. 4. The board may appoint its own secretary, who, under its direction, shall make the abstract of school returns required by section three; collect information respecting the condition and efficiency of the public schools and other means of popular education; and diffuse as widely as possible throughout the commonwealth information of the best system of studies and method of instruction for the young, that the best education which public schools can be made to impart may be secured to all children who depend upon them for instruction.

SECT. 5. The secretary shall suggest to the board and to the legislature, improvements in the present system of public schools; visit, as often as his other duties will permit, different parts of the commonwealth for the purpose of arousing and guiding public sentiment in relation to the practical interests of education; collect in his office such school-books, apparatus, maps, and charts, as can be obtained without expense to the commonwealth; receive and arrange in his office the reports and returns of the school committees; and receive, preserve, or distribute, the state documents in relation to the public school system.

SECT. 6. He shall, under the direction of the board, give sufficient notice of, and attend such meetings of teachers of public schools, members of the school committees of the several towns, and friends of education generally in any county, as may voluntarily assemble at the time and place designated by the board; and shall at such meetings devote himself to the object of collecting information of the condition of the



public schools of such county, of the fulfilment of the duties of their office by members of the school committees of all the towns and cities, and of the circumstances of the several school districts in regard to teachers, pupils, books, apparatus, and methods of education, to enable him to furnish all information desired for the report of the board required in section three.

SECT. 7. He shall send the blank forms of inquiry, the school registers, the annual report of the board, and his own annual report, to the clerks of the several towns and cities as soon as may be after they are ready for distribution.

Secretary shall send forms and reports to town clerks, &c. 1850, 41.

SECT. 8. He shall receive from the treasury, in quarterly payments an annual salary of two thousand dollars, and his necessary travelling expenses incurred in the performance of his official duties after they have been audited and approved by the board; and all postages and other necessary expenses arising in his office, shall be paid out of the treasury in the same manner as those of the different departments of the government.

Compensation of secretary, and expenses of office. 1849, 215, §§ 2, 3. 1853, 49.

SECT. 9. The board may appoint one or more suitable agents to visit the several towns and cities for the purpose of inquiring into the condition of the schools, conferring with teachers and committees, lecturing upon subjects connected with education, and in general of giving and receiving information upon subjects connected with education, in the same manner as the secretary might do if he were present.

Board may appoint agents to make inquiry, &c. Resolves, 1857, 22.

SECT. 10. The incidental expenses of the board, and the expenses of the members thereof incurred in the discharge of their official duties, shall be paid out of the treasury, their accounts being first audited and allowed.

Expenses of board, how paid. 1838, 55.

SECT. 11. The assistant librarian of the state library shall act when necessary as clerk of the board.

Clerk. 1849, 155, § 1.

## CHAPTER 35.

### OF TEACHERS' INSTITUTES AND ASSOCIATIONS.

SECTION

1. Board of education to arrange for meeting of teachers' institutes.
2. Expenses of, how paid.
3. Board to regulate length of session and expense.

SECTION

4. When meetings held, county associations to receive \$50 a year.
5. To be paid on certificate, &c.

SECTION 1. When the board of education is satisfied that fifty teachers of public schools desire to unite in forming a teachers' institute, it shall, by a committee of its body, or by its secretary, or in case of his inability by such person as it may delegate, appoint and give notice of a time and place for such meeting, and make suitable arrangements therefor.

Teachers' institutes, meetings of. 1846, 99, § 1. 1848, 10. 1849, 62.

SECT. 2. To defray the necessary expenses and charges, and procure teachers and lecturers for such institutes, the governor may draw his warrant upon the treasurer for a sum not exceeding three thousand dollars per annum, to be taken from that portion of the income of the school fund not apportioned for distribution to the several cities and towns for the support of public schools.

expenses of, how paid. 1846, 99, §§ 2, 3. 1854, 300, §§ 3, 4. Resolves, 1850, 65.

SECT. 3. The board may determine the length of time during which a teachers' institute shall remain in session, and what portion, not exceeding three hundred and fifty dollars, of the sum provided for in the preceding section shall be appropriated to meet the expenses of any

length of, and expense. 1846, 99, § 2. 1849, 62. 1852, 216.

such institute; and the board, its secretary, or any person by it duly appointed, may draw upon the treasurer therefor.

When meetings held, county associations to receive \$50 a year. 1848, 301, § 1.

SECT. 4. When a county association of teachers and others holds semi-annual meetings, of not less than two days each, for the express purpose of promoting the interests of public schools, it shall receive fifty dollars a year from the commonwealth.

To be paid on certificate, &c. 1848, 301, § 2.

SECT. 5. Upon the certificate under oath of the president and secretary of such association to the governor that two semi-annual meetings have been held in accordance with the provisions of the preceding section, he shall draw his warrant in favor of such association for the sum aforesaid.

### CHAPTER 36.

#### OF THE SCHOOL FUNDS.

##### MASSACHUSETTS SCHOOL FUND.

###### SECTION

1. School fund, how invested. Income only to be used.
2. Half the income to be distributed for support of common schools. Appropriations for other educational purposes to be paid from other half. Surplus to be added to principal.
3. apportioned for schools by secretary and treasurer. When towns are not entitled to share.

###### SECTION

4. Income received by towns to be applied for support of schools therein.
5. Appropriations for Indians. Account to be rendered.

##### INDIAN SCHOOL FUND.

6. Indian school fund, how applied, &c.

##### TODD NORMAL SCHOOL FUND.

7. Todd fund, how applied.

##### MASSACHUSETTS SCHOOL FUND.

School fund, how invested. Income only to be used. R. S. 11, §§ 13, 14. 1854, 300, §§ 2, 3, 4. 1854, 333.

SECTION 1. The present school fund of this commonwealth, together with such additions as may be made thereto, shall constitute a permanent fund, to be invested by the treasurer with the approbation of the governor and council, and called the "Massachusetts School Fund;" the principal of which shall not be diminished, and the income of which, including the interest on notes and bonds taken for sales of Maine lands and belonging to said fund, shall be appropriated as hereinafter provided.

Income, how distributed. 1854, 300, §§ 2, 3. 1858, 96, § 2.

SECT. 2. One-half of the annual income of said fund shall be apportioned and distributed for the support of public schools without a specific appropriation. All money appropriated for other educational purposes, unless otherwise provided by the act appropriating the same, shall be paid from the other half of said income so long as it shall be sufficient for that purpose. If insufficient, the excess of such appropriations in any year shall be paid from any money in the treasury not otherwise appropriated. If the income in any year exceeds such appropriations for the year, the surplus shall be added to the principal of said fund.

how apportioned for schools. When towns are not entitled to share. R. S. 23, §§ 66, 67. 1846, 223, § 5. 1849, 117, §§ 2, 3.

SECT. 3. The income of the school fund appropriated by the preceding section to the support of public schools, which may have accrued upon the first day of June of each year, shall be apportioned by the secretary and treasurer, and on the tenth day of July be paid over by the treasurer to the treasurers of the several towns and cities for the use of the public schools, according to the number of persons therein between the ages of five and fifteen years, ascertained and certified as provided in sections three and four of chapter forty. But no such apportionment shall be made to a town or city which has not complied with the provisions of sections five and six of said chapter, or which has not raised by taxation for the support of schools during the school year embraced in the last annual returns, including only wages and board of

teachers, fuel for the schools, and care of fires and school-rooms, a sum not less than one dollar and fifty cents for each person between the ages of five and fifteen years belonging to said town or city on the first day of May of said school year.

SECT. 4. The income of the school fund received by the several cities and towns shall be applied by the school committees thereof to the support of the public schools therein, but said committees may, if they see fit, appropriate therefrom any sum, not exceeding twenty-five per cent. of the same, to the purchase of books of reference, maps, and apparatus for the use of said schools.

Income received by towns, how applied.

SECT. 5. On the first day of January annually, there shall be paid out of the income of said school fund as follows, viz.: One hundred dollars to the treasurer of the Marshpee Indians, to be applied under his direction to the support of public schools among said Indians; one hundred and sixty-five dollars to the selectmen of the district of Marshpee, under the provisions of chapter thirty-five of the Resolves of the year one thousand eight hundred and fifty-five; sixty dollars to the trustee of the Gay Head Indians; sixty dollars to the guardian of the Indians of Christiantown and Chippequiddic; and twenty dollars to the treasurer of the Herring Pond Indians; to be applied by them in like manner to the support of public schools among said Indians; and an annual account of the appropriations of said money shall be rendered to the governor and council.

Appropriations for Indians. Account to be rendered. R. S. 23, § 68. 1828, 154. 1853, 186, §§ 1, 2. Resolves, 1855, 35.

INDIAN SCHOOL FUND.

SECT. 6. The income of the school fund for Indians, derived from the surplus revenue of the United States, shall be paid annually in the month of March for public school purposes as follows, viz.: to the treasurer of the district of Marshpee, sixty dollars; to the guardian of the Christiantown and Chippequiddic Indians, seventy-two dollars, one-half thereof for the benefit of said Christiantown and Chippequiddic Indians, and the other half for the benefit of the Gay Head Indians; and to the treasurer of the Herring Pond Indians, eighteen dollars.

Indian school fund, how applied, &c. 1837, 85, § 7.

TODD NORMAL SCHOOL FUND.

SECT. 7. The income of the Todd fund shall be paid by the treasurer of the commonwealth on the warrant of the governor to the board of education, to be by them applied to specific objects in connection with the normal schools not provided for by legislative appropriation.

Todd fund, how applied. 1850, 63, 88.

CHAPTER 37.

OF STATE SCHOLARSHIPS.

SECTION

1. Forty-eight scholarships established.
2. Arrangement of sections and classes for scholarships. One scholarship to each section every four years. Secretary of board to notify school committees.
3. School committees to recommend candidates. Qualifications of candidates. Vacancies, how filled.
4. Additional scholars. Character of scholars.

SECTION

5. Time and place of selection.
6. Place of education, how selected. Scholars to receive \$100 annually.
7. Vacancies, how filled.
8. Scholars attending normal school, allowance to.
9. Those receiving aid, to teach or refund.
10. Appropriations.

SECTION 1. To aid in qualifying principal teachers for the high schools of the commonwealth, forty-eight state scholarships are established.

Scholarships established. 1853, 193, § 1.



Arrangement of sections and classes for scholarships. 1853, 193, § 2.

SECT. 2. The sections and classes of sections, and the order in which they are entitled to scholarships as now arranged by the board of education, shall continue until the year eighteen hundred and sixty-one, at which time, and at the expiration of every ten years thereafter, the board shall arrange the senatorial districts into four classes of ten sections each, and each of said classes shall, once in four years, in such alternate order as the board, at the time of the formation of the classes, by lot designates, be entitled to one scholarship for each of its sections. The secretary of the board shall through the mail notify the school committee of each town or city of the year its class is entitled to scholarships.

Candidates for scholarships, how recommended. Qualifications. Vacancies, how filled. 1853, 193, § 3.

SECT. 3. The school committees of the towns and cities in each class, may in the year in which their class is entitled to scholarships recommend as candidates therefor, young men, inhabitants of their town or city, who shall furnish the board of education with the certified opinion of said committee and of a competent teacher, that they will be fitted for college at the succeeding commencement; and said board, together with the senator if he resides within any section of such class, shall select from such candidates one scholar from each section, whom by personal examination they judge the most deserving and likely to become useful as a teacher. If any section presents no such suitable candidate, the place may be filled by the board from the candidates of the other sections of the same class, and if from a deficiency of proper candidates less than ten scholars are selected from a class, the board may, after a careful examination by themselves as to scholarship, complete the number from the state at large.

Additional scholars. Character of candidates. 1853, 193, § 4.

SECT. 4. If, after the selection of ten scholars from any class of sections, other candidates from such class recommended as aforesaid are considered by the board as possessing the requisite qualifications, the board may select therefrom two additional scholars, and in default of such candidates may select such additional scholars from the state at large in the manner provided in the preceding section. All candidates shall be persons of irreproachable moral character, free from any considerable defect of sight or hearing, and of good health and constitution.

Time and place of selection. 1853, 193, § 5.

SECT. 5. The selections for scholarships required to be made by the board and by the senators within the respective sections, shall be made at a meeting held annually at the office of the secretary of the board, at such time in the month of March as the board appoints, of which the secretary shall give notice. The selections to be made by the board alone may be made at the same or at any other time during the year.

Place of education, how selected. Scholar to receive \$100 annually. 1853, 193, § 6.

SECT. 6. Any scholar so selected may be educated at any college established by law in this commonwealth which he and his friends may select; and the board shall at the end of each collegiate year, not exceeding four, upon his producing a certificate from the president of his college that he has been faithful in his studies, exemplary in his deportment, and ranks in scholarship among the first half of his class, pay to him one hundred dollars.

Vacancies, how filled. 1853, 193, § 7.

SECT. 7. Selections to fill vacancies occurring in such scholarships may be made by the board in like manner as original selections; and the board shall take all measures necessary for that purpose.

Scholar attending normal school, allowance to. 1853, 193, § 8.

SECT. 8. Any such scholar after leaving college may attend a state normal school, and for each term not exceeding two during which he attends such school, he shall, upon producing a certificate of such attendance and of the faithful and exemplary performance of his duties there from the principal master thereof, be paid by the board of education, from any unexpended balance of the funds provided by section ten of this chapter, the sum of twenty-five dollars.

to teach, or refund. 1853, 193, § 9.

SECT. 9. Every person who has received aid in the manner provided by this chapter, shall teach in the public schools of the commonwealth

the same term of time that he has received such aid; and if, being in competent health, he fails so to teach, unless he satisfies the board that such failure has arisen from inability to find employment, he shall pay to the treasurer at the rate of one hundred dollars a year for the time of such failure, with interest thereon from the time of graduation; and the treasurer may recover the amount in an action at law.

SECT. 10. Forty-eight hundred dollars annually from the income of the school fund not appropriated to public schools, and all such sums as the treasurer recovers under the preceding section, are appropriated to accomplish the purposes of this chapter under the direction of the board of education.

Appropriations.  
1853, 193, § 10.  
See § 8.

## CHAPTER 38.

### OF THE PUBLIC SCHOOLS.

- PUBLIC SCHOOLS.
- SECTION
1. Each town to have school six months in a year. Branches to be taught.
  2. High school in towns of five hundred families. Branches taught. Duration of school. Towns of four thousand inhabitants.
  3. High school districts in adjacent towns, how established.
  4. Committee, how chosen. Powers.
  5. to determine location of school-house.
  6. Expenses apportioned.
  7. Schools may be maintained for those over fifteen years of age.
  8. under superintendence of school committee.
  9. Female assistants.
  10. Duty of instructors in colleges, &c.
  11. of ministers and town officers.
  12. Towns to raise money for schools.
  13. Funds of corporations for supporting schools, not affected, &c.
  14. Forfeiture for neglect to raise money, &c.
  15. three-fourths of, to be appropriated to schools.
  16. School committee, how chosen. Number; term of service.
  17. Vacancies, how filled.
  18. When whole committee decline, new committee how elected.
  19. Term of service of person filling vacancy.
  20. On election of new board, certain duties of old to continue.
  21. Committee, how increased or diminished.
  22. records of; secretary.

- SECTION
23. Committee to contract with teachers, unless, &c.
  24. Instructor to receive and file certificate. When and how paid.
  25. may be dismissed. Compensation to cease.
  26. Examinations and visits by committee.
  27. Bible to be read in schools. Sectarian books excluded.
  28. Committee to direct what books to be used. Change of books, how made, &c.
  29. to procure books, apparatus, &c.
  30. for certain scholars at expense of town.
  31. Expense of books so supplied to be taxed to parents, &c.
  32. If parents unable to pay, tax may be omitted.
  33. Duty of committee where school is for benefit of whole town.
  34. Compensation of committee.
  35. Superintendent of schools, appointment, duties, &c.

#### SCHOOL-HOUSES.

36. Towns not districted, to maintain school-houses, &c.
37. Location of school-houses.
38. Land may be taken for school-house lots, &c.
39. Owner of land may have jury. Proceedings. Damages and costs.
40. Committee of town not districted to have charge of school-houses.
41. Provisions of chapter to apply to cities, except, &c.

SECTION 1. In every town there shall be kept, for at least six months in each year, at the expense of said town, by a teacher or teachers of competent ability and good morals, a sufficient number of schools for the instruction of all the children who may legally attend public school therein, in orthography, reading, writing, English grammar, geography, arithmetic, the history of the United States, and good behavior. Algebra, vocal music, drawing, physiology, and hygiene shall be taught by lectures or otherwise, in all the public schools in which the school committee deem it expedient.

Each town to have school six months in a year. Branches taught.  
R. S. 23, § 1.  
1839, 56, § 1.  
1858, 5, §§ 1, 2.  
1859, 263.

SECT. 2. Every town may, and every town containing five hundred families or householders shall, besides the schools prescribed in the preceding section, maintain a school to be kept by a master of competent ability and good morals, who, in addition to the branches of learning

High schools in towns of 500 families. Branches taught.

Duration of school.  
Towns of 4000 inhabitants.  
R. S. 23, § 5.  
1852, 123.  
1857, 200, § 2.  
11 Mass. 141.  
11 Cush. 178.

before mentioned, shall give instruction in general history, bookkeeping, surveying, geometry, natural philosophy, chemistry, botany, the civil polity of this commonwealth and of the United States, and the Latin language. Such last mentioned school shall be kept for the benefit of all the inhabitants of the town, ten months at least, exclusive of vacations, in each year, and at such convenient place, or alternately at such places, in the town, as the legal voters at their annual meeting determine. And in every town containing four thousand inhabitants, the teacher or teachers of the schools required by this section, shall, in addition to the branches of instruction before required, be competent to give instruction in the Greek and French languages, astronomy, geology, rhetoric, logic, intellectual and moral science, and political economy.

High school districts in adjacent towns, how established.  
1848, 279, § 1.

SECT. 3. Two adjacent towns, having each less than five hundred families or householders, may form one high school district, for establishing such a school as is contemplated in the preceding section, when a majority of the legal voters of each town, in meetings called for that purpose, so determine.

Committee, how chosen. Powers.  
1848, 279, § 2.

SECT. 4. The school committees of the two towns so united shall elect one person from each of their respective boards, and the two so elected shall form the committee for the management and control of such school, with all the powers conferred upon school committees and prudential committees.

to determine location of school-house.  
1848, 279, § 3.

SECT. 5. The committee thus formed shall determine the location of the school-house authorized to be built by the towns forming the district, or if the towns do not determine to erect a house, shall authorize the location of such school alternately in the two towns.

Expenses apportioned.  
1848, 279, § 4.

SECT. 6. In the erection of a school-house for the permanent location of such school, in the support and maintenance of the school, and in all incidental expenses attending the same, the proportions to be paid by each town, unless otherwise agreed upon, shall be according to its proportion of the county tax.

Schools may be maintained for those over 15 years of age.  
1857, 189, § 1.

SECT. 7. Any town may establish and maintain, in addition to the schools required by law to be maintained therein, schools for the education of persons over fifteen years of age; may determine the term or terms of time in each year, and the hours of the day or evening during which said school shall be kept; and appropriate such sums of money as may be necessary for the support thereof.

under superintendence of committee.  
1857, 189, § 2.

SECT. 8. When a school is so established, the school committee shall have the same superintendence over it as they have over other schools; and shall determine what branches of learning may be taught therein.

Female assistants.  
1839, 56, § 1.

SECT. 9. In every public school, having an average of fifty scholars, the school district or town to which such school belongs shall employ one or more female assistants, unless such district or town, at a meeting called for the purpose, votes to dispense with such assistant.

Duty of instructors in colleges, &c.  
Constitution, Ch. 5, § 2.  
R. S. 23, § 7.

SECT. 10. It shall be the duty of the president, professors and tutors of the university at Cambridge and of the several colleges, of all preceptors and teachers of academies, and of all other instructors of youth, to exert their best endeavors to impress on the minds of children and youth committed to their care and instruction, the principles of piety and justice, and a sacred regard to truth; love of their country, humanity, and universal benevolence; sobriety, industry, and frugality; chastity, moderation, and temperance; and those other virtues which are the ornament of human society and the basis upon which a republican constitution is founded; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above mentioned virtues, to preserve and perfect a republican constitution and secure the blessings of liberty, as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices.



SECT. 11. It shall be the duty of the resident ministers of the gospel, the selectmen, and the school committees, to exert their influence and use their best endeavors that the youth of their towns shall regularly attend the schools established for their instruction.

Duty of ministers and town officers.  
R. S. 23, § 8.

SECT. 12. The several towns shall, at their annual meetings, or at a regular meeting called for the purpose, raise such sums of money for the support of schools as they judge necessary; which sums shall be assessed and collected in like manner as other town taxes.

Towns to raise money for schools.  
R. S. 23, § 9.  
10 Met. 513.

SECT. 13. Nothing contained in this chapter shall affect the right of any corporation established in a town, to manage any estate or funds given or obtained for the purpose of supporting schools therein, or in any wise affect such estate or funds.

School funds of corporations not affected, &c.  
R. S. 23, § 59.

SECT. 14. A town which refuses or neglects to raise money for the support of schools as required by this chapter, shall forfeit a sum equal to twice the highest sum ever before voted for the support of schools therein. A town which refuses or neglects to choose a school committee to superintend said schools, or to choose prudential committees in the several districts, when it is the duty of the town to choose such prudential committee, shall forfeit a sum not less than five hundred nor more than one thousand dollars, to be paid into the treasury of the county.

Forfeiture for neglect to raise money, &c.  
R. S. 23, § 60.  
1839, 135.

SECT. 15. Three-fourths of any forfeiture paid into the treasury of the county under the preceding section, shall be paid by the treasurer to the school committee, if any, otherwise to the selectmen of the town from which it is recovered, who shall apportion and appropriate the same to the support of the schools of such town, in the same manner as if it had been regularly raised by the town for that purpose.

Three fourths of, appropriated to schools.  
R. S. 23, § 61.

SECT. 16. Every town shall, at the annual meeting, choose, by written ballots, a board of school committee, which shall have the general charge and superintendence of all the public schools in town. Said board shall consist of any number of persons divisible by three, which said town has decided to elect, one-third thereof to be elected annually, and continue in office three years. If a town fails or neglects to choose such committee, an election at a subsequent meeting shall be valid.

School committee, how chosen, &c.  
R. S. 23, § 10.  
1857, 270, §§ 1, 2.  
1859, 264.  
23 Pick. 225.  
5 Cush. 207.

SECT. 17. If any person elected a member of the school committee, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if any member of the board declines further service, or, from change of residence or otherwise, becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of the town, or to the mayor and aldermen of the city, and the two boards shall thereupon, after giving public notice of at least one week, proceed to fill such vacancy; and a majority of the ballots of persons entitled to vote shall be necessary to an election.

Vacancies, how filled.  
1857, 266, §§ 1, 2.

SECT. 18. If all the persons elected as members of the school committee, after such notice of their election, refuse or neglect to accept the office, or having accepted, afterwards decline further service, or become unable to attend to the duties of the board, the selectmen or the mayor and aldermen shall, after giving like public notice, proceed by ballot to elect a new board, and the votes of a majority of the entire board of selectmen, or of the mayor and aldermen, shall be necessary to an election.

When whole committee decline, new committee how elected.  
1857, 266, § 2

SECT. 19. The term of service of every member elected in pursuance of the provisions of the two preceding sections, shall end with the municipal or official year in which he is chosen, and if the vacancy which he was elected to fill was for a longer period, it shall, at the first annual election after the occurrence of the vacancy, be filled in the manner prescribed for original elections of the school committee.

Term of service of person filling vacancy.  
1857, 266, § 3.  
1857, 270, § 3.  
1859, 80.

SECT. 20. All the members of the school committee shall continue

On election of new board, certain duties of old to continue.  
1846, 223, § 1.  
1857, 266, § 3.  
1857, 270, § 3.

Committee, how increased or diminished.  
1857, 270, § 4.

records of; secretary.  
1838, 105, § 3.

to contract with teachers, unless, &c.  
R. S. 23, § 13.  
1838, 105, § 2.  
1859, 69.

Teachers to receive and file certificate.  
when and how paid.  
R. S. 23, § 14.  
1830, 115.  
1855, 126.

may be dismissed, &c.  
1844, 32.

Examinations and visits by committee.  
R. S. 23, §§ 15, 16.

Bible to be read in schools.  
Sectarian books excluded.  
R. S. 23, § 23.  
1855, 410.

School books, change of, how made, &c.  
R. S. 23, § 17.  
1859, 93, §§ 2, 3.

in office for the purpose of superintending the winter terms of the several schools, and of making and transmitting the certificate, returns, and report of the committee, notwithstanding the election of any successor at the annual meeting; but for all other duties, the term of office shall commence immediately after election.

SECT. 21. Any town may, at the annual meeting, vote to increase or diminish the number of its school committee. Such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen. Such diminution shall be made by choosing, annually, such number as will in three years effect it, and a vote to diminish shall remain in force until the diminution under it is accomplished.

SECT. 22. The school committee shall appoint a secretary and keep a permanent record book, in which all its votes, orders and proceedings shall by him be recorded.

SECT. 23. The school committee, unless the town at its annual meeting determines that the duty may be performed by the prudential committee, shall select and contract with the teachers of the public schools; shall require full and satisfactory evidence of the good moral character of all instructors who may be employed; and shall ascertain, by personal examination, their qualifications for teaching and capacity for the government of schools.

SECT. 24. Every instructor of a town or district school shall, before he opens such school, obtain from the school committee a certificate in duplicate of his qualifications, one of which shall be deposited with the selectmen before any payment is made to such instructor on account of his services; and upon so filing such certificate, the teacher of any public school shall be entitled to receive, on demand, his wages due at the expiration of any quarter, or term longer or shorter than a quarter, or upon the close of any single term of service, subject to the condition specified in section thirteen of chapter forty.

SECT. 25. The school committee may dismiss from employment any teacher whenever they think proper, and such teacher shall receive no compensation for services rendered after such dismissal.

SECT. 26. The school committee, or some one or more of them, for the purpose of making a careful examination of the schools, and of ascertaining that the scholars are properly supplied with books, shall visit all the public schools in the town on some day during the first or second week after the opening of such schools respectively, and also on some day during the two weeks preceding the closing of the same; and shall also for the same purposes visit, without giving previous notice thereof to the instructors, all the public schools in the town once a month, and they shall, at such examinations, inquire into the regulation and discipline of the schools, and the habits and proficiency of the scholars therein.

SECT. 27. The school committee shall require the daily reading of some portion of the Bible in the common English version; but shall never direct any school books calculated to favor the tenets of any particular sect of christians to be purchased or used in any of the town schools.

SECT. 28. The school committee shall direct what books shall be used in the public schools, and no change shall be made in said books except by the unanimous consent of the whole board, unless the committee consists of more than nine, and questions relating to school books are intrusted to a sub-committee. In that case, the consent of two-thirds of the whole number of said sub-committee, with the concurrent vote of three-fourths of the whole board, shall be requisite for such change. If any change is made, each pupil then belonging to the public schools, and requiring the substituted book, shall be fur-



nished with the same, by the school committee, at the expense of said town.

SECT. 29. The school committee shall procure, at the expense of the city or town, a sufficient supply of text-books for the public schools, and give notice of the place where they may be obtained. Said books shall be furnished to the pupils at such prices as merely to reimburse the expense of the same. The school committee may also procure, at the expense of the city or town, such apparatus, books of reference, and other means of illustration as they deem necessary for the schools under their supervision, in accordance with appropriations therefor previously made.

Committee to procure text-books, apparatus, &c.  
R. S. 23, § 19.  
1859, 93, § 1.  
13 Pick. 229.

SECT. 30. If any scholar is not furnished by his parent, master, or guardian, with the requisite books, he shall be supplied therewith by the school committee at the expense of the town.

for certain scholars at expense of town.  
R. S. 23, § 20.

SECT. 31. The school committee shall give notice in writing to the assessors of the town of the names of the scholars supplied with books under the provisions of the preceding section, of the books so furnished, the prices thereof, and the names of the parents, masters, or guardians, who ought to have supplied the same. The assessors shall add the price of the books to the next annual tax of such parents, masters, or guardians; and the amount so added shall be levied, collected, and paid into the town treasury, in the same manner as the town taxes.

Expense of books so supplied to be taxed to parents, &c.  
R. S. 23, § 21.

SECT. 32. If the assessors are of opinion that any parent, master, or guardian, is unable to pay the whole expense of the books so supplied on his account, they shall omit to add the price of such books, or shall add only a part thereof, to his annual tax, according to their opinion of his ability to pay.

If parents unable to pay, tax may be omitted.  
R. S. 23, § 22.

SECT. 33. In any town containing five hundred families in which a school is kept for the benefit of all the inhabitants as before provided, the school committee shall perform the like duties in relation to such school, the house where it is kept, and the supply of all things necessary therefor, as the prudential committee may perform in a school district.

Duty of committee where school is for benefit of whole town.  
R. S. 23, § 11.

SECT. 34. The members of the school committee shall be paid in cities one dollar, and in towns one dollar and a half, each, a day, for the time they are actually employed in discharging the duties of their office, together with such additional compensation as the town or city may allow.

Compensation of committee.  
1838, 105, § 4.  
1859, 103.

SECT. 35. Any town annually by legal vote, and any city by an ordinance of the city council, may require the school committee annually to appoint a superintendent of public schools, who, under the direction and control of said committee, shall have the care and supervision of the schools, with such salary as the city government or town may determine; and in every city in which such ordinance is in force, and in every town in which such superintendent is appointed, the school committee shall receive no compensation, unless otherwise provided by such city government or town.

Superintendent of schools, appointment, duties, &c.  
1854, 314.  
1856, 232, §§ 1, 2.  
1860 Ch. 101.

SCHOOL-HOUSES.

SECT. 36. Every town not divided into school districts shall provide and maintain a sufficient number of school-houses, properly furnished and conveniently located, for the accommodation of all the children therein entitled to attend the public schools; and the school committee, unless the town otherwise direct, shall keep them in good order, procuring a suitable place for the schools, where there is no school-house, and providing fuel and all other things necessary for the comfort of the scholars therein, at the expense of the town.

Towns not districted, to maintain school-houses, &c.  
R. S. 23, § 32.  
1856, 286, § 2.  
1859, 252, §§ 4, 5.

SECT. 37. Any town, at a meeting legally called for the purpose, may determine the location of its school-houses, and adopt all necessary

Location of school-houses.



R.S. 23, §§ 23, 32.  
1850, 252, § 4.

Land may be taken for school-house lots, &c.  
1848, 237, § 1.  
1855, 318, § 1.  
2 Gray, 414.

Owner of land, may have jury. Proceedings. Damages and costs.  
1848, 237.  
1851, 186.  
1855, 10.  
2 Gray, 414.

Committee of town not districted, to have charge of school-houses.

Provisions of chapter to apply to cities, except, &c.

measures to purchase or procure the land for the accommodation thereof.

SECT. 38. When land has been designated by a town, school district, or those acting under its authority, or determined upon by the selectmen as a suitable place for the erection of a school-house and necessary buildings, or for enlarging a school-house lot, if the owner refuses to sell the same, or demands therefor a price deemed by the selectmen unreasonable, they may, with the approbation of the town, proceed to select, at their discretion, and lay out, a school-house lot, or an enlargement thereof, and to appraise the damages to the owner of such land in the manner provided for laying out highways and appraising damages sustained thereby; and upon payment, or tender of payment, of the amount of such damages, to the owner, by the town, the land shall be taken, held, and used, for the purpose aforesaid. But no lot so taken or enlarged shall exceed, in the whole, eighty square rods, exclusive of the land occupied by the school buildings.

SECT. 39. When the owner feels aggrieved by the laying out or enlargement of such lot, or by the award of damages, he may, upon application therefor in writing to the county commissioners within one year thereafter, have the matter of his complaint tried by a jury, and the jury may change the location of such lot or enlargement, and assess damages therefor. The proceedings shall in all respects be conducted in the manner provided in cases of damages by laying out highways. If the damages are increased, or the location changed, by the jury, the damages and all charges shall be paid by the town; otherwise the charges arising on such application shall be paid by such applicant. The land so taken shall be held and used for no other purpose than that contemplated by this chapter, and shall revert to the owner, his heirs or assigns, upon the discontinuance there, for one year, of such school as is required by law to be kept by the town.

SECT. 40. The school committee of a town in which the school district system has been abolished, or does not exist, shall have the general charge and superintendence of the school-houses in said town, so far as relates to the use to which the same may be appropriated.

SECT. 41. Except as may be otherwise provided in their respective charters, or acts in amendment thereof, the provisions of this chapter, so far as applicable, shall apply to cities. And the mayor and aldermen in the several cities are authorized to execute the powers given in section thirty-eight of this chapter to the selectmen and town.

## CHAPTER 39.

### OF SCHOOL DISTRICTS.

#### SCHOOL DISTRICTS.

##### SECTION

1. Districts, how formed, when reorganized.
2. to be corporations for certain purposes.
3. may be abolished, &c.
4. towns to vote on abolition of.
5. secretary to notify towns, &c., to insert in warrant concerning.
6. corporate powers of, to continue for certain purposes.
7. Prudential committee in each district. Duties.
8. may be chosen by the districts.
9. to consist of three persons in certain cases.
10. vacancies in, how filled.

##### SECTION

11. Prudential committee, duties of, to be performed by town committee, when, &c.
12. If district does not establish school, town committee may, &c.
13. District meetings, selectmen, &c., may issue warrants for.
14. manner of warning.
15. districts may prescribe mode of calling.
16. Clerk to be chosen, and sworn, keep records, &c.
17. liable only for want of integrity. District, when liable.
18. Districts may raise money for school-houses; may fix site.

SECTION

- 19. Towns may provide school-houses at the common expense.
- 20. Selectmen to determine site, in case, &c.
- 21. Penalty on school district for not providing school-house.
- 22. Personal and real estate, where taxed.
- 23. Manufacturing corporations, where taxed.
- 24. Non-residents, where taxed.
- 25. Same subject.
- 26. School taxes assessed like town taxes.
- 27. Assessors to issue warrants to collectors.
- 28. Money raised, to be at disposal of committees.
- 29. If district refuses to raise money, town may order it.
- 30. If district neglects to organize, school committee may provide, &c.
- 31. Collectors to proceed as in collecting town taxes.
- 32. Treasurer to have like powers, &c.
- 33. Compensation of assessors, &c.
- 34. Abatement of taxes.

UNION DISTRICTS.

- 35. Union districts, how formed, &c.

SECTION

- 36. First meeting. Subsequent meetings. Location of house.
- 37. Clerk, how chosen, &c.
- 38. Assessments, how made.
- 39. Prudential committees, how constituted. Powers and duties, &c.
- 40. Usual schools maintained.
- 41. School committees, powers and duties of.

CONTIGUOUS SCHOOL DISTRICTS IN ADJOINING TOWNS.

- 42. Contiguous districts in adjoining towns may unite.
- 43. Union not formed without consent of districts, &c.
- 44. United districts may be separated
- 45. meetings of, how called.
- 46. Prudential committee to be chosen, &c.
- 47. Money raised, to be in proportion, &c.
- 48. how assessed.
- 49. School committees of adjoining towns to officiate in turns.

SECTION 1. Towns may provide for the support of schools without forming school districts; or may, at a meeting called for the purpose, divide into such districts and determine the limits thereof; but shall not, oftener than once in ten years from the second day of May, eighteen hundred and forty-nine, be districted anew so as to change the taxation of lands from one district to another having a different school-house.

SECT. 2. A school district shall be a body corporate so far as to prosecute and defend in all actions relating to the property or affairs of the district, and may take and hold, in fee simple or otherwise, any estate real or personal given to or purchased by the district for the support of a school or schools therein.

SECT. 3. A town may, at any time, abolish the school districts therein, and shall thereupon forthwith take possession of all the school-houses, land, apparatus and other property owned and used for school purposes, which such districts might lawfully sell and convey. The property so taken shall be appraised under the direction of the town, and at the next annual assessment thereafter, a tax shall be levied upon the whole town, equal to the amount of said appraisal; and there shall be remitted to the tax payers of each district the said appraised value of its property thus taken. Or the difference in the value of the property of the several districts may be adjusted in any other manner agreed upon by the parties in interest.

SECT. 4. Every town divided into school districts shall, at the annual meeting in the year eighteen hundred and sixty-three, and every third year thereafter, vote upon the question of abolishing such districts.

SECT. 5. The secretary of the commonwealth, on the recurrence of a year when the vote thus required is to be had, shall seasonably notify thereof the selectmen of the several towns, and require them, in towns retaining the school district system, to insert an article in the warrant for the annual meeting, for the purpose specified in the preceding section; and the selectmen of any town who neglect to insert such article in the warrant, when so required, shall forfeit twenty dollars.

SECT. 6. Upon the abolition or discontinuance of any district, its corporate powers and liabilities shall continue and remain so far as may be necessary for the enforcement of its rights and duties; and the property which it possessed at the time shall be subject to all legal process against it.

SECT. 7. Every town divided into school districts shall, at its annual meeting, choose one person, resident in each school district, to be a

Districts.  
R. S. 23, § 24.  
1849, 206.  
1851, 303.  
23 Pick. 70.  
4 Cush. 250.  
10 Cush. 418.  
4 Gray, 250.  
7 Gray, 411.

to be corporations, &c.  
R. S. 23, §§ 57, 58.  
6 Met. 502.  
10 Met. 404.

may be abolished, &c.  
1850, 286, § 1.  
1852, 199.  
See § 19.  
1860 Ch. 135.

towns to vote on abolition of.

secretary to notify towns, &c., to insert in warrant concerning.

corporate powers of, to continue for certain purposes.

Prudential committee in each district.



**Duties.**

R. S. 23, § 25.  
1838, 105, § 2.  
11 Pick. 240.  
4 Cush. 539.  
8 Cush. 191.

**Prudential committee, how chosen.**

R. S. 23, § 26.  
21 Pick. 75.

to consist of three persons.  
1839, 137.  
4 Gray, 250.

vacancies in, how filled.  
1855, 451.

town committee to act as, when, &c.  
R. S. 23, § 31.

If district does not establish school, town committee may.  
R. S. 23, § 45.

District meetings, selectmen, &c., may issue warrants for.  
R. S. 23, § 46.  
8 Cush. 592.

Manner of warning.  
R. S. 23, § 47.  
4 Greenl. 46.  
14 Mass. 315.  
12 Pick. 206.

Districts may prescribe mode of calling.  
R. S. 23, § 48.  
1850, 213.  
10 Pick. 543.  
2 Cush. 419.  
8 Cush. 592.

Clerk to be chosen, and sworn, keep records, &c.  
R. S. 23, § 27.  
21 Pick. 75.  
12 Met. 105.

liable only for want of integrity.

District, when liable.  
R. S. 23, § 29.  
10 Pick. 543.  
10 Pick. 486.

Districts may raise money for school-houses.

committee for that district, and to be called the prudential committee, who shall keep the school-house in good order at the expense of the district; and if there is no school-house, shall provide a suitable place for the school of the district at the expense thereof; shall provide fuel and all things necessary for the comfort of the scholars therein; give information and assistance to the school committee of the town to aid them in the discharge of the duties required of them; and, when the town so determines, shall select and contract with an instructor for each school in the district.

SECT. 8. If a town so determines, the prudential committee may be chosen by the legal voters of the several school districts to which they respectively belong, in such manner as the district directs.

SECT. 9. When a town determines that the prudential committees shall select and contract with the school teachers for their districts, three persons in each district may be chosen to act as such committee.

SECT. 10. When the office of prudential committee becomes vacant in any district, by reason of the death, resignation, or removal of the person or persons elected, such district may fill the vacancy at a legal meeting called for the purpose.

SECT. 11. When no prudential committee is chosen for a school district, the school committee shall perform all the duties of the prudential committee.

SECT. 12. If a school district neglects or refuses to establish a school and employ a teacher for the same, the school committee may establish such school and employ a teacher therefor, as the prudential committee might have done.

SECT. 13. The selectmen of the several towns divided into school districts as aforesaid, or the prudential committee of every such district, upon application made to either of them respectively, in writing, by three or more residents who pay taxes in the district, shall issue their warrant, directed to one of the persons making the application, requiring him to warn the inhabitants of such district, qualified to vote in town affairs, to meet at the time and place in the district expressed in the warrant.

SECT. 14. The warning shall be given seven days at least before the time appointed for the meeting, by personal notice to every inhabitant of the district qualified to vote in town affairs, or by leaving at his last and usual place of abode a written notification, expressing the time, place and purpose of the meeting, unless the district prescribes another mode of warning its meetings.

SECT. 15. A school district, at any regular meeting having an article in the warrant for that purpose, may prescribe the mode of warning all future meetings of the district; and may also direct by whom and in what manner such meetings may be called. Notwithstanding such prescribed mode, meetings may nevertheless be called in accordance with the provisions of the two preceding sections.

SECT. 16. The inhabitants of each school district, qualified to vote in town affairs, shall choose a clerk, who shall be sworn by the moderator, in open meeting, or by a justice of the peace; make a fair record of all votes passed at meetings of the district; certify the same when required, and hold his office until a successor is chosen and qualified.

SECT. 17. The clerk shall be answerable only for want of integrity on his own part; and if he certifies truly to the assessors of the town the votes of the district for raising, by a tax, any sum of money, the district shall be liable in case of any illegality in the proceedings in relation to raising such money.

SECT. 18. The legal voters of any district, at a meeting called for that purpose, may raise money for erecting or repairing school-houses in their district; for purchasing or hiring any buildings to be used as



school-houses, and land for the use and accommodation thereof; and for purchasing libraries and necessary school apparatus, fuel, furniture, and other necessary articles, for the use of schools; they may also determine in what part of their district such school-houses shall stand, and choose any committee to carry into effect the provisions aforesaid.

SECT. 19. The legal voters of every town may, if they think it expedient, carry into effect the provisions of the preceding section at the common expense of the town, so far as relates to providing school-houses for the several school districts of the town; and the town in such case may, at any legal meeting, raise money and adopt all other proper measures for this purpose, and, if already districted, may take possession of the school-houses and property of the several districts in the manner provided in section three of this chapter.

SECT. 20. If a school district cannot determine by a vote of two-thirds of the legal voters present and voting thereon, where to place their school-house, the selectmen, upon application made to them by the committee appointed to build or procure the school-house, or by five or more of the legal voters of the district, shall determine where such school-house shall be placed.

SECT. 21. A school district, obliged by law to provide a suitable school-house, shall, for neglecting one year so to do, be liable to a fine not exceeding two hundred dollars, to be recovered by indictment, on complaint of any legal voter in said district, to be appropriated to the support of schools therein.

SECT. 22. In raising and assessing money in the several school districts, every inhabitant of the district shall be taxed in the district in which he lives, for all his personal estate, and for all the real estate which he holds in the town, being under his own actual improvement; and all other of his real estate in the same town shall be taxed in the district in which it lies.

SECT. 23. In the assessment of taxes pursuant to the preceding section, all real estate and machinery belonging to manufacturing corporations or establishments shall be taxed in the school districts where the same are situated; and in assessing the shares in such corporation, or the personal estate of the owners of such establishments, for the like purposes, the value of such machinery and real estate shall first be deducted from the value of such shares or personal estate.

SECT. 24. All the land within a town, owned by the same person not living therein, shall be taxed in the same district.

SECT. 25. When the estate of a non-resident owner is taxed, it may be taxed in such district as the assessors of the town determine; and the assessors, before they assess a tax for any district, shall determine in which district the estate of any such non-resident shall be taxed, and certify in writing their determination to the clerk of the town, who shall record the same; and such estate, while owned by the same person resident without the limits of the town, shall be taxed in such district accordingly until the town is districted anew.

SECT. 26. The assessors of the town shall assess, in the same manner as town taxes are assessed, on the polls and estates of the inhabitants of each school district, and on all estates liable to be taxed therein as aforesaid, all money voted to be raised by the legal voters of such district for the purposes aforesaid; and such assessment shall be made within thirty days after the clerk of the district has certified to said assessors the sum voted by the district to be raised.

SECT. 27. The assessors shall make a warrant, substantially in the form heretofore used, except that a seal shall not be required thereto, directed to one of the collectors of the town, requiring him to collect the tax so assessed, and to pay the same to the treasurer of the town within a time to be limited in the warrant; and a certificate of the

Districts may fix site.  
R. S. 23, § 28  
1849, 81, § 1.  
21 Pick. 75.  
10 Cush. 418.

Towns may provide school-houses, at the common expense.  
R. S. 23, § 32.  
1850, 286, § 2.

Selectmen to determine site, in case, &c.  
R. S. 23, § 30.  
1852, 119.  
2 Gray, 414.

Penalty on school district for not providing school-house.

Personal and real estate, where taxed.  
R. S. 23, § 33.  
5 Mass. 330.  
12 Met. 181.

Manufacturing corporations, where taxed.  
R. S. 23, § 34.  
1850, 301.

Non-residents, where taxed.  
R. S. 23, § 36.  
Same subject.  
R. S. 23, § 35.

School taxes assessed like town taxes.  
R. S. 23, § 37.  
3 Mass. 230.  
3 Cush. 507.  
14 Pick. 362.  
12 Met. 178.

Assessors to issue warrants to collectors.  
R. S. 23, § 38.  
5 Pick. 496.  
12 Pick. 214.

assessment shall be made by the assessors and delivered to the treasurer.

Money raised, to be at disposal of committees. R. S. 23, § 39.

SECT. 28. The money so collected and paid shall be at the disposal of the committee appointed by the district, to be by them applied to the building or repairing of school-houses, or to the purchase of buildings to be used as such, or of land for their sites, as before provided, and according to the votes or directions of the legal voters of the district.

If district refuses to raise money, town may order it. R. S. 23, § 41. 1848, 274.

SECT. 29. If at a meeting of the legal voters of a school district called for the purpose of raising money, a majority of the voters present are opposed thereto, any five inhabitants of the district, who pay taxes, may make application in writing to the selectmen of the town, requesting them to insert in their warrant for the next town meeting an article requiring the opinion of the town relative to the expediency of raising such money as was proposed in the warrant for the district meeting; and if the majority of the voters think the raising of any of the sums of money proposed in the warrant is necessary and expedient, they may vote such sum as they think necessary for said purposes, and the same shall be assessed on the polls and estates of the inhabitants of such district, and be collected and paid over in the manner before provided. They may also empower the selectmen of the town, or the school committee, or may choose a committee, to carry into effect the purposes for which such money is voted, if such district neglects or refuses to choose a committee for that purpose.

If district neglects to organize, school committee may provide, &c. 1858, 145, § 1.

SECT. 30. If a district neglects to organize by the choice of officers, the money necessary for the erection, repair, or enlargement, of a school-house therein, may be expended by order of the school committee, and, upon their certificate, shall be assessed upon the polls and estates of the inhabitants of the district, collected like other district taxes, and paid into the treasury of the city or town.

Collectors, how to collect taxes. R. S. 23, § 40.

SECT. 31. In collecting district taxes the collectors shall have the same powers and proceed in the manner provided by law in collecting town taxes.

Treasurer, powers of, &c. R. S. 23, § 41.

SECT. 32. The treasurer of a town, to whom a certificate of the assessment of a district tax is transmitted, shall have the like authority to enforce the collection and payment of the money so assessed and certified, as he has in the case of money raised by the town, for the use of the town.

Compensation of assessors, &c. R. S. 23, § 42.

SECT. 33. The assessors, treasurer, and collector, shall have the same compensation, respectively, for assessing, collecting, and paying out money, assessed for the use of a school district, as is allowed by the town for like services in respect to town taxes.

Abatement of taxes.

SECT. 34. The assessors shall have the same power to abate the tax, or any part thereof, assessed on an inhabitant of a school district, as they have to abate town taxes.

#### UNION DISTRICTS. *1861 Ch. 132.*

Union districts, how formed, &c. 1838, 189, §§ 1, 2, 5. 1839, 56, § 2.

SECT. 35. Two or more contiguous school districts in a town may, by a vote of two-thirds of the legal voters of each district, present and voting at legal meetings of their respective districts called for the purpose, associate and form a union district, for the purpose of maintaining a union school for the benefit of the older children of such associated districts; such district shall have the powers, privileges, and liabilities of school districts, with such name as the district determines at its first meeting.

First meeting. Subsequent meetings. Location of house. 1838, 189, §§ 3, 5.

SECT. 36. The districts proposing such association shall, at the time of voting to form the union, respectively agree upon the time, place and manner of calling the first meeting of the union district, which may from time to time determine the mode of calling and warning its meet-



ings, the time and place of its annual meetings, and the place where its school-house shall stand. The location of the school-house, if not determined by the district, shall be referred to the selectmen, as provided for other districts.

SECT. 37. Each union district, at its first meeting, shall choose by ballot a clerk, who shall be sworn in the manner, and perform the duties, prescribed for clerks of other school districts, and hold the office until a successor is chosen and qualified.

Clerk, how chosen, &c. 1838, 189, § 4.

SECT. 38. In raising and assessing money in such districts, every inhabitant shall be taxed in the manner in which inhabitants of other school districts are taxed, and the real estate of non-resident owners taxable in either of the districts composing the union district shall be taxed in such districts.

Assessments, how made. 1838, 189, § 1.

SECT. 39. The prudential committees of the respective districts, forming the union district, shall together constitute the prudential committee of such district; have the powers and discharge the duties, in relation to the school and school-house of the district, prescribed to prudential committees in relation to the schools and school-houses in their respective districts; and determine what proportion of the money raised and appropriated by the town for each of the districts composing the union district shall be appropriated and expended in paying the instructors of the union school; subject in all matters to any legal votes of the union district.

Prudential committees, how constituted. Powers and duties, &c. 1838, 189, §§ 6, 7.

SECT. 40. The public schools required by law shall continue to be maintained in each of the districts thus associated, as if no union district had been formed.

Usual schools maintained. 1838, 189, § 7.

SECT. 41. The school committee shall have the powers and duties in relation to such union school which they have in relation to other district schools.

School committees, powers and duties of. 1838, 189, § 8.

CONTIGUOUS SCHOOL DISTRICTS IN ADJOINING TOWNS.

SECT. 42. If two or more contiguous school districts in adjoining towns are too small to maintain schools advantageously in each, such districts may unite and form one district, with the powers, privileges, and liabilities allowed or prescribed in regard to school districts.

Contiguous districts in adjoining towns may unite. R. S. 23, § 49.

SECT. 43. No district shall be so united, unless the legal voters of each, at legal meetings called for the purpose, agree thereto; nor, unless the respective towns, at legal town meetings called for the purpose, assent to the same; and when such vote is passed by a school district, the clerk thereof shall forthwith send a certified copy to the clerk of his town.

Union not formed without consent of districts, &c. R. S. 23, § 50.

SECT. 44. When the voters in such united district, at a legal meeting called for the purpose, deem it expedient to separate and again form two or more districts, they may do so, first obtaining the consent of the respective towns.

United districts may be separated. R. S. 23, § 51.

SECT. 45. The first meeting of such united district shall be called in the manner agreed upon by the respective districts at the time of forming the union; and such district may, from time to time thereafter, prescribe the mode of calling and warning its meetings as other school districts may do.

meetings of, how called. R. S. 23, § 52.

SECT. 46. Such district, at the first meeting and annually thereafter, shall choose a prudential committee, who shall receive and expend the money raised and appropriated in each town for the united district, and possess the powers and discharge the duties allowed or prescribed to the prudential committees of other districts.

Prudential committee to be chosen, &c. R. S. 23, § 53.

SECT. 47. The legal voters of a united district shall, at the time of voting to raise such money, determine the amount to be paid by the inhabitants in each town, which shall be in proportion to their respec-

Money raised to be in proportion, &c. R. S. 23, § 54.



tive polls and estates; and the clerk of the district shall certify such vote to the assessors of each of said towns.

Money, how assessed.  
R. S. 23, § 55.

SECT. 48. All money duly voted to be raised by any such united district shall be assessed by the assessors of the respective towns upon the polls and estates of the inhabitants of the district, and collected, as taxes are assessed and collected in other school districts.

School committees of adjoining towns to officiate in turns.  
R. S. 23, § 53.

SECT. 49. The respective school committees of the towns from which such united district is formed shall discharge the duties of school committee for the district in alternate years, commencing with the most ancient town.

## CHAPTER 40.

### OF SCHOOL REGISTERS AND RETURNS.

SECTION

1. Town clerks to deliver registers, &c., to school committee.
2. If not received.
3. Duties of assessors, as to persons between five and fifteen.
4. of school committee; form of certificate.
5. Registers to be kept; returns.
6. Committees' report; to whom sent; where deposited; to be printed.
7. When report is not made.
8. When informal, &c.

SECTION

9. Penalty for neglect, or informal, &c., report.
10. Reports, &c., of board of education, how received, delivered, and for what purpose. In whom property of.
11. Who to sign reports.
12. Penalty on committee for neglect in returns, &c.
13. Registers, how kept. Teachers not to draw pay until return of register.

Town clerks to deliver registers, &c., to school committee.  
1849, 65, § 2.

SECTION 1. The clerks of the several cities and towns, upon receiving from the secretary of the board of education the school registers and blank forms of inquiry for school returns, shall deliver them to the school committee of such cities and towns.

If not received.  
1846, 223, § 3.

SECT. 2. If a school committee fails to receive such blank forms of return on or before the last day of March, they shall forthwith notify the secretary of the board of education, who shall transmit such forms as soon as may be.

Duties of assessors as to persons between five and fifteen.  
1855, 15.

SECT. 3. The assessors shall annually in the month of May, ascertain the number of persons in their respective towns and cities on the first day of May between the ages of five and fifteen years, and on or before the first day of July following report the same to the school committee.

of school committee. Form of certificate.  
1846, 223, § 2.  
1849, 117, § 1.  
1855, 23.  
See § 11.

SECT. 4. The school committee shall annually on or before the last day of the following April, certify under oath the numbers so returned to them by the assessors, and also the sum raised by such city or town for the support of schools during the preceding school year, including only wages and board of teachers, fuel for the schools, and care of the fires and school-rooms, and shall transmit such certificate to the secretary of the board of education. The form of such certificate shall be as follows, to wit:—

We, the school committee of \_\_\_\_\_, do certify, that from the returns made by the assessors in the year \_\_\_\_\_, it appears, that on the first day of May, in the year \_\_\_\_\_, there were belonging to said town the number of \_\_\_\_\_ persons between the ages of five and fifteen years; and we further certify, that said town raised the sum of \_\_\_\_\_ dollars for the support of public schools for the preceding school year, including only the wages and board of teachers, fuel for the schools, and care of fires and school-rooms.

} *School Committee.*

ss. On this \_\_\_\_\_ day of \_\_\_\_\_, personally appeared the above named school committee of \_\_\_\_\_, and made oath that the above certificate, by them subscribed, is true.

Before me,

*Justice of the Peace.*

SECT. 5. The school committee shall cause the school registers to be faithfully kept in all the public schools, and shall annually on or before the last day of April, return the blank forms of inquiry, duly filled up, to the secretary of the board of education; and shall also specify in said returns the purposes to which the money received by their town or city from the income of the school fund has been appropriated.

Registers and returns. 1837, 227; 1838, 105, § 6; 1846, 223, § 3; 1850, 179. See § 11. See Ch. 36, § 3. See Ch. 38, § 20.

SECT. 6. The school committee shall annually make a detailed report of the condition of the several public schools, which report shall contain such statements and suggestions in relation to the schools as the committee deem necessary or proper to promote the interests thereof. The committee shall cause said report to be printed for the use of the inhabitants, in octavo, pamphlet form, of the size of the annual reports of the board of education, and transmit two copies thereof to the secretary of said board, on or before the last day of April, and deposit one copy in the office of the clerk of the city or town.

Committees' report; to whom sent; where deposited; to be printed. 1838, 105, § 1. 1846, 223, § 4. 1850, 57. See Ch. 36, § 3. See Ch. 38, § 20.

SECT. 7. When a school committee fails within the prescribed time to make either the returns or report required of them by law, the secretary of the board of education shall forthwith notify such committee, or the clerk of the city or town, of such failure; and the committee or clerk shall immediately cause the same to be transmitted to the secretary.

When report is not made. 1855, 93, § 1. See Ch. 38, § 20.

SECT. 8. If a report or return is found to be informal or incorrect, the secretary shall forthwith return the same, with a statement of all deficiencies therein, to the committee for its further action.

When informal, &c. 1855, 93, § 2. See Ch. 38, § 20.

SECT. 9. The returns or reports of a city or town so returned by the secretary for correction, or which have not reached his office within the time prescribed by law, shall be received by him if returned during the month of May; but in all such cases ten per cent. shall be deducted from the income of the school fund which such city or town would have been otherwise entitled to. If such returns or reports fail to reach his office before the first day of June, then the whole of such city or town's share of the income shall be retained by the treasurer of the commonwealth, and the amount so retained, as well as the ten per cent. when deducted, shall be added to the principal of the school fund. And such city or town shall in addition thereto forfeit not less than one hundred nor more than two hundred dollars: *provided, however*, if said returns and reports were duly mailed in season to reach said office within the time required by law, then the city or town from which said returns or reports are due shall be exempt from the forfeiture, otherwise incurred.

Penalty for neglect or informal, &c., report. 1855, 93, § 3. 1859, 238.

SECT. 10. The clerk of each city and town shall deliver one copy of the reports of the board of education and its secretary to the secretary of the school committee of the city or town, to be by him preserved for the use of the committee, and transmitted to his successor in office; and two additional copies of said reports, for the use of said committee; and shall also deliver one copy of said reports to the clerk of each school district, to be by him deposited in the school district library, or, if there is no such library, carefully kept for the use of the prudential committee, teachers, and inhabitants, of the district, during his continuance in office, and then transmitted to his successor; and in case the city or town shall not be districted, said reports shall be delivered to the school committee, and so deposited by them as to be accessible to the several teachers and to the citizens; and such reports shall be deemed to be the property of the town or city, and not of any officer, teacher, or citizen, thereof.

Reports, &c., of board of education, how received, delivered, and for what purpose. In whose property of. 1849, 65, § 2.

SECT. 11. When the school committee of a city or town is not less than thirteen in number, the chairman and secretary thereof may, in behalf of the committee, sign the annual school returns and the certificate required by sections four and five.

Who to sign reports. 1855, 244.

SECT. 12. A city or town which has forfeited any part of its portion

Penalty on committee for neg-

lect in returns, &c. 1847, 183, § 2. 1848, 173.

Registers, how kept. Teachers not to draw pay until return of register. 1849, 209.

of the income of the school fund through the failure of the school committee to perform their duties in regard to the school report and school returns, may withhold the compensation of the committee.

SECT. 13. The several school teachers shall faithfully keep the registers furnished to them, and make due return thereof to the school committee, or such person as they may designate, and no teacher shall be entitled to receive payment for services until the register, properly filled up and completed, shall be so returned.

## CHAPTER 41.

### OF THE ATTENDANCE OF CHILDREN IN THE SCHOOLS.

#### SECTION

1. Children to be sent to school by parents, &c. Penalty for neglect. Excuses for neglect.
2. Truant officers and school committee to inquire and report.
3. All children may attend where they reside.
4. School committee to regulate admission, &c., to high school.
5. Children may attend in adjoining town, and committee pay for instruction.

#### SECTION

6. Wards may attend where guardian resides.
7. Children may attend in other towns than place of parents' residence, and parents pay, &c.
8. Children not to attend unless vaccinated.
9. Race, &c., not to exclude.
10. Teachers and school committee to state grounds of exclusion.
11. Damages for exclusion, how recovered.
12. Interrogatories to committee, &c.

Children to be sent to school by parents, &c. Penalty for neglect. Excuses for neglect. 1852, 240, §§ 1, 2, 4. 1855, 309.

SECTION 1. Every person having under his control a child between the ages of eight and fourteen years, shall annually during the continuance of his control send such child to some public school in the city or town in which he resides, at least twelve weeks, if the public schools of such city or town so long continue, six weeks of which time shall be consecutive; and for every neglect of such duty the party offending shall forfeit to the use of such city or town a sum not exceeding twenty dollars: but if it appears upon the inquiry of the truant officers or school committee of any city or town, or upon the trial of any prosecution, that the party so neglecting was not able, by reason of poverty, to send such child to school, or to furnish him with the means of education, or that such child has been otherwise furnished with the means of education for a like period of time, or has already acquired the branches of learning taught in the public schools, or that his bodily or mental condition has been such as to prevent his attendance at school or application to study for the period required, the penalty before mentioned shall not be incurred.

Truant officers and school committee to inquire and report. 1852, 240, § 3. 1855, 309. 1859, 188.

SECT. 2. The truant officers and the school committees of the several cities and towns shall inquire into all cases of neglect of the duty prescribed in the preceding section; and ascertain from the persons neglecting, the reasons if any therefor; and shall forthwith give notice of all violations, with the reasons, to the treasurer of the city or town; and if such treasurer wilfully neglects or refuses to prosecute any person liable to the penalty provided for in the preceding section, he shall forfeit the sum of twenty dollars.

Children to attend where they reside. 1849, 117, § 4.

SECT. 3. All children within the commonwealth may attend the public schools in the place in which they have their legal residence, subject to the regulations prescribed by law.

Admission to high school, how regulated. R. S. 25, § 15.

SECT. 4. The school committee shall determine the number and qualifications of the scholars to be admitted into the school kept for the use of the whole town.

Children may attend in ad-

SECT. 5. Children living remote from any public school in the town in which they reside, may be allowed to attend the public schools in an



adjoining town, under such regulations, and on such terms, as the school committees of the said towns agree upon and prescribe; and the school committee of the town in which such children reside shall pay out of the appropriations of money raised in said town for the support of schools the sum agreed upon.

joining town, and committee pay for instruction. 1855, 78. 1859, 89, § 1.

SECT. 6. Minors under guardianship, their father having deceased, may attend the public schools of the city or town of which their guardian is an inhabitant.

Wards, where may attend. 1856, 164.

SECT. 7. With the consent of school committees first obtained, children between the ages of five and fifteen years may attend school in cities and towns other than those in which their parents or guardians reside; but whenever a child resides in a city or town different from that of the residence of the parent or guardian, for the sole purpose of attending school there, the parent or guardian of such child shall be liable to pay to such city or town, for tuition, a sum equal to the average expense per scholar for such school for the period the child shall have so attended.

Children may attend in other towns than place of parents' residence, and parents pay, &c. 1857, 132.

SECT. 8. The school committee shall not allow any child to be admitted to or connected with the public schools, who has not been duly vaccinated.

Children to be vaccinated. 1855, 414, § 2.

SECT. 9. No person shall be excluded from a public school on account of the race, color, or religious opinions, of the applicant or scholar.

Color, &c., not to exclude. 1855, 256, § 1.

SECT. 10. Every member of the school committee under whose directions a child is excluded from a public school, and every teacher of such school from which a child is excluded, shall, on application by the parent or guardian of such child, state in writing the grounds and reason of the exclusion.

Teachers, &c., to state grounds of exclusion. 1855, 256, § 4.

SECT. 11. A child unlawfully excluded from any public school shall recover damages therefor in an action of tort, to be brought in the name of such child by his guardian or next friend against the city or town by which such school is supported.

Damages for exclusion. 1845, 214. 1855, 256, § 2. 8 Cush. 160. 7 Gray, 245.

SECT. 12. The plaintiff in such action may, by filing interrogatories for discovery, examine any member of the school committee, or any other officer of the defendant city or town, as if he were a party to the suit.

Interrogatories to committee, &c. 1855, 256, § 3.

## CHAPTER 42.

### OF THE EMPLOYMENT OF CHILDREN AND REGULATIONS RESPECTING THEM.

SECTION

1. Children under fifteen, who have not attended school, &c., not to be employed in manufactory, unless, &c.
2. Penalty, school committee to prosecute.
3. Children under twelve not to be employed more than ten hours a day. Penalty.
4. Cities and towns may make by-laws respecting habitual truants, &c. Fines.

SECTION

5. Cities and towns shall appoint persons to prosecute for violations of by-laws.
6. Minor convicted may be committed, &c.
7. On non-payment of fine, may be committed. How discharged.
8. Warrants where returnable. Compensation.

SECTION 1. Children of the age of twelve years and under the age of fifteen years, who have resided in this state for the term of six months, shall not be employed in a manufacturing establishment unless within twelve months next preceding the term of such employment they have attended some public or private day school, under teachers approved by the school committee of the place in which said school was kept, at least one term of eleven weeks, and unless they shall attend such a school for

Certain children not to be employed in manufactory, unless, &c. 1836, 245, § 1. 1849, 220, § 1. 1855, 379. 1858, 83, § 1.

a like period during each twelve months of such employment. Children under twelve years of age, having resided in this state for a like period, shall not be so employed unless they have attended a like school for the term of eighteen weeks within twelve months next preceding their employment, and a like term during each twelve months of such employment.

Penalty.  
School committee to prosecute.  
1842, 60, § 1.  
1849, 220, § 3.  
1858, 83, § 2.

SECT. 2. The owner, agent, or superintendent, of a manufacturing establishment, who employs a child in violation of the provisions of the preceding section, shall forfeit a sum not exceeding fifty dollars for each offence, to be recovered by indictment, to the use of the public schools in the city or town where such establishment is situated; and the school committees in the several cities and towns shall prosecute for all such forfeitures.

Children under 12 not to be employed more than ten hours a day. Penalty.  
1842, 60, §§ 3, 4.  
9 Met. 562.

SECT. 3. No child under the age of twelve years shall be employed in any manufacturing establishment more than ten hours in one day; and the owner, agent, or superintendent, who knowingly employs such child for a greater number of hours, shall forfeit the sum of fifty dollars for each offence, to the use of the person prosecuting therefor.

By-laws respecting habitual truants, &c.  
Fines.  
1850, 294, § 1.  
1854, 88, § 6.  
1859, 196.  
See § 6.

SECT. 4. Each city and town may make all needful provisions and arrangements concerning habitual truants, and children not attending school, or without any regular and lawful occupation, or growing up in ignorance, between the ages of five and sixteen years; and also all such by-laws respecting such children, as shall be deemed most conducive to their welfare and the good order of such city or town; and there shall be annexed to such by-laws suitable penalties, not exceeding twenty dollars for any one breach: *provided*, that said by-laws shall be approved by the superior court of the county.

violations of, how to be prosecuted.  
1850, 294, § 2.

SECT. 5. The several cities and towns availing themselves of the provisions of the preceding section, shall appoint at the annual meetings of such towns, or annually by the mayor and aldermen of such cities, three or more persons, who alone shall be authorized, in case of violation of such by-laws, to make the complaint and carry into execution the judgments thereon.

Minor convicted may be committed, &c.  
1852, 283, § 1.  
1854, 88, § 3.

SECT. 6. A minor convicted under such by-law of being an habitual truant, or of not attending school, or of being without regular and lawful occupation, or growing up in ignorance, may, at the discretion of the justice or court having jurisdiction of the case, instead of the fine mentioned in section four, be committed to any such institution of instruction, house of reformation, or suitable situation provided for the purpose under authority of section four, for such time, not exceeding two years, as such justice or court may determine.

On non-payment of fine, may be committed.  
How discharged.  
1852, 283, §§ 2, 3.  
1854, 88, §§ 3, 4.  
See Ch. 180.

SECT. 7. A minor convicted of either of said offences and sentenced to pay a fine may, in default of payment thereof, be committed to such institution of instruction, house of reformation, or suitable situation provided as aforesaid. And upon proof that the minor is unable to pay the fine, and has no parent, guardian, or person chargeable with his support, able to pay the same, he may be discharged by such justice or court, whenever it is deemed expedient, or he may be discharged in the manner poor convicts may be discharged from imprisonment for non-payment of fine and costs.

Warrants, where returnable.  
Compensation.  
1854, 88.

SECT. 8. Warrants issued under this chapter shall be returnable before any trial justice or judge of a police court, at the place named in the warrant; and the justice or judge shall receive such compensation as the city or town determines.

## TITLE XII.

### OF WAYS, BRIDGES, PUBLIC PLACES, FERRIES, SEWERS, AND DRAINS.

- CHAPTER 43. — Of the Laying out and Discontinuance of Highways, Town Ways, and Private Ways.
- CHAPTER 44. — Of the Repairs of Ways and Bridges.
- CHAPTER 45. — Of Regulations and By-Laws respecting Ways and Bridges.
- CHAPTER 46. — Of the Boundaries of Highways and other Public Places, and Encroachments thereon.
- CHAPTER 47. — Of Ferries.
- CHAPTER 48. — Of Sewers and Drains.

### CHAPTER 43.

#### OF THE LAYING OUT AND DISCONTINUANCE OF HIGHWAYS, TOWN WAYS, AND PRIVATE WAYS.

SECTION

1. Highways to be laid out by the commissioners.
2. Recognizance for payment of costs, &c.
3. Notice to be given to towns, &c.
4. Commissioners to view premises, if requested, &c.
5. Hearing and adjudication upon common convenience, &c.
6. Notice before highway is laid out, &c.
7. Alterations between termini.
8. Commissioners may lay out, &c., highways if at time of view no one objects.
9. Upon petition for laying out, &c., highway; commissioners may order specific repairs of existing highways.
10. Highway may be temporarily closed in such case.
11. Towns to make such repairs.
12. Existing highway may be located anew.
13. Time prescribed for making highways, and for removing trees, &c.
14. Damages to be estimated, but not paid until, &c. Indemnity.
15. Damages occasioned by specific repairs. Indemnity.
16. Damages, how estimated.
17. When claimants have different interests, entire damage or indemnity to be paid to a trustee.
18. Trustee in certain cases to be appointed by judge of probate; to give bond. Suit on bond.
19. Party aggrieved to have a jury or committee.
20. Powers of jury, &c., as to laying out and altering.

SECTION

21. Applications for jury to revise location, &c.; when acted on.
22. to revise assessment of damages, when to be made.
23. Several applications may be considered, &c., by same jury.
24. Recognizance for costs in all cases.
25. Petitions not to abate by death of party.
26. Executors, &c., neglecting to appear, survivors may proceed.
27. Warrant for jury, directed to sheriff, &c.
28. Jury, how and whence summoned.
29. Jurors to pay fine for non-attendance.
30. Talesmen may be returned.
31. Jurors to be sworn.
32. Commissioners may appoint person to preside at trial.
33. Duties of presiding officer.
34. Commissioners to take notice on behalf of their counties. May appoint agent to attend jury.
35. Notice of trial.
36. Officer's fees.
37. Duty of jury.
38. Title of lands, determined only so far as respects damages.
39. Jury may extend time for removing trees, &c.
40. Verdict or report to be returned within three months. Court may set aside.
41. Complainant entitled to jury until verdict rendered; may waive right to trial, &c.
42. Clerks of courts to certify verdict, &c., to commissioners. Proceedings thereon.
43. Verdict, &c., recorded, conclusive.
44. Costs, how paid.



## SECTION

45. Questions of costs, finally settled, &c.
46. Highways not to be worked or shut up until, &c.
47. Expenses, damages, &c., paid by county.
48. Expenses paid by petitioners.
49. Highways made at expense of county when towns neglect. Charged to towns.
50. Warrants to issue against towns neglecting to pay.
51. Commissioners may order expenses to be paid out of county treasury.
52. Commissioners to certify to county treasurer when highway is completed.
53. Several parties may go to same jury.
54. Notice to persons interested to become parties.
55. Verdict, to apportion damages.
56. conclusive on all who have notice, &c.
57. Costs of parties, how taxed.
58. Party neglecting to appear, to be barred.

## TOWN WAYS AND PRIVATE WAYS.

59. Town ways, &c., how laid out.
60. how discontinued.
61. Notice to be given by selectmen before laying out.
62. Damage from laying out, &c., how determined and paid.
63. When paid; when party shall have indemnity instead.
64. Damages, if interests are separate.
65. Location, &c., to be filed and accepted before town way, &c., laid out.
66. Commissioners may lay out in certain cases.
67. If selectmen unreasonably refuse, &c., party may appeal to commissioners.
68. Appeal if towns refuse to accept ways.
69. If ways laid out, &c., by commissioners, are not completed in six months, &c., they may complete and assess town.
70. If towns refuse to discontinue, commissioners may.
71. When towns are debarred from laying out, &c.
72. Recognizance for costs. Notice.

Highways to be laid out by the commissioners.  
R. S. 24, § 1.  
1850, 299.  
7 Mass. 153.

Recognizance for payment of costs, &c.  
R. S. 24, § 41.  
18 Pick. 309.

Notice to be given to towns, &c.  
R. S. 24, § 2.  
7 Gray, 109.

SECTION 1. When a new highway, from town to town, or from place to place within the same town, is wanting, or when any highway can with greater public convenience be altered or discontinued, application therefor shall be made, by petition in writing to the county commissioners who have jurisdiction in the place in which such new highway or such alteration or discontinuance is wanted.

SECT. 2. No petition for the laying out, altering, or discontinuing, a highway, shall be proceeded upon by the commissioners, until the petitioners cause a sufficient recognizance to be given to the county, with surety to the satisfaction of the commissioners, for the payment of all costs and expenses which shall arise by reason of such petition and the proceedings thereon, if the petitioners shall not finally prevail.

SECT. 3. The commissioners to whom such petition is presented shall cause a copy thereof to be served upon the clerk of every town within which such new highway, alteration, or discontinuance, is prayed for, thirty days at least before the time appointed for any view or hearing. They shall also cause copies of the petition, or abstracts containing the substance thereof, to be posted in two public places in each of said towns, and shall give notice to all persons interested, by causing a like copy to be published three weeks successively in such newspaper as they shall order; the posting and the last publication of the copy to be fourteen days at least before any view, hearing, or adjudication, on such petition.

## SECTION

73. Parties may have jury or committee to ascertain damages; rule as to costs.
74. Owner may remove trees, &c. Not removing, relinquishes right.
75. Jury may extend time for removal.
76. When towns shall not contest legality of ways.

## WAYS IN THE COUNTY OF SUFFOLK.

77. Powers of board of aldermen of Boston.
78. Application for laying out ways, &c., how made.
79. Parties may apply for jury to superior court; view to be granted.
80. Commissioners of Middlesex, powers of, in Suffolk. Warrant for jury, to whom directed. Return of verdict, &c.

## WAYS IN CITIES.

81. Provisions of chapter extend to cities.

## DEDICATION OF WAYS.

82. Ways not chargeable unless regularly laid out.
83. Selectmen, &c., to close such ways, or caution the public, &c.
84. When abutters to grade ways. If they refuse, to be assessed for expense.
85. Grade, how established; plan of, where deposited.
86. Grading of way, not a dedication. Establishment of grade, not an acceptance. Streets not to be obstructed without consent, &c.

## ASCERTAINING LOCATION.

87. If location of way is uncertain, selectmen, &c., to ascertain, &c.

## ERECTION OF MONUMENTS.

88. Commissioners, &c., to mark termini and angles of ways. Penalty for neglect.

## WAYS OVER BURYING-GROUNDS.

89. Ways not to be laid out over burying-grounds, unless, &c.
90. Same subject.

SECT. 4. They shall view the premises, when they deem it expedient or when requested by any party interested; and, before any view, shall give notice in the manner provided in the preceding section to all persons interested, of the time and place for commencing the same.

Commissioners to view premises, if requested, &c.  
R. S. 24, § 3.  
9 Met. 423.

SECT. 5. They shall hear the parties, either at the time of the view, or at any regular or special meeting, or any adjournment thereof, as they determine; and as soon as may be after the hearing they shall consider and adjudicate upon the common convenience and necessity of laying out, altering, or discontinuing, such highway, as prayed for by the petitioners.

Hearing and adjudication upon common convenience, &c.  
R. S. 24, § 4.  
9 Met. 423.

SECT. 6. When they have adjudicated upon the common convenience and necessity of laying out, altering, or discontinuing, a highway, they shall, as soon as may be, proceed to lay out, alter, or discontinue, the same accordingly; first giving such notice thereof as is required before proceeding to view, except that instead of a copy of the whole petition it shall be sufficient to serve and publish an abstract thereof.

Notice before highway is laid out, &c.  
R. S. 24, § 6.  
18 Pick. 309.  
20 Pick. 71.  
22 Pick. 278.  
7 Gray, 109.

SECT. 7. They may make such changes between the termini of the highway described in the petition, with regard to the direction, alteration, or discontinuance, thereof, as in their opinion the public convenience requires.

Alterations between termini.  
R. S. 24, § 5.

SECT. 8. If at the time of view, upon a petition for laying out or altering a highway, no person interested shall object, the commissioners may within six months proceed to lay out or alter the same without further notice. If at the time of view upon a petition for discontinuing a highway the commissioners shall decide that the same ought to be discontinued, they may at the same time adjudge and determine that it be discontinued without a further or subsequent meeting therefor, and may estimate the damages caused to any person thereby; and when a return of said proceedings and adjudication is made at the next regular meeting of the commissioners and accepted, it shall be held to be a discontinuance of such highway.

Commissioners may lay out, &c., highways if at time of view no one objects.  
R. S. 24, § 6.  
1839, 76, § 1.  
20 Pick. 71.  
9 Met. 423.

SECT. 9. If, upon a petition for laying out or altering a highway, the commissioners, after having viewed the same and heard all persons interested, are of opinion that the existing highway between the termini mentioned in the petition can be so far amended as to supersede the necessity of laying out a new highway or altering the location of existing ways, they may, after due notice to the towns interested, direct specific repairs to be made in the existing ways in such manner as the public convenience requires; and they may apportion the expense of making the same upon the county and towns respectively as in laying out highways.

Upon petition for laying out, &c., highway, commissioners may order specific repairs of existing ways.  
R. S. 24, § 7.  
1 Met. 336.

SECT. 10. At the time of ordering specific repairs upon an existing highway, they may direct it to be closed to the public travel for such time as they may deem reasonable.

Highway may be temporarily closed.  
1839, 90

SECT. 11. Towns in which specific repairs are ordered to be made shall be liable to make the same, and be entitled to a trial by jury in like manner as is provided in laying out highways.

Towns to make certain repairs.  
R. S. 24, § 8.

SECT. 12. When application is made to the commissioners by a town, or by five inhabitants of a town, to locate anew a road within such town, whether the same were laid out by the authority of the town or otherwise, they may, either for the purpose of establishing the boundary lines of such road or of making alterations in the course or width thereof, locate it anew, after giving like notice and proceeding in the manner prescribed in laying out highways. The expense shall be assessed upon the petitioners, or upon the town or county, as the commissioners order.

Existing highway may be located anew.  
R. S. 24, § 9.  
1851, 214.  
11 Cush. 394.  
2 Gray, 274.

SECT. 13. When a highway is laid out or altered, the commissioners shall in their return determine and specify the manner in which such new highway or alteration shall be made, and also the time within which

Time prescribed for making highways, and



for removing trees, &c.  
R. S. 24, § 10.  
1859, 132, § 2.  
3 Mass. 403.

it shall be completed; and shall transmit to the clerks of the several towns in which said highway lies a description of the location and bounds thereof within the limits of such towns respectively, which description shall be recorded within ten days by the clerk in a book of records kept in the town for that purpose. They shall also allow the owner of the land a reasonable time to take off his timber, wood, or trees, which shall be expressed in their return. If he shall not remove the same within the time allowed, he shall be deemed to have relinquished his right thereto for the benefit of the town.

Damages to be estimated, but not paid until, &c. Indemnify.  
R. S. 24, § 11.  
1842, 86, § 1.  
22 Pick. 263.  
2 Met. 558.  
10 Met. 465.  
12 Met. 123.  
3 Cush. 81.  
8 Cush. 360.  
2 Gray, 267.  
4 Gray, 537.  
5 Gray, 35, 372.

SECT. 14. If damage shall be sustained by any persons in their property, by the laying out, altering, or discontinuing, a highway, the commissioners shall estimate the amount, and in their return state the share of each separately; but they shall not order such damages to be paid, nor shall a person claiming damage have a right to demand the same, until the land over which the highway or alteration is located has been entered upon and possession taken for the purpose of constructing it. But when a person so claiming damages has been put to trouble and expense by the proceedings, the commissioners shall allow him full indemnity therefor, instead of the damages awarded, although no entry is made upon his land.

Damages occasioned by specific repairs. Indemnity.  
1842, 86, § 2.  
8 Cush. 362.  
2 Gray, 267.

SECT. 15. When specific repairs are ordered to be made in a highway which occasion damage to any person or property, the commissioners shall estimate the same and make return thereof; and at their first meeting after the repairs are completed, they shall order the damage to be paid. But if the order for repairs does not go into effect, or is rescinded or altered, they shall order only so much of the damage to be paid as in their opinion has been actually sustained.

Damages, how estimated. Set-off.  
R. S. 24, § 31.  
1842, 86, § 2.  
2 Mass. 267.  
5 Met. 372.  
2 Gray, 467.  
4 Gray, 537.

SECT. 16. In estimating the damage sustained by laying out, locating anew, altering, or discontinuing, a highway, or by an order for specific repairs, regard shall be had to all the damages done to the party, whether by taking his property or injuring it in any manner; and there shall be allowed, by way of set-off, the benefit, if any, to the property of the party by reason thereof.

When claimants have different interests, entire damages or indemnity to be paid to a trustee.  
1851, 290, § 1.  
See §§ 53, 61.  
Ch. 63, § 25.

SECT. 17. When persons having a claim for damages sustained in their property by the laying out, alteration, or discontinuance, of a highway, have different or separate interests in the property, so that an estate for life or for a term of years in the same belongs to one person, and the remainder or reversion in fee belongs to another, entire damages, or an entire sum as indemnity, shall be assessed in the same manner as is provided in other cases, without any apportionment thereof; and the amount of such damages or indemnity shall be paid over to or be recoverable by any person whom the parties owning the several interests may appoint, to be invested by him, when paid over or recovered, in bond, mortgage, or other good securities, and held in trust for the benefit of the parties according to their several interests; the annual income to be paid over to the person in whom was the estate for life or term of years, for the period such estate might have continued, and the remainder after the termination of such estate to be paid over absolutely to the person that was entitled to the reversion in fee, or to his heirs or devisees.

Trustee in certain cases to be appointed by judge of probate, &c.  
1851, 290, § 2.  
See § 61.  
Ch. 63, § 25.

SECT. 18. If any of the persons having an interest in such property shall, by reason of legal disability, be incapacitated from choosing a trustee, or if the parties in interest cannot agree upon a choice, the probate court of the county in which the property is situated, upon application, shall appoint some suitable person as trustee. Said trustee shall before entering upon the duties of his trust give a bond to the judge of probate and insolvency, with sufficient surety or sureties, in such penal sum as the judge directs, conditioned for the faithful performance of his duties as trustee under the provisions of this and the preceding section;



which bond upon breach of its condition may be put in suit by order of the probate court for the use and benefit of the persons interested in the trust property, in like manner as is provided in case of bonds given by executors or administrators.

SECT. 19. A party aggrieved by the doings of the commissioners, either in laying out, locating anew, altering, or discontinuing, a highway, or in the estimation of his damages occasioned thereby, or by reason of any specific repairs ordered by the commissioners, or in the sum awarded him as indemnity, may, on application in writing to the commissioners, have a jury to determine the matter of his complaint; unless he agrees with the parties adversely interested to have the same determined by a committee to be appointed under the direction of the commissioners. *(Allen 329.)*

Party aggrieved to have jury, &c.  
R. S. 24, § 13.  
1842, 86, § 3.  
21 Pick. 258.  
22 Pick. 278.  
1 Met. 437.  
12 Met. 123.  
3 Cush. 82.  
4 Cush. 291.  
10 Cush. 151.  
5 Gray, 65.

SECT. 20. Such jury or committee shall not revise the judgment of the commissioners as to the common convenience and necessity of laying out or altering the way in question; but they may make any alterations that are prayed for between the termini as established, so far as they think them necessary or proper.

Powers of jury.  
R. S. 24, § 13.  
11 Pick. 275.  
22 Pick. 280.  
3 Met. 375.  
5 Gray, 65.

SECT. 21. Applications for a jury to revise the judgment of the commissioners in laying out, locating anew, altering, or discontinuing, a highway, or in ordering specific repairs to be made, may be received and acted upon at the meeting at which the order therefor is adopted, or at the next regular meeting thereafter, but not afterwards.

Applications for jury to revise location, &c., when acted on.  
R. S. 24, §§ 8, 14.  
8 Cush. 360.

SECT. 22. Applications for a jury to revise the judgment of the commissioners in the assessment of damages merely, or in the award of indemnity, may be made at any time within one year from the time of the adoption of the order; or, if within that time a suit shall be instituted wherein the legal effect of the proceedings of the commissioners in laying out, locating anew, altering, or discontinuing, a highway, is drawn in question, such application may be made at any time within one year after the final determination of the suit.

to revise assessment of damages, when to be made.  
R. S. 24, § 14.  
1842, 86, § 3.  
1849, 200.  
1857, 133.  
8 Cush. 362.  
5 Gray, 31.

SECT. 23. If two or more persons apply at the same time for joint or several damages or indemnity, they may join in the same petition to the commissioners; and if several applications are pending at the same time before the commissioners for a jury to determine any matter relating to the laying out, alteration, or discontinuance, of a highway, or the assessment of damages or indemnity, they shall cause all such applications to be considered and determined by the same jury; and the costs shall be taxed either jointly or severally, as the court to which the verdict may be returned shall determine to be equitable.

Several applications may be considered by same jury.  
R. S. 24, § 15.  
22 Pick. 281.  
13 Met. 316.  
2 Cush. 346.

SECT. 24. No jury shall be ordered, nor committee appointed, until the petitioners give recognizance to the county for the payment of all the costs and expenses which may arise in case the jury or committee shall not alter such highway, nor increase the damages or indemnity allowed by the commissioners.

Recognizance for costs in all cases.  
R. S. 24, § 41.

SECT. 25. No petition for a jury shall abate or be defeated by the death of the petitioner; but the executor or administrator, or the heirs or devisees if they shall be the persons interested, may appear and prosecute such petition, or present a new petition, in the same manner and with the same effect as the original party might have done.

Petitions not to abate by death of parties.  
R. S. 24, § 16.

SECT. 26. If, upon the death of one or more of several petitioners for a jury, the executors or administrators, heirs or devisees, of such petitioners, after due notice that such petition is pending, neglect to appear or to prosecute, the surviving petitioners may proceed in the same manner as if they only had made the application.

Executors, &c., neglecting to appear, survivors may proceed.  
R. S. 24, § 17.

SECT. 27. The warrant for a jury shall be directed to the sheriff of the county or his deputy, who is disinterested, or to a coroner, as the commissioners shall order, requiring him to summon a jury of twelve men to hear and determine the matter of complaint set forth in the

Warrant for jury, &c.  
R. S. 24, § 18.  
11 Pick. 269.  
3 Cush. 59.  
4 Cush. 291.

petition, and to decide all such matters as shall legally come before them on the hearing.

Jury, how and whence summoned.  
R. S. 24, § 19.  
13 Met. 316.  
4 Cush. 291.

SECT. 28. The officer who receives the warrant shall in writing require of the selectmen of the three nearest towns not interested in the question, if there be so many in the county, to return a number of jurors, not less than two nor more than six from any one town unless in case of necessity; and the jurors shall be drawn, summoned, and returned, as in other cases, except that the jurors need not be summoned more than twenty-four hours before the time appointed for their attendance.

Jurors to pay fine for non-attendance.  
R. S. 24, § 20.

SECT. 29. If a person so summoned as a juror fails to attend without sufficient cause, he shall pay a fine not exceeding ten dollars, at the discretion of the court to which the verdict is returned, to be paid into the county treasury.

Talesmen may be returned.  
R. S. 24, § 21.

SECT. 30. If by reason of challenges or otherwise there is not a full jury of the persons summoned, the officer who summoned the jury, or in his absence the officer attending the jury, shall return some suitable person to supply the deficiency.

Jurors to be sworn.  
R. S. 24, § 22.

SECT. 31. The jurors shall be sworn to make a just and true appraisal of the damages sustained by the complainant, or of the indemnity to which he is entitled, and well and truly to try all such other matters as shall be lawfully submitted to them under the complaint, and to give a true verdict therein, according to law and the evidence given them; but when no estimate of damages or indemnity is required to be made, that part of the oath shall be omitted.

Commissioners may appoint person to preside at trial.  
R. S. 24, § 23.  
1 Cush. 480.

SECT. 32. The commissioners, when they issue their warrant for a jury, may at the request of either party appoint some suitable person to preside at the trial, in which case the jury may be attended by a deputy-sheriff; but if no person is appointed, the sheriff of such county shall preside; or, when the sheriff is interested or unable to attend, a coroner of the county shall preside.

Duties of presiding officer.  
R. S. 24, §§ 24, 25.  
11 Pick. 274.

SECT. 33. The person presiding at the trial shall keep order therein, and administer the oath to the jurors and witnesses; shall decide all questions of law arising on the trial which would be proper for the decision of a judge; shall direct the jury upon any question of law, when requested by either party; and shall when requested certify to the court, with the verdict, the substance of any decision or direction by him given.

Commissioners to take notice on behalf of their counties. may appoint agent to attend jury.  
R. S. 24, §§ 26, 27.

SECT. 34. When a petition for a jury is presented, the commissioners shall, on behalf of the county, take notice of the same; and may in behalf of the county agree with the petitioners to substitute a committee in the place of a jury, as before provided. They shall, when they think it necessary, appoint some suitable person to attend upon the jury or the committee, as an agent for the county, who shall be allowed therefor three dollars a day and ten cents a mile travel.

Notice of trial.  
R. S. 24, § 28.

SECT. 35. The officer by whom a jury is summoned shall give seasonable notice of the time and place of their meeting to the person appointed to preside at the trial, and also to the person appointed agent for the county, if such appointments have been made. When a committee is substituted for a jury, the notice to the agent shall be given by the person first named on the committee.

Officer's fees.  
R. S. 24, § 29.

SECT. 36. The officer shall receive for summoning the jurors four cents a mile for all necessary travel, and one dollar and fifty cents for each day he attends upon them. He shall certify to the court his own travel and attendance, and also that of each juror.

Duty of jury.  
R. S. 24, § 30.

SECT. 37. The jury shall view the premises when they think proper, or upon the request of either party, and shall hear and examine all legal evidence laid before them, with the observations of the parties or their counsel thereon. All the jurors shall sign the verdict which may be



agreed upon, which shall be enclosed in a sealed wrapper, with an indorsement thereon expressing what it contains, and delivered so indorsed to the officer having charge of the jury.

SECT. 38. If the interest or right of a complainant in or to the real estate alleged to be damaged by the laying out, locating anew, altering, discontinuing, or making specific repairs upon, a highway, is drawn in question on such hearing, the jury may hear and determine the question of interest or right so far only as respects the damages of such complainant.

Title of lands determined only as respects damages.  
R. S. 24, § 32.

SECT. 39. A jury assessing damages may extend the time allowed by the commissioners for the owner of the land to take off the timber, wood, trees, or other property. If he neglects to take off the same within the extended time, he shall be deemed to have relinquished his claim thereto for the benefit of the town, as before provided.

Jury may extend time for removing trees, &c.  
R. S. 24, § 33.  
6 Gray, 442.

SECT. 40. When a jury is ordered, they shall be summoned and give their verdict within three months next after the date of the order. The verdict shall be returned to the next term of the superior court to be held for the same county, and the court shall receive it, and adjudicate thereon, and may set it aside for good cause. If the matter is determined by a committee, the report of the committee shall be made within three months after their appointment, shall be returned to the next term of the court held after making the same; and like proceedings shall be had thereon as upon the return of a verdict.

Verdict or report when returned may be set aside.  
R. S. 24, § 34.  
5 Mass. 435.  
1 Cush. 562.  
3 Cush. 15.

SECT. 41. If the jury do not agree upon a verdict, or if the proceedings are set aside upon a writ of certiorari, the complainant shall be entitled to a new jury from time to time until a verdict is rendered and established; but he may at any stage of the proceedings, upon such terms as the court shall order, waive his right to a trial by jury and accept the damages assessed by the commissioners.

Complainant entitled to jury until verdict rendered, may waive right to trial, &c.  
R. S. 24, § 35.  
10 Pick. 235.

SECT. 42. The clerk of the court shall certify such verdict or report, with the adjudication of the court thereon, to the commissioners at their next meeting after the adjudication shall be had; and if the verdict or report has been set aside, the commissioners, on application therefor, shall order a new jury, or the parties may agree upon a new committee; and thereupon like proceedings shall be had as are herein before provided.

Clerks of courts to certify verdict, &c., to commissioners. Proceedings thereon.  
R. S. 24, § 36.

SECT. 43. The verdict or report returned to the court as before provided, and accepted and recorded, shall be conclusive upon the parties.

Verdict, &c., conclusive.  
R. S. 24, § 37.  
20 Pick. 205.  
1 Cush. 562.  
Costs how paid.  
R. S. 24, § 38.

SECT. 44. If the jury or committee do not alter the highway, nor increase the amount allowed by the commissioners, as damages or indemnity, the costs incurred by reason of the application for the jury or committee shall be paid by the persons who recognize for the payment of costs; otherwise all such costs shall be paid from the county treasury.

SECT. 45. If a question arises with regard to the taxation of costs, in the proceedings and hearing before a jury or committee, it shall be determined by the court to which the verdict or report is returned; and the court may also determine the compensation of the committee and of the person who presides at the trial.

Questions of costs, how settled, &c.  
R. S. 24, § 39.

SECT. 46. When the commissioners order a jury, or a committee is agreed upon, to consider and determine with regard to the laying out, alteration, or discontinuance, of a highway, or specific repairs upon an existing highway, the highway so laid out or altered shall not be opened or worked, nor shall the highway so discontinued, or upon which specific repairs are ordered, be shut up, until after the meeting of the commissioners at which the verdict of the jury or report of the committee, with the adjudication of the court thereon, is certified to them as before directed; and thereupon the commissioners may allow such further time as they think reasonable for making and completing such highway, and

Highways not to be opened or worked or shut up, until, &c.  
R. S. 24, § 40.  
1839, 90.



for the removal of the timber, wood, trees, or other property, if any, from the premises.

Expenses, damages, &c., paid by county.  
R. S. 24, §§ 33, 42.  
1842, 86, §§ 1, 2.  
2 Gray, 274.

SECT. 47. When a highway is finally laid out, and established, altered, or discontinued, or specific repairs are ordered, on an existing highway, all the expenses of the proceeding, and also all damages allowed therefor, and all sums awarded as indemnity, shall be paid by order of the commissioners by the county, except as herein otherwise provided.

Expenses paid by petitioners.  
R. S. 24, § 43.  
3 Met. 314.

SECT. 48. If a highway is not finally laid out and established, located anew, altered, or discontinued, nor specific repairs ordered, all said expenses shall be paid by the persons who have recognized therefor. If they refuse or neglect to pay such expenses, or to pay the costs incurred by reason of the application for a jury or committee, when required by the commissioners, such expenses or costs shall be ordered by the commissioners to be paid from the county treasury; and thereupon the commissioners, after giving due notice to the persons who so recognized, shall issue a warrant against them or some of them (unless sufficient cause is shown to the contrary) for the amount ordered to be paid by them, with the further costs of the notice and warrant, and the money shall be collected as in other cases, and paid into the county treasury.

Highways, how made when towns neglect; expense charged to towns.  
R. S. 24, § 41.  
5 Greenl. 254.

SECT. 49. After a highway has been established by the commissioners, if a town whose duty it is to make such highway, or a part thereof, shall not make and complete the same within the time and in the manner prescribed, and to the acceptance of the commissioners, they shall, as soon as may be thereafter, cause such highway to be completed as aforesaid; and at their next meeting they shall direct the expenses and charges of completing the same to be paid out of the county treasury, and shall order notice thereof to be given to each town that is delinquent, stating the proportions which they are respectively required to pay.

Warrants to issue against towns neglecting to pay.  
R. S. 24, § 45.  
See § 69.

SECT. 50. If a delinquent town does not pay its proportion of the expenses and charges before the next regular meeting of the commissioners, with interest thereon at the rate of ten per cent. a year from the time the same is paid from the county treasury, the commissioners, unless sufficient cause is shown to the contrary, shall issue a warrant against such town for the sum it was ordered to pay, with the interest, and the further costs of such notice and warrant; and the same shall be collected as in other like cases, and paid into the county treasury.

Expenses may be paid by county.  
R. S. 24, § 46.  
1841, 105, § 1.  
6 Met. 329.

SECT. 51. When a highway is laid out or altered, the commissioners, after the same is completed, may order the whole or part of the expenses incurred by any town in making or altering the same, to be paid out of the county treasury.

Commissioners to certify when highway is completed.  
R. S. 24, § 47.  
13 Pick. 225.

SECT. 52. Upon notice to the commissioners that the part of such highway lying within the limits of a town has been completed according to their directions for making the same, they shall view and carefully examine the same throughout; and if they find such highway well made, they shall so certify to the county treasurer, who shall thereupon pay to such town the sum so allowed.

Several parties may go to the same jury.  
R. S. 24, § 48.  
1851, 290.  
5 Met. 372.  
3 Cush. 81.  
7 Cush. 533.  
10 Cush. 385.

SECT. 53. When there shall be several parties, having several estates at the same time, in land or buildings, other than and different from the estates and interests for which provision is made in section seventeen, and the land or buildings are taken or otherwise damaged, in whole or in part, by the laying out, locating anew, altering, or discontinuing, of a highway, or making specific repairs thereon, and one of such parties, by petition as provided in this chapter, applies for a jury to ascertain his damages in the premises, all the other parties so interested may become parties to the proceedings under such petition, and the damages of all of them may be determined by the same jury, in the manner provided in the five following sections.

SECT. 54. Upon such application of a party thus interested, the commissioners shall order the petitioner to give notice thereof to all the other parties interested, by serving each of them, fourteen days at least before their next regular meeting, with an attested copy of such petition and the order thereon, that the other parties may if they see cause appear at the next meeting and become parties to the proceedings under the petition; and at the next meeting a jury shall be ordered as before provided in this chapter, who shall, under the direction of the person presiding at the trial, proceed to hear all the persons who have become parties to the proceedings.

Notice to persons interested to become parties.  
R. S. 24, § 49.

SECT. 55. If on such hearing the jury find any of the parties entitled to damages, they shall assess the same in the following manner, to wit: they shall first find and set forth in their verdict the total amount of the damages sustained by the owners of such land and buildings, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the total amount of damages among the several parties whom they find to be entitled, in proportion to their several interests and claims and to the damages sustained by them respectively, and set forth such apportionment in their verdict; and if they find any one or more of said parties not to have sustained damage, they shall set forth in their verdict that they award no damages to such party.

Verdict to apportion damages.  
R. S. 24, § 50.

SECT. 56. The verdict, if accepted, shall be conclusive upon all parties interested who shall either have had notice as aforesaid, or by consent have become parties to the proceedings.

conclusive on all who have notice, &c.  
R. S. 24, § 51.

SECT. 57. Each party recovering damages shall recover his several costs; and each party not recovering damages shall be liable for costs to the town or other corporation of which he shall have claimed damages, in like manner as if the proceedings were had under his several petition; but if a party shall fourteen days before the trial give notice in writing to the town or other corporation that may be liable for damages, that he relinquishes all claim for damages, and shall also before the trial file in the case a relinquishment of such claim, he shall not be liable for costs in the case.

Costs of parties, how taxed.  
R. S. 24, § 52.

SECT. 58. If a person, having notice as aforesaid, neglects to appear and become a party to the proceedings in court, he shall be forever barred from making an application for damages.

Party neglecting to appear, to be barred.  
R. S. 24, § 53.

TOWN WAYS AND PRIVATE WAYS.

SECT. 59. The selectmen of the several towns may lay out or alter town ways for the use of their respective towns, and private ways for the use of one or more of the inhabitants thereof; or may order specific repairs to be made upon such ways.

Town ways, &c., how laid out.  
R. S. 24, § 66.  
1842, 85.  
7 Cush. 394.

SECT. 60. A town, at a meeting regularly called for the purpose, may discontinue any town or private way.

how discontinued.  
R. S. 24, § 70.

SECT. 61. No town way or private way shall be laid out or altered unless, seven days at least previously thereto, a written notice of the intention of the selectmen of the town to lay out or alter the same is left by them, or by their order, at the usual place of abode of the owners of the land over which such way is proposed to be laid out or altered, or unless such notice is delivered to such owner in person or to his tenant or authorized agent. If the owner has no such place of abode in the town, and no tenant or authorized agent therein known to the selectmen, or if, being a resident in the town, he is not known as such to the selectmen, such notice shall be posted up in some public place in the town seven days at least before the laying out of such way.

Notice to be given by selectmen before laying out, &c.  
R. S. 24, § 67.

SECT. 62. If damage is sustained by any person in his property by the laying out, alteration, or discontinuance, of a town or private way,

Damages from laying out, &c.,



how determined  
and paid.  
R. S. 24, § 68.  
1842, 86.  
10 Met. 465.  
5 Gray, 31.

Damages, when  
paid.  
Indemnity.  
1842, 86.  
1847, 259, § 4.  
12 Met. 123.

if interests are  
separate.  
1851, 290.  
1853, 10.

Location, &c.,  
to be filed, &c.,  
before laying  
out.  
R. S. 24, § 69.  
2 Mass. 529.  
2 Greenl. 60.  
3 Greenl. 438.  
9 Pick. 492.  
9 Pick. 146.  
5 Met. 423.

Commissioners  
may lay out in  
certain cases.  
1837, 164.

If selectmen  
unreasonably  
refuse, &c.,  
party may ap-  
peal to commis-  
sioners.  
R. S. 24, § 71.  
6 Mass. 8.  
3 Met. 312.  
9 Met. 423.  
12 Met. 208.  
7 Cush. 395.  
11 Cush. 189.

Appeal if towns  
refuse to accept  
ways.  
R. S. 24, § 72.  
8 Greenl. 271.  
2 Mass. 118.  
3 Mass. 188.  
9 Met. 423.

If ways laid  
out, &c., by  
commissioners

or by specific repairs which may be ordered thereon, he shall receive such compensation as the selectmen shall determine, to be assessed and awarded in the manner provided for the assessment and award of damages by county commissioners in laying out highways; which damages shall be paid by the town if it is a town way, but if a private way, then by the person for whose use it is so laid out or altered, or for whose benefit specific repairs are ordered, or on whose application it is discontinued, unless the selectmen deem it reasonable that part of the damage shall be paid by the town and the residue by said persons, in which case they shall make an order specifying the sums to be paid by each.

SECT. 63. The damages so awarded shall not be paid until the land is entered upon and possession taken for the purpose of constructing such way or alteration, or until the specific repairs which have been ordered are commenced. And if possession is not taken, or if the specific repairs are not made, the party, instead of the damages awarded to him, shall be entitled to indemnity to be assessed by the selectmen in the same manner that indemnity is awarded by county commissioners in like cases.

SECT. 64. If there are separate or different interests in lands or buildings which are so taken or injured, of the character and description mentioned in sections seventeen and eighteen, the damages shall be assessed by the selectmen in the mode therein provided for an assessment by the commissioners.

SECT. 65. Except as is hereinafter provided, no town way or private way laid out or altered by the selectmen, shall be established until such laying out or alteration, with the boundaries and admeasurements of the way, is reported to the town, and accepted and allowed at some public meeting of the inhabitants regularly warned and notified therefor, nor unless such laying out or alteration, with the boundaries and admeasurements, is filed in the office of the town clerk seven days at least before such meeting.

SECT. 66. When the location or alteration of a private way is desired in a town for the use of one or more persons, not being inhabitants thereof, or when the location or alteration of a private way lying partly in one town and partly in another is desired, the county commissioners may cause such way to be located or altered, proceeding therein as is provided where the selectmen refuse to lay out a private way.

SECT. 67. If the selectmen of a town unreasonably refuse or neglect to lay out or alter a town way or private way, when requested in writing by one or more of the inhabitants thereof, the commissioners, on the petition in writing of a person aggrieved presented at any regular meeting within one year, may cause such way to be laid out or altered, ascertain the place and course of the way, and estimate the damages sustained by any person by reason thereof. Such damages with all costs of the proceedings shall be paid by the town, if it is a town way. If it is a private way, the damages and costs, or such part thereof as the commissioners judge reasonable, shall be paid by the persons for whose use it is laid out or altered, and the residue, if any, by the town.

SECT. 68. If a town unreasonably refuses or delays to approve and allow a town way or private way laid out or altered by the selectmen, and to put the same on record, any person aggrieved thereby may within one year thereafter apply by petition in writing to the commissioners; and the commissioners, unless sufficient cause is shown against such application, may approve and allow of the way as laid out or altered by the selectmen, and direct the laying out or alteration and acceptance to be recorded by the clerk of such town, which shall have the like effect as if accepted by the town and recorded.

SECT. 69. If a town in which a town way or private way is laid out, altered, or approved, in pursuance of the three preceding sections, shall



not make and complete the same in the manner prescribed by the commissioners, and to their acceptance, within six months from the time when the same is laid out or approved, or within the time directed by the commissioners, they shall, as soon as may be thereafter, cause such way to be completed, and at the next meeting shall direct the expenses and charges of completing the same to be paid out of the county treasury, and order notice thereof to be given to the delinquent town, stating the amount of such expenses and charges. If the town does not before the next regular meeting of the commissioners pay the same, with interest thereon at the rate of ten per cent. from the time when the same was paid by the county treasurer, they [shall] cause the same with all further costs to be collected in the manner prescribed in section fifty.

SECT. 70. Upon the application in writing of any person aggrieved by the refusal of a town to discontinue a town way or private way, the commissioners may order such way to be discontinued.

SECT. 71. When a town way has been laid out or altered by the commissioners, it shall not within two years thereafter be discontinued or altered by the town; and when such way has been discontinued by the commissioners, the town shall not within two years thereafter lay out the same again.

SECT. 72. When an application is made to the commissioners in consequence of the refusal or neglect of selectmen to lay out or alter a private or town way, or in consequence of the refusal or neglect of the town to accept and allow such way when laid out or altered by the selectmen, or when such application is made for the discontinuance of a private or town way, the commissioners shall cause a like recognizance to be given to the county as is directed in this chapter with regard to applications for highways; and like proceedings may be had on such recognizance. They shall also cause notice to be given, before they proceed to view, or to hear the parties, as in the case of highways.

SECT. 73. A person aggrieved by the laying out, or by the alteration or discontinuance, of a town or private way, or by an order for specific repairs, or by the assessment of his damages, or compensation by way of indemnity, may have the matter of his complaint determined by a jury, which may be applied for at any time within one year after such laying out, alteration, order for repairs, discontinuance, or assessment of indemnity; or if a suit is instituted within one year wherein the legal effect of the proceedings is drawn in question, such application for damages or indemnity may be made at any time within one year after the final determination of such suit. Upon such application, an order for a jury shall be made by the commissioners, (or by agreement of the parties the matter may be determined by a committee to be appointed by the commissioners;) and the jury or committee shall have the same powers, and the proceedings in all respects shall be conducted in the same manner, as before provided in like case with respect to highways. If the damages are increased or the way is altered, the damages and all charges shall be paid by the town; otherwise the charges arising on such application shall be paid by the applicant or person recognizing as aforesaid.

SECT. 74. When a town or private way is laid out or altered by the selectmen or commissioners, they shall in their report or return thereof specify the manner in which such way, location, or alteration, shall be completed, and transmit to the clerk a description of the location and bounds thereof, which shall, within ten days, be recorded by him in a book of records kept for that purpose; and they shall allow the owner of the land through which the way may pass, a reasonable time to take off his trees, fences, and other property, which may obstruct the building of such way. If he neglects to remove the same within the time

are not completed within six months, &c., they may complete, and assess town, 1846, 222, §§ 1, 2.

If towns refuse to discontinue. R. S. 24, § 73.

When towns cannot lay out, &c. R. S. 24, § 74. 2 Pick. 44.

Recognizance for costs. No office. R. S. 24, § 75. 9 Met. 423. 11 Cush. 189.

Parties may have jury or committee to ascertain damages. Rule as to costs. R. S. 24, §§ 68, 76. 1842, 86. 1849, 200. 3 Met. 312. 10 Met. 465. 9 Cush. 245. 5 Gray, 31, 65, 421. See Ch. 64, § 6.

Owner may remove trees, &c. not removing, relinquishes right. 1848, 98, §§ 1, 2. 1859, 132, §§ 1, 2, 4. See § 87.

allowed, he shall be deemed to have relinquished his right thereto for the benefit of the town, if the way be a town way; and if it be a private way, for the benefit of such person as the selectmen or commissioners shall determine.

Jury may extend time for removal.  
1848, 98, § 3.

SECT. 75. If a jury is ordered to assess the damages done by the location or alteration of such way, they may extend the time for the owner of the land to remove his trees, fences, and other property; and if he neglects to remove the same within such extended time, he shall be deemed to have relinquished his claim thereto.

Towns not to contest legality of ways.  
R. S. 24, § 77  
5 Gray, 65.

SECT. 76. No town shall contest the legality of a way laid out by such town and accepted and recorded as provided in this chapter.

#### WAYS IN THE COUNTY OF SUFFOLK.

Powers of board of aldermen of Boston.  
R. S. 24, § 54.  
1842, 86.  
1854, 448, § 33.

SECT. 77. The board of aldermen of the city of Boston shall within said city have similar powers and perform like duties as are exercised and performed by the commissioners of counties in respect to the laying out, altering, and discontinuing, of ways, and ordering specific repairs thereon; and shall assess damages therefor, and award indemnity for damages sustained by reason of such laying out, alteration, discontinuance, or order for specific repairs, in like cases and in the same manner as commissioners are required to perform similar duties.

Applications for laying out &c., ways, how made.

SECT. 78. Applications for laying out, altering, or discontinuing, a way in said city, may be made, and notice given, and proceedings had thereon, in such manner and under such regulations as shall be prescribed by any ordinance of the city for that purpose.

Parties may apply for jury to superior court. View to be granted.  
R. S. 24, § 55.  
1849, 200.  
1859, 196.  
20 Pick. 201.

SECT. 79. A party aggrieved by the doings of the board of aldermen in the cases mentioned in the preceding sections, may apply for a jury by petition to the superior court, at any term thereof which shall be holden within one year after the passage of the order or proceeding upon which the application is founded, or if the application be for the assessment of damages or indemnity merely, then within one year after the final determination of any suit wherein the legal effect of the proceedings of the board of aldermen is drawn in question; and thereupon said court shall, after due notice to the city, order a trial by jury to be had at the bar of the court in the same manner in which other civil causes are there tried by the jury, and if either party request it, the jury shall view the place in question.

Commissioners of Middlesex, powers of, in Suffolk. Warrant for jury, to whom directed. Return of verdict, &c.  
1851, 336, §§ 1, 2.  
1853, 295.

SECT. 80. The county commissioners of Middlesex shall have and exercise the same powers and duties in the city of Chelsea and in the towns of North Chelsea and Winthrop in the county of Suffolk, in relation to highways and other ways, as they have and exercise in the several towns in the county of Middlesex, except so far as may be otherwise provided in the charter of the city of Chelsea; and similar proceedings may be had for the assessment and award of damages and indemnity. But in case a jury is applied for or committee agreed upon in any matter relating to a way, the warrant therefor shall be directed to the sheriff or his deputy, or to a coroner, of the county of Suffolk, and the proceedings thereon shall be the same as are had upon such warrants in other counties. The verdict of such jury as well as the report of such committee shall be returned to the superior court.

#### [WAYS IN CITIES.]

Provisions of chapter extend to cities.

SECT. 81. The provisions of the foregoing sections of this chapter, so far as applicable, shall apply to the several cities and towns, except as may be otherwise provided by city charters and acts in amendment thereof.



DEDICATION OF WAYS.

SECT. 82. No way opened and dedicated to the public use, which has not become a public way, shall be chargeable upon a city or town as a highway or town way, unless the same is laid out and established by such city or town in the manner prescribed by the statutes of the commonwealth.

Ways not chargeable unless, &c. 1846, 203, § 1. 4 Cush. 332. 5 Gray, 73. 7 Gray, 343.

SECT. 83. The mayor and aldermen and selectmen shall, whenever the public safety demands it, direct and cause the entrances of such ways entering on and uniting with an existing public highway, to be closed up; or may by other sufficient means caution the public against entering upon such ways; and if any such way shall not be closed, or sufficient notice given that the same is dangerous, the city or town shall be liable for damages arising from defects therein in the same manner as if it had been duly laid out and established.

Selectmen, &c., to close such ways, or caution the public, &c. 1846, 203, §§ 2, 3.

SECT. 84. In cities in which the city council, and in towns in which the inhabitants at a legal meeting, have accepted the provisions of this and the two following sections, if a street or way has been or shall be opened over private land by the owner thereof, and permitted to be used by the public before the same has been accepted and laid out according to law, the owners of the lots abutting thereon shall grade such street or way at their own expense, in such manner as the safety and convenience of the public shall in the opinion of the mayor and aldermen or selectmen require. If the owners of such abutting lots, after reasonable notice from the mayor and aldermen or selectmen, neglect or refuse so to do, or to close the street from public use, the mayor and aldermen or selectmen may cause the same to be graded, and after due notice to the parties interested shall assess the expense thereof upon the owners in such proportion as shall be judged reasonable. All assessments so made shall be a lien upon the abutting lands in the same manner as taxes are a lien upon real estate.

Abutters, when to grade ways; to be assessed for expense, if they refuse. 1853, 315, §§ 1, 4. Allen 137.

SECT. 85. The mayor and aldermen or selectmen may fix and establish the grade of a street or way so opened and used, and cause a plan of such grade to be deposited in the office of the city or town clerk. And all persons making improvements upon the lots abutting thereon, after the grade has been established and recorded, shall conform to the grade. But nothing contained in this and the preceding section shall affect any agreements heretofore made respecting such streets or ways, between the owners of lots and the city or town.

Assessments a lien.

Grade, how established. Plan of, where deposited. 1853, 115, §§ 1, 2.

SECT. 86. The grading of such street or way by the owners of the land, in pursuance of the notice by the mayor and aldermen or selectmen, shall not be construed to be a dedication of the same to the public use, nor shall the establishment and record of the grade, or the grading thereof by the mayor and aldermen or selectmen, constitute an acceptance of the same by the city or town. But no such street or way shall be dug up or obstructed without the consent of the mayor and aldermen or selectmen.

Grading, not a dedication. Establishment of grade not an acceptance. Streets not to be obstructed without consent, &c. 1853, 115, §§ 1, 2, 3.

[ASCERTAINING LOCATION.]

SECT. 87. When ten or more freeholders represent to the mayor and aldermen of a city or selectmen of a town, that the exact location of a street, road, or way, over which they have jurisdiction, cannot readily be ascertained, they shall make investigation thereof, and if it appears that the representation is correct, shall, after giving the notice required in laying out a similar road or way, proceed to ascertain the correct location, erect the necessary bounds, and file a certificate thereof, for record, as provided in sections seventy-four and eighty-eight.

If location of way is uncertain, selectmen, &c., to ascertain, &c. 1859, 132, § 4.



## ERECTION OF MONUMENTS.

Commissioners, &c., to mark termini and angles of ways. Penalty for neglect. 1848, 192. 1855, 95. 7 Gray, 465.

SECT. 88. The county commissioners, mayor and aldermen, and selectmen, shall cause permanent stone bounds not less than three feet long, two feet of which at least shall be inserted in the earth, to be erected at the termini and angles of all roads laid out by them, when practicable; and when not so, a heap of stones, a living tree, a permanent rock, or the corner of an edifice, may be a substitute for such stones; or said bounds may be permanent stone bounds not less than three feet long, with holes drilled therein, and filled with lead, placed a few inches below the travelled part of the street or way, as the officer whose duty it is to cause the same [to be] erected may determine. And if they neglect to establish such monuments after being notified so to do by an owner of land through which any such way is laid out, (since the twenty-fifth of April, eighteen hundred and forty-eight,) the county if it be a county road, and the city or town if it be a city or town road, shall pay to the owner of the land the sum of fifty dollars for each month that such neglect continues, to be recovered in an action of tort.

## WAYS OVER BURYING-GROUNDS.

Ways not to be laid out over burying-grounds, unless, &c. R. S. 24, § 59.

SECT. 89. No highway or town way shall be laid out or constructed in, upon, or through, an enclosure used or appropriated for the burial of the dead, unless authority to that effect is specially granted by law, or the consent of the inhabitants of the town where such enclosure is situated is first obtained.

Same subject. R. S. 24, § 60.

SECT. 90. No highway or town way shall be laid out or constructed in, upon, or through, such part of an enclosure belonging to private proprietors, as may be used or appropriated to the burial of the dead, unless the consent of such proprietors is first obtained therefor.

## CHAPTER 44.

## OF THE REPAIRS OF WAYS AND BRIDGES.

## PUBLIC WAYS AND BRIDGES.

## SECTION

1. Ways and bridges to be repaired at expense of town.
2. When several towns to repair bridge, commissioners may make orders. How enforced.
3. Towns to vote sums to be paid in labor and materials.
4. Highway tax may be raised in money.
5. Non-residents, how assessed.
6. Selectmen to assign surveyors' limits.
7. Surveyor to give notice. Party taxed may work, &c.
8. Surveyor may remove obstructions.
9. Fence, &c., to prevent spreading of disease, not to be removed.
10. Surveyors not to turn water-courses so as to incommode, &c.
11. Surveyors may contract for repairing ways.
12. may be authorized to collect taxes in money.
13. Surveyor's power when sum voted is deficient, or not paid.
14. If towns neglect to raise money, surveyor with consent of selectmen may repair at town's expense.
15. Unless town shall otherwise determine,

## SECTION

- two-thirds the tax to be expended before July first. Manner in which tax shall be expended in succeeding year.
16. Penalty for not accounting.
17. Tax of delinquents to be collected in money.
18. Surveyor to pay over surplus money. Penalty.
19. Towns to pay damages occasioned by repairs.
20. Petitioner aggrieved may apply for jury or agree with adverse party, &c.
21. Fine to use of executor, &c., for defect in way causing loss of life.
22. Damages for injury by defect of ways recovered of town, &c., if notice, &c. Exception.
23. Party liable may tender, &c.
24. Penalty on towns for neglect, &c.
25. Fines imposed, appropriated for repairs, except, &c.
26. Location not to be denied on trial, if repairs made within six years.

## PRIVATE WAYS AND BRIDGES.

27. Four or more proprietors may call meeting.
28. General powers and duties of proprietors and surveyor

SECTION  
 29. Penalty on proprietor neglecting to comply with votes.  
 30. Penalty for refusing to serve as surveyor.  
 31. Forfeitures, how applied.

SECTION  
 32. Proprietors may contract for repairs, and raise money for such contracts.  
 33. Surveyors may collect taxes.  
 34. Penalty on surveyor for neglect.  
 35 Chapter to apply to cities, except, &c.

PUBLIC WAYS AND BRIDGES.

SECTION 1. Highways, town ways, streets, causeways, and bridges, shall be kept in repair at the expense of the town, city, or place, in which they are situated, when other provision is not made therefor, so that the same may be safe and convenient for travellers with their horses, teams, and carriages, at all seasons of the year.

Ways and bridges to be repaired at expense of town.  
 R. S. 25, § 1.  
 13 Gray, 61.

SECT. 2. When two or more towns are required by law to maintain or keep in repair a bridge upon a highway or town way, and differ as to the mode or time of doing the same, the county commissioners having jurisdiction to lay out highways in either of such towns to whom application is first made by one of the towns, may, after a hearing upon due notice to all parties interested, pass such orders concerning the maintenance and repair of such bridge as in their opinion the public good may require. Such orders shall be final, and shall be enforced in the same manner as other orders by the commissioners are by law enforced.

Where several towns are to repair bridge, commissioners may make orders.  
 1852, 238, §§ 1, 2, 3.

SECT. 3. Towns shall vote such sums to be paid in labor and materials on the highways and town ways, as are necessary; and the assessors shall assess the same on the polls and estates, real and personal, of the inhabitants, residents and non-residents, of their town, as other town charges are by law assessed; and shall deliver to each surveyor a list of the persons within his limits, and the sums at which they are severally assessed.

Towns to vote sums to be paid in labor and materials.  
 R. S. 25, § 8.

SECT. 4. Towns may vote to raise such sums of money as are necessary for making and repairing highways and town ways; and order that the same be assessed upon the polls and estates of the inhabitants, residents and non-residents, as other town charges are assessed; and the same shall be collected as other town taxes are collected.

Highway tax may be raised in money.  
 R. S. 25, § 9.

SECT. 5. The lands of non-resident proprietors shall be taxed for the making and repairing of highways in the same manner as for other town taxes; and upon default of payment, the same proceedings shall be had as are provided for the collection of other town taxes of such persons.

Non-residents, how assessed  
 R. S. 25, § 20.

SECT. 6. The selectmen of every town having more than one surveyor of highways, shall annually in writing before the first day of May, assign to each surveyor the limits and divisions of the highways and town ways to be kept in repair by him.

Selectmen to assign surveyors' limits.  
 R. S. 25, § 7.  
 4 Pick. 149.

SECT. 7. The surveyor shall give reasonable notice, as directed by the town to each person in his list, of the sum he is assessed to the highways and town ways; and to the inhabitants within the limits of his district, assessed as aforesaid, seven days' notice of the times and places he shall appoint, extraordinary casualties excepted, for providing materials and working on the highways and town ways; and each inhabitant shall have an opportunity to work thereon, in person or by his substitute, or with his oxen, horses, cart and plough, at the prices which the town shall affix to such labor, to the full amount of the sum at which he is assessed; but if any person so assessed pays to the surveyor in money the sum assessed to him, the surveyor shall according to his best judgment carefully expend the sum so paid in repairing said ways.

Surveyor to give notice. Party taxed may work, &c.  
 R. S. 25, § 11.  
 1838, 30.  
 See § 17.

SECT. 8. Surveyors of highways, except as is provided in the following section, and in sections six and nine of chapter forty-six, may cut down or lop off trees and bushes, and dig up and remove whatever obstructs or encumbers a highway or town way, or hinders, incommodes,

Surveyor may remove obstructions.  
 R. S. 25, § 3.  
 13 Pick. 343.



or endangers, persons travelling thereon; and when such way is encumbered with snow they shall forthwith cause the same to be removed, or so trodden down as to make the way safe and convenient.

SECT. 9. No surveyor or other person shall remove or take down fences, gates, or bars, placed on a highway or town way for the purpose of preventing the spreading of a disease which may be dangerous to the public health.

SECT. 10. No surveyor of highways shall, without the approbation of the selectmen first had in writing, cause a water-course occasioned by the wash of a highway or town way to be so conveyed by the side of such way as to incommode any house, store, shop, or other building, or to obstruct any person in the prosecution of his business. Persons aggrieved by a violation of this section may complain to the selectmen or mayor and aldermen, who shall thereupon view the water-course, and may direct the surveyor to alter the same in such manner as they shall determine.

SECT. 11. Towns may authorize their surveyors or any other person to enter into contracts for making or repairing the highways or town ways within the same.

SECT. 12. They may empower their surveyors to collect all such taxes as are not paid in labor or otherwise within the time limited by law, or at such periods as may be agreed upon by the town; and for that purpose the assessors shall deliver to them warrants of distress, in substance like the warrants prescribed by law for collecting other town taxes; or they may deliver a warrant for collecting the deficiency in any highway tax to the collector, who shall then proceed to collect the same in like manner as other taxes are by law to be collected, and shall pay over the same to the respective surveyors, who shall account with the selectmen for the expenditure thereof.

SECT. 13. When there is a deficiency either of labor or money in the amount appropriated for the repair of highways or town ways within the limits of any surveyor, or when said amount is not furnished or paid to him, so that he is unable to make such repairs, he may to an amount not exceeding ten dollars employ persons to make such repairs; and the persons so employed shall be paid therefor by the town.

SECT. 14. If a town neglects to vote a sufficient sum of money for the purpose of repairing the highways and town ways, or does not otherwise effectually provide therefor, each of its surveyors, first having obtained the consent of the selectmen for that purpose in writing, may employ persons to repair the highways and town ways in their respective districts, so that the same shall be safe and convenient for travellers at all seasons of the year, and the persons so employed shall be paid therefor by the town.

SECT. 15. Two-thirds at least of the sums of money granted by each town for repairing highways and town ways, shall be laid out and expended for that purpose before the first day of July next after the same are granted, or at such other time or times as the town at a legal meeting called for that purpose shall determine. If any part of the money raised is to be expended in labor and materials in the month of March or April of the succeeding year, and after the surveyors of highways for such year are chosen and qualified, it shall be expended by the surveyors to whom the tax was committed, under the direction of the surveyors of the succeeding year having charge of the repairs of the highways and town ways in the district in which the same is to be thus expended.

SECT. 16. Every surveyor shall exhibit his tax bill to the selectmen on the first Monday of July annually, and also at the expiration of the term for which he is appointed; and at those times shall render an account of all moneys expended by him on the highways and town

Fence, &c., to prevent spreading of disease, not to be removed.  
R. S. 25, § 4.

Surveyors not to turn water-courses so as to incommode, &c.  
R. S. 25, § 5.  
2 Met. 599.

Surveyors may contract for repairing ways.  
R. S. 25, § 15.

may collect taxes, &c.  
R. S. 25, § 16.

power when sum voted is deficient or not paid.  
R. S. 25, § 13.  
9 Met. 522.

If towns neglect to raise money, surveyor, &c., may repair at town's expense.  
R. S. 25, § 14.  
13 Pick. 343.

Two-thirds the tax to be expended before July unless, &c. How taxes shall be expended in succeeding year.  
R. S. 25, § 10.  
1839, 144.  
1847, 254.

Penalty for not accounting.  
R. S. 25, § 19.

1 Allen 102



ways. For each neglect he shall forfeit a sum not exceeding fifty dollars.

SECT. 17. At the expiration of his term the surveyor shall render to the assessors a list of such persons as have neglected or refused to work out or otherwise pay their highway tax, when required by him as provided in section seven; and such deficient sums shall be collected and paid into the treasury like other town taxes.

Tax of delinquents to be collected in money.  
R. S. 25, § 12.

SECT. 18. If any money remains unexpended in the hands of a surveyor at the expiration of his office, he shall pay the same to the town treasurer; who, after demand, may recover the same in an action of contract for money had and received, with twenty per cent. in addition thereto, to the use of the town.

Surveyor to pay over surplus. Penalty.  
R. S. 25, §§ 17, 18.

SECT. 19. When an owner of land adjoining a highway or town way sustains damage in his property by reason of any raising, lowering, or other act, done for the purpose of repairing such way, he shall have compensation therefor, to be determined by the selectmen or mayor and aldermen; with whom he shall file his petition therefor after the commencement, and within one year from the completion of the work; and who shall finally adjudicate upon the question of damages within thirty days after the filing of the petition therefor, unless the parties agree in writing to extend the time. The benefit, if any, which the complainant may receive by reason of such alteration or repair, shall be allowed by way of set off.

Towns to pay damages occasioned by repairs.  
R. S. 25, § 6.  
1859, 67.  
1 Pick. 418.  
2 Met. 599.  
8 Met. 179.  
8 Cush. 69.  
10 Cush. 411.  
5 Gray, 372.

SECT. 20. If the petitioner is aggrieved, either by the estimate of his damages or by a refusal or neglect to estimate the same, he may, within one year from the expiration of said thirty days, apply for a jury, and have his damages ascertained in the manner provided where land is taken in laying out highways. Or he may, by agreement with the adverse party and upon application made within the same time, have them ascertained by a committee to be appointed, in the city of Boston by the superior court, and elsewhere by the county commissioners in their respective jurisdictions.

Petitioner aggrieved may apply for jury, or, &c.  
1859, 67.

SECT. 21. If the life of a person is lost by reason of a defect or want of repair of a highway, town way, causeway, or bridge, or for want of suitable rails on such way or bridge, the county, town, or person, by law obliged to repair the same, shall be liable to a fine of one thousand dollars, to be recovered by indictment to the use of the executor or administrator of the deceased person, for the benefit of his heirs, devisees, or creditors: *provided*, that the county, town, or person, had previous reasonable notice of the defect or want of repair of such way or bridge.

If life is lost through defect, &c., executor may recover \$1000.  
R. S. 25, § 21.

SECT. 22. If a person receives or suffers bodily injury, or damage in his property, through a defect or want of repair, or of sufficient railing in or upon a highway, town way, causeway, or bridge, he may recover, in an action of tort, of the county, town, place, or persons, by law obliged to repair the same, the amount of damage sustained thereby, if such county, town, place, or persons, had reasonable notice of the defect, want of repair, or of sufficient railing, or if the same had existed for the space of twenty-four hours previous to the occurrence of the injury or damage. But no such damage shall be recovered by a person whose carriage and load thereon exceed the weight of six tons.

Damages for defect of ways.  
1838, 104.  
1850, 5, § 1.  
19 Pick. 147.  
8 Met. 388.  
13 Met. 292, 297.  
1 Cush. 443, 451.  
2 Cush. 600.  
4 Cush. 310.  
6 Cush. 141.  
7 Cush. 490.  
11 Cush. 563.  
5 Gray, 61.  
7 Gray, 100, 104.  
13 Gray, 61.  
Party liable may tender, &c.  
R. S. 25, § 23.  
7 Cush. 581.

SECT. 23. If, before the entry of an action provided for in the preceding section, the defendant tenders to the plaintiff the amount which he would be entitled to recover, together with all legal costs, and the plaintiff does not accept the same, and does not recover upon the trial more than the sum so tendered, the defendant shall recover his costs.

SECT. 24. If a town neglects to repair any of the ways or bridges which it is by law obliged to keep in repair, or neglects to make the same safe and convenient when encumbered with snow, such town shall pay such fine as the court in its discretion may order.

Penalty on towns for neglect, &c.  
R. S. 25, § 24.  
13 Pick. 343.

Fines imposed, appropriated for repairs, except, &c.  
R. S. 25, § 25.

SECT. 25. Except in cases where it is otherwise specially provided, fines imposed on a town for deficiencies in the ways and bridges within the same, shall be appropriated to the repairing of such ways and bridges; and the court imposing such fine shall appoint one or more persons to superintend the collection and application of the same, who shall make a return of their doings therein to the court.

Location, when not to be denied.  
R. S. 25, § 26.  
5 Greenl. 368.  
2 Pick. 51.  
3 Pick. 408.  
18 Pick. 312.  
4 Cush. 332.  
5 Gray, 75.  
7 Gray, 343, 345.

SECT. 26. If on the trial of an indictment or action brought to recover damages for an injury received by reason of a deficiency or want of repair in a highway, town way, causeway, or bridge, it appears that the county, town, or person, against whom such suit is brought, has, at any time within six years before such injury, made repairs on such way or bridge, such county, town, or person shall not deny the location thereof.

#### PRIVATE WAYS AND BRIDGES.

Four or more proprietors may call meeting.  
R. S. 25, § 34.

SECT. 27. When four or more persons are the proprietors and rightful occupants of a private way or bridge, and three of them make application in writing to a justice of the peace to call a proprietors' meeting, the justice may issue his warrant therefor, setting forth the time, place, and purpose, of the meeting; which shall be posted up in some public place of the town where such way or bridge is situate, seven days at least before the time appointed for the meeting.

General powers and duties of proprietors and surveyor.  
R. S. 25, § 35.

SECT. 28. The proprietors and occupants so assembled shall choose a clerk and surveyor, who shall be sworn. They may determine by a majority of those present the manner of calling future meetings; what repairs of the way or bridge are necessary; and the proportion of money and of labor and materials to be furnished by each proprietor and occupant for such repairs. The surveyor shall have the like powers with respect to such ways or bridges as are exercised by surveyors of highways.

Penalty on proprietor neglecting to comply with votes.  
R. S. 25, § 36.

SECT. 29. A proprietor or occupant refusing or neglecting to comply with such vote when required by the surveyor, shall be held to pay him the amount of his proportion in money, with ten per cent. interest thereon, in an action of contract.

Penalty for refusing to serve as surveyor.  
R. S. 25, § 37.

SECT. 30. If a person so chosen refuses or neglects to accept that trust and take the oath, he shall forfeit the sum of five dollars, to be recovered in the manner provided for the like neglect or refusal of a person chosen surveyor of highways.

Forfeitures, how applied.  
R. S. 25, § 33.

SECT. 31. Damages and forfeitures recovered under the provisions of the two preceding sections shall be applied to the use of the proprietors for repairing said ways or bridges.

Proprietors may contract for repairs, and raise money for such contracts, &c.  
R. S. 25, §§ 39, 40.

SECT. 32. The proprietors and occupants may, at a legal meeting for that purpose, authorize any person to contract by the year, or for a longer or shorter time, for making and keeping in repair such private ways or bridges; may vote to raise such sum of money as they may deem necessary for carrying such contracts into effect; and may choose assessors who shall assess each proprietor and occupant for his proportion of such sum, according to his interest in such way or bridge, and deliver the lists of such assessments to the surveyor, with proper warrants of distress, in substance as is prescribed by law for collecting town taxes.

Surveyors may collect taxes.  
R. S. 25, § 41.

SECT. 33. The surveyor may levy and collect such taxes in the same manner as surveyors of highways are empowered to collect highway taxes.

Penalty on surveyor for neglect.  
R. S. 25, § 42.

SECT. 34. If a surveyor neglects or refuses to pay over according to the direction of his warrant the moneys so collected, he shall be liable to the same penalties as are provided for a like neglect or refusal of surveyors of highways to pay over moneys to the town treasurer.

Chapter to apply to cities, except, &c.

SECT. 35. The provisions of this chapter shall apply to cities except as otherwise provided in their charters or acts in amendment thereof.



CHAPTER 45.

OF REGULATIONS AND BY-LAWS RESPECTING WAYS AND BRIDGES.

<p><b>SECTION</b></p> <p><b>GUIDE POSTS.</b></p> <p>1. Towns to erect and maintain guide posts.</p> <p>2. Selectmen to report locations, &amp;c. Penalty.</p> <p>3. Towns to determine places for posts. Penalty.</p> <p>4. Posts to be erected at places, with guide boards.</p> <p>5. Penalty for neglect to erect posts.</p> <p><b>SIDEWALKS.</b></p> <p>6. Sidewalks, how constructed. Penalty for riding, &amp;c., over. Surveyor's authority. Cities.</p>	<p><b>SECTION</b></p> <p>7. Sidewalks, when selectmen, &amp;c., may grade, &amp;c. Expense, how paid.</p> <p>8. not to be obstructed, unless, &amp;c.</p> <p>9. Removal of snow, &amp;c., from, in cities.</p> <p><b>BY-LAWS.</b></p> <p>10. By-laws to prevent pasturing cattle in highways.</p> <p>11. to regulate travel over certain county bridges.</p> <p>12. over certain town bridges.</p> <p>13. over incorporated bridges.</p> <p>14. No penalty incurred unless by-laws are posted up.</p>
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GUIDE POSTS.

**SECTION 1.** Every town shall in the manner provided in this chapter, erect and maintain guide posts on the highways and other ways within the town, at such places as are necessary or convenient for the direction of travellers. Towns to erect and maintain guide posts. R. S. 25, § 28.

**SECT. 2.** The selectmen of each town shall submit to the inhabitants at every annual meeting a report of all the places in which guide posts are erected and maintained within the town, and of all places at which in their opinion they ought to be erected and maintained. For each neglect or refusal to make such report they shall severally forfeit the sum of ten dollars. Selectmen to report locations, &c. Penalty. R. S. 25, § 29.

**SECT. 3.** Upon the report of the selectmen, the town shall determine the several places at which guide posts shall be erected and maintained, which shall be recorded in the town records. A town which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit the sum of five dollars for every month during which it neglects or refuses so to do; and in such case, upon any trial for not erecting or maintaining guide posts reported to be necessary or convenient by the selectmen, the town shall be estopped from alleging that such guide posts were not necessary or convenient. Towns to determine places for posts. Penalty. R. S. 25, § 30.

**SECT. 4.** At each of the places determined by the town there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board or boards, and upon each board shall be plainly and legibly painted or otherwise marked the name of the next town or place, and such other town or place of note as the selectmen think proper, to which each of such roads leads, together with the distance or number of miles to the same; and also the figure of a hand, with the forefinger thereof pointing towards the towns or places to which said roads lead: *provided*, that the inhabitants of any town may at their annual meeting agree upon some suitable substitute for such guide posts. Posts to be erected at places, with guide boards. R. S. 25, § 31.

**SECT. 5.** Every town which neglects or refuses to erect and maintain such guide posts, or some suitable substitutes therefor, shall forfeit annually the sum of five dollars for every guide post which it so neglects or refuses to maintain. Penalty for neglect to erect posts. R. S. 25, § 32.

SIDEWALKS.

**SECT. 6.** A person owning or occupying lands adjoining a highway or road in a town, may construct a sidewalk within such highway or road, and along the line of such land, indicating the width of such side- Sidewalks, how constructed. Penalty for riding, &c., over.



Surveyor's authority. Cities. 1849, 24, §§ 1, 2, 3.

When selectmen, &c., may grade, &c., sidewalks. Expense, how paid. 1855, 43, § 1.

Sidewalks not to be obstructed, unless, &c. 1855, 43, § 2.

removal of snow, &c., from, in cities. 1857, 64, §§ 1, 2.

By-laws to prevent pasturing cattle in highways. 1857, 82.

to regulate travel over certain county bridges. R. S. 25, § 44.

certain town bridges. R. S. 25, § 45.

over incorporated bridges. R. S. 25, § 47. 7 Gray, 457.

No penalty unless by-laws are posted up. R. S. 25, §§ 46, 47.

walk by trees, posts, or curb-stones, set at reasonable distances apart, or by a railing erected thereto; and where a sidewalk is so constructed, whoever rides or drives a horse or team upon and along the same shall forfeit the sum of one dollar to be recovered by such owner or occupant in an action of tort. But this section shall not diminish or interfere with the authority of surveyors of highways, or any other authority that can be legally exercised over highways or roads; nor shall it in any manner diminish the liability of any person for unreasonably obstructing highways or roads, nor shall it apply to cities.

SECT. 7. In cities in which the city council, and in towns in which the inhabitants, have adopted the provisions of this and the following section, the mayor and aldermen or selectmen may establish and grade sidewalks in such streets as in their judgment the public convenience may require, and may assess the abutters on such sidewalks one-half the expense of the same, the residue being paid by such city or town. All assessments so made shall be a lien upon the abutting lands in the same manner as taxes are a lien upon real estate.

SECT. 8. No sidewalk constructed or graded in a city or town shall be dug up or obstructed in any part thereof, without the consent of the mayor and aldermen of the city, or of the selectmen of the town, in which such sidewalk is established.

SECT. 9. City councils may by ordinance provide for the removal of snow and ice from sidewalks in such portions of their cities as they deem expedient, which ordinance shall determine the time and manner of removal, and shall affix penalties not exceeding fifty dollars to any violation of its provisions by any owner or tenant of the estate abutting upon the sidewalk from which the snow and ice are required to be removed.

#### BY-LAWS.

SECT. 10. A city or town may make suitable by-laws and regulations to prevent the pasturing of cattle or other animals, either with or without a keeper, upon any or all of the streets or ways in such city or town, and may annex penalties not exceeding twenty dollars for each violation thereof. But no such by-law or regulation shall affect the right of a person to the use of land within the limits of such way adjoining his own premises.

SECT. 11. The commissioners of each county may establish by-laws to prevent persons from riding or driving horses at a rate faster than a walk over any bridge maintained by such county, which shall have cost not less than one thousand dollars; and annex penalties not exceeding one dollar for a breach thereof, to be recovered in an action in the name of the county treasurer.

SECT. 12. A town may at an annual meeting establish by-laws to prevent persons from riding or driving horses at a rate faster than a walk over any bridge within the limits of such town, which shall have cost not less than five hundred dollars; and annex penalties not exceeding one dollar for a breach thereof; but such by-laws shall first be approved by the commissioners for the county in which such town lies.

SECT. 13. The proprietors of an incorporated bridge may make such by-laws as they deem necessary to prevent persons from riding or driving horses over such bridge at a rate faster than a walk; and annex penalties to such by-laws not exceeding two dollars for each offence, to be recovered to the use of the corporation.

SECT. 14. No person shall be liable to any of the penalties in the three preceding sections, unless the commissioners, town, and proprietors, respectively, keep posted up at each end of such bridges, in some conspicuous place, a board painted with a white ground containing in black letters the substance of their said by-laws.

CHAPTER 46.

OF THE BOUNDARIES OF HIGHWAYS AND OTHER PUBLIC PLACES, AND ENCROACHMENTS THEREON.

SECTION

1. Fences, &c., when deemed boundaries of highways, &c.
2. Limitation.
3. When building adjudged nuisance, taken down, sold, &c. Costs.
4. Gates, rails, &c., how and when removed.
5. Gates, fences, &c., on town or private ways, how removed.

SECTION

6. Shade trees may be planted in highways; how removed.
7. penalty for injuring, &c.
8. owner of beast damaging, liable, &c.
9. may be set out at public expense, when, &c. Sums to be appropriated.

SECTION 1. Where buildings or fences have been erected and continued for more than twenty years, fronting upon or against a training field, burying place, common landing place, highway, private way, street, lane, or alley, and from the length of time or otherwise the boundaries thereof are not known, or cannot be made certain by the records or by monuments, such fences or buildings shall be deemed and taken to be the true boundaries thereof. When such boundaries can be made certain, no length of time, less than forty years, shall justify the continuance of a fence or building on a town or private way, or on a highway, training field, burying place, landing place, or other land appropriated for the general use or convenience of the inhabitants of the commonwealth, or of a county, town, or parish; but the same may upon the presentment of a grand jury be removed as a nuisance.

Fences, &c., when deemed boundaries of highways, &c.  
R. S. 24, § 61.  
17 Pick. 309.  
8 Met. 578.  
13 Met. 115.  
11 Cush.

SECT. 2. The limitations of time prescribed in the preceding section shall take effect from and after the thirty-first day of December in the year one thousand eight hundred and thirty-nine.

Limitation.  
R. S. 24, § 62.

SECT. 3. When a building, fence, or other encumbrance, erected or continued on a town or private way, or on a highway, training field, burying place, landing place, or other land appropriated for the general use or convenience of the inhabitants of the commonwealth, or of a county, town, or parish, is adjudged a nuisance and ordered to be abated, and the materials, upon a sale thereof by auction, shall be insufficient to pay the costs and charges of prosecution and removal, the court may order the deficient sum to be raised and levied from the goods and chattels of the party convicted of erecting or continuing such nuisance.

When building adjudged a nuisance is taken down, sold, &c. Costs.  
R. S. 24, § 63.

SECT. 4. Any person may take down and remove gates, rails, bars, or fence[s], upon or across a highway, unless the same have been there placed for the purpose of preventing the spreading of a disease dangerous to the public health, or have been erected or continued by the license of the county commissioners or of the selectmen of the town; in which case a person aggrieved by such taking down and removal may apply to the commissioners, or selectmen, respectively, who may order the same to be replaced.

Gates, rails, &c., on highways, how and when removed.  
R. S. 25, § 27.  
10 Mass. 71.

SECT. 5. If fence[s], gates, rails, or bars are upon or across a town way or private way, the same may be removed by the order of a justice of the peace, unless the same are there placed for the purpose of preventing the spreading of a disease dangerous to the public health, or unless the same are erected or continued by license of the town, or of the person for whose use such private way was laid out; and a person aggrieved by such removal may apply to the commissioners; and if upon examination it appears that the same were erected or continued by license as aforesaid, the commissioners shall order them to be replaced.

on town or private ways, how removed.  
R. S. 25, § 43.

SECT. 6. The mayor and aldermen, selectmen, or any municipal officer of a city or town to whom the care of the streets or roads may be intrusted, may authorize the planting of shade trees therein, wher-

Shade trees may be planted in highways, &c.;



Shade trees,  
how removed.  
1856, 256, § 1.  
See Ch. 44, § 5.

ever it may not interfere with the public travel or with private rights; and shade trees standing and trees planted pursuant to such license shall be deemed and taken to be the private property of the person so planting them, or upon whose premises they stand or are planted, and shall not be deemed a nuisance; but upon complaint made to the mayor and aldermen, or selectmen, they may cause such trees to be removed at the expense of the owner thereof, if the public necessity seems to them so to require.

penalty for in-  
juring, &c.  
1856, 256, § 2.

SECT. 7. Whoever wantonly injures, defaces, tears, or destroys, an ornamental or shade tree, or shrub, statue, fountain, vase, or other plant or fixture of ornament or utility, in a street, road, square, court, park, public garden, or other enclosure, shall forfeit not less than five nor more than one hundred dollars, to be recovered by complaint, one-half to the complainant and the other half to the use of the person upon whose property, or within whose premises, the trespass was committed.

owner of  
beast damaging,  
liable, &c.  
1859, 261.

SECT. 8. Whoever negligently or carelessly suffers any horse or other beast driven by or for him, or any beast belonging to him and lawfully on the highway, to break down, destroy, or injure any tree not his own, standing for use or ornament on said highway, or negligently or wilfully by any other means breaks down, destroys, or injures any such tree, shall be subject to an action for damages, at the suit of the owner or tenant of the land in front of which the tree stands.

may be set  
out at public  
expense, when,  
&c. Sums to be  
appropriated.  
1857, 115, §§ 1,  
2, 3.  
See Ch. 44, § 8.

SECT. 9. In a city in which the city council, and in a town in which the inhabitants, have accepted this section, the mayor and aldermen or selectmen may set out and maintain shade trees upon the public squares and highways, at the expense of such city or town, which may appropriate annually, for that purpose, a sum not exceeding twenty-five cents for each of its ratable polls in the year next preceding that in which such appropriation is made.

## CHAPTER 47.

### OF FERRIES.

#### SECTION

1. Ferryman to be licensed by commissioners.
2. Tolls to be established by commissioners. Ferryman to give bond.
3. Safe boats to be kept at ferries, &c. Penalty.
4. Remedy for persons sustaining damage through negligence of ferrymen.

#### SECTION

5. Penalty for keeping ferry without authority.
6. When towns to maintain ferry.
7. When two towns shall bear expense jointly.
8. Penalty for neglect.

Ferryman to be  
licensed by  
commissioners.  
R. S. 26, §§ 1, 2.

SECTION 1. No person shall keep a ferry and receive pay, unless he first obtains a license therefor from the county commissioners. Such license may be granted to suitable persons for such time as the commissioners think proper, and they may revoke it when necessary.

Tolls to be es-  
tablished by  
commissioners.  
Ferryman to  
give bond.  
R. S. 26, § 2.

SECT. 2. The commissioners shall establish the fares or tolls at each ferry for passengers, horses, carriages, and other things, there transported, always having regard to the length and situation of the ferry, and the number of persons passing the same; and in all cases taking bond with sufficient sureties of each ferryman for the faithful performance of his duty. But this and the preceding section shall not apply to ferries established by law prior to the thirtieth day of April in the year one thousand eight hundred and thirty-six.

Safe boats to be  
kept at ferries,  
&c.

SECT. 3. Every ferryman shall keep a safe and good boat or boats in good repair, adapted to the waters where they are to be used, and shall



give ready attendance on passengers on all occasions, according to the regulations established for his ferry. For every neglect in keeping such a boat, or in giving such attendance, he shall forfeit a sum not exceeding twenty dollars, and be further liable in an action of tort for such damages as any person sustains by such neglect.

Penalty.  
R. S. 26, §§ 3, 4.

SECT. 4. Whoever sustains an injury by the negligence or default of a ferryman may have a remedy by an action upon the bond required in this chapter; and in such action like proceedings may be had as in actions brought on the bonds of sheriffs.

Remedy for damage by default of ferry-men.  
R. S. 26, § 5.

SECT. 5. Whoever without lawful authority keeps a ferry and demands or receives pay or toll therefor, shall forfeit a sum not exceeding five dollars for every day that he keeps such ferry, and be further liable in an action of tort for such damages as are thereby occasioned to any person authorized to keep an established ferry.

Penalty for keeping ferry without authority.  
R. S. 26, § 6.

SECT. 6. When the commissioners judge it necessary to establish a ferry, and no person appears to keep the same for the stated profits thereof, the town where such ferry may be shall provide one or more suitable persons to keep and attend the same at such place and in such times of the year as the commissioners order, which persons shall be licensed as aforesaid; and the expense of maintaining such ferry, beyond the amount received for tolls, shall be paid by the town.

When towns to maintain ferry.  
R. S. 26, § 7.

SECT. 7. If such ferry is established between two towns, they shall maintain the same, either jointly or alternately, as the commissioners shall order.

When two towns to bear expense.  
R. S. 26, § 8.

SECT. 8. A town neglecting to maintain a ferry as provided in the two preceding sections, shall forfeit for each month's neglect a sum not exceeding one hundred dollars.

Penalty for neglect.  
R. S. 26, § 9

## CHAPTER 48.

### OF SEWERS AND DRAINS.

SECTION

1. Board of aldermen in Boston may lay and repair sewers and drains.
2. Land to be taken and damages appraised as in laying out highways.
3. In towns which shall accept, &c., main drains and sewers may be laid.
4. Persons entering their drains into the main drain to be assessed, &c.
5. Such assessments to constitute a lien.
6. Party aggrieved may have jury. To file specification of objections.
7. Town may provide that part of expense shall be paid by town, &c. In Boston, not less than one quarter to be so paid.

SECTION

8. Highways, streets, &c., not to be dug up to lay drains, &c., without consent of selectmen.
9. Drains, &c., how to be constructed.
10. Persons benefited to share expense of making drains, repairing, &c.
11. to share expense of removing obstructions, &c.
12. refusing to pay their proportions, shall pay double the amount, &c.
13. Notice to be given before opening any drain.
14. Provisions not to affect agreements of parties.

SECTION 1. The board of aldermen of the city of Boston may lay, make, and maintain, in said city, all such main drains or common sewers as they shall adjudge to be necessary for the public convenience or the public health, and may repair the same from time to time whenever it is necessary.

Board of aldermen in Boston may lay and repair sewers and drains.  
1857, 225, § 1.

SECT. 2. When land is taken by virtue of the preceding section, the board shall proceed in the manner required by law in taking land for public highways or streets; and persons suffering damage in their property shall have the rights and remedies for the ascertainment and the recovery of the amount of such damage provided by law for the ascertain-

Land to be taken and damages appraised as in laying out highway.  
1857, 225, § 2.

ment and recovery of damages for lands taken in said city of Boston for public highways or streets.

In certain towns main drains and sewers may be laid. 1841, 115, §§ 1, 6. 9 Cush. 233.

SECT. 3. In any city or town in which chapter one hundred and fifteen of the statutes of eighteen hundred and forty-one has been accepted according to the provisions of that act, and in any city in which this and the three following sections of this chapter have been accepted by the city council, and in any town in which the same have been accepted by the legal voters at a meeting called for that purpose, the mayor and aldermen of the city and the selectmen of the town may lay, make, maintain, and repair, all main drains or common sewers; and all the main drains or common sewers shall be the property of such city or town.

Persons entering drains into main drain to be assessed, &c. 1841, 115, § 2.

SECT. 4. Every person who enters his particular drain into such main drain or common sewer, or who, by more remote means, receives benefit thereby for draining his cellar or land, shall pay to the city or town a proportional part of the charge of making and repairing the same, to be ascertained, assessed, and certified, by the mayor and aldermen or selectmen, and notice thereof shall be given to the party to be charged, or his tenant or lessee.

Such assessments to constitute a lien. 1841, 115, § 3.

SECT. 5. Assessments so made shall constitute a lien on the real estates assessed for one year after they are laid, and may, together with incidental costs and expenses, be levied by sale thereof if the assessment is not paid within three months after a written demand for payment, made either upon the person assessed or upon any person occupying the estate; such sale to be conducted in like manner as sales for the non-payment of taxes.

Party aggrieved may have jury. Mode of proceeding. 1841, 115, § 4. See § 10.

SECT. 6. A person aggrieved by such assessment may, at any time within three months from receiving notice thereof, apply for a jury. Such application shall be made in like manner and the proceedings thereon shall be the same as in case of lands taken for laying out of highways: *provided*, that before making his application the party shall give one month's notice in writing to the selectmen or mayor and aldermen of his intention so to apply, and shall therein particularly specify his objections to the assessment made by them; to which specification he shall be confined upon the hearing by the jury.

Part of expense may be paid by town, &c. How, in Boston. 1841, 115, § 5.

SECT. 7. Nothing herein contained shall prevent a city or town from providing, by ordinance or otherwise, that a part of the expense of constructing, maintaining, and repairing, main drains or common sewers, shall be paid by such city or town. And in the city of Boston, not less than one-quarter part of such expense shall be paid by the city, and shall not be charged upon those using the main drains or common sewers.

Highways, &c., when may be dug up to lay drains, &c. R. S. 27, § 1.

SECT. 8. Whoever digs or breaks up the ground in a highway, street, or lane, in any town, for the laying, altering, or repairing, of a drain or common sewer, without the consent of the selectmen in writing, shall forfeit five dollars for each offence to the use of the town.

Drains, &c., how to be constructed. R. S. 27, § 2.

SECT. 9. All drains and common sewers in a street or highway, shall be substantially made or repaired with brick or stone, or with such other materials, and in such manner, as the selectmen of the town shall permit or direct.

Persons benefited to share expense of making drains, repairing, &c. R. S. 27, § 3. See § 13.

SECT. 10. When a person, by the consent and under the direction of the selectmen, at his own charge, makes and lays a common sewer or main drain for the benefit of himself and others who think fit to join therein, every person who afterwards enters his particular drain into the same, or by any more remote means receives benefit thereby for the draining of his cellar or land, shall pay to the owners of such common sewer or main drain, a proportional part of the charge of making and repairing the same, to be determined by the selectmen of the town and certified under their hands; saving always to the party aggrieved by any such determination the right to a trial by jury, as provided in section six.

SECT. 11. When a common sewer or main drain is stopped or gone to decay, so that it is necessary to open the same in order to repair it or to remove such stoppage, all persons benefited by such repair or removal of obstructions, as well those who do not as those who do cause such repairs to be made or obstruction to be removed, shall pay to the person incurring the expense their proportional parts thereof, to be determined as provided in the preceding section.

Persons benefited by drains to share expense of removing obstructions, &c. R. S. 27, § 4.

SECT. 12. Every person so required to pay his proportional part of the expense of making or repairing a drain or common sewer, shall have notice of the sum and of the person to whom the same is to be paid; and if he does not, within seven days after such notice, pay the same to the person authorized by the selectmen to receive it, he shall be held to pay double the amount certified by the selectmen as aforesaid, with all expenses arising upon such neglect; and the person so authorized by the selectmen may recover the same in an action of contract in his own name.

refusing to pay their proportions, shall pay double the amount, &c. R. S. 27, § 5.

SECT. 13. Whoever has occasion to open a common sewer or main drain in order to clear and repair the same, shall, seven days at least before he begins to open the same, give notice to all parties interested, by advertising in such manner as the selectmen may direct, that such parties may, if they think proper, object thereto and state their objections in person or in writing to the selectmen; and if the selectmen judge the objections reasonable, the parties making the same shall not be held to pay any part of such expenses; but if they do not make their objections to the selectmen within three days after such notice, or if the objections are not adjudged reasonable, the selectmen shall in writing under their hands give liberty to the persons applying, to open such common sewer or main drain, and to clear and repair the same; and all persons interested therein shall pay their proportions to be determined as provided in section ten.

Notice to be given before opening any drain. R. S. 27, § 6.

SECT. 14. Nothing contained in this chapter shall affect any covenants or agreements among the proprietors of such drains or common sewers.

Agreements of owners not affected. R. S. 27, § 7.

## TITLE XIII.

### OF THE REGULATION OF TRADE IN CERTAIN CASES.

- CHAPTER 49.— Of the Inspection and Sale of Provisions and other Merchandise.
- CHAPTER 50.— Of Sales by Auctioneers, and Hawkers and Pedlers.
- CHAPTER 51.— Of Weights and Measures.
- CHAPTER 52.— Of Shipping and Pilotage.
- CHAPTER 53.— Of Money, Bonds, Bills of Exchange and Promissory Notes.
- CHAPTER 54.— Of Agents, Consignees, and Factors.
- CHAPTER 55.— Of Limited Partnerships.
- CHAPTER 56.— Of the Unauthorized Use of Trade-marks and Names.



## CHAPTER 49.

OF THE INSPECTION AND SALE OF PROVISIONS AND OTHER  
MERCHANDISE.APPOINTMENT OF INSPECTORS-GENERAL, &c.  
SECTION

1. Inspectors-general to be appointed by the governor for five years. To be sworn. Present inspectors to continue in office, unless, &c.
2. Deputy-inspectors.

## BEEF.

3. Weighers of beef, when and how appointed.
4. Fees for weighing.

## BREAD.

5. Bread, weight of, how sold.
6. prices of, &c., to be displayed, where sold.
7. to be weighed, &c.
8. Penalty.
9. Rolls, &c.

## BUTTER AND LARD.

10. Inspector-general of butter, &c., to give bond.
11. Deputies to be appointed; to give bond and be sworn.
12. Manner of inspecting.
13. Brands of casks, &c.
14. Size of kegs, and quality of casks.
15. Casks, &c., to be filled with brine before packing; how branded.
16. Inspector-general to make returns; contents.
17. Fees.
18. Penalty for delaying to inspect.
19. Imported butter, &c., not subject to inspection.
20. Penalty for counterfeiting brands.
21. for putting other butter into branded kegs, &c.
22. for exporting, &c., butter, &c., not inspected.
23. When butter, &c., may be seized and libelled.

## CHOCOLATE.

24. Chocolate, how to be stamped.
25. Ingredients; boxes, how branded.
26. Chocolate made contrary to law may be seized, &c.

## FIRE-ARMS.

27. Provers of fire-arms to be appointed and sworn.
28. How fire-arms shall be proved.
29. How stamped.
30. Fees.
31. Penalty for buying, selling, &c., arms not proved.
32. for forging stamps.

## FISH.

33. Inspector-general to give bonds, and have no private interests in pickled fish.
34. may appoint deputies, who shall give bond and be sworn.
35. Inspectors to inspect all fish, &c.
36. Fish, how prepared, packed, and branded.
37. Number, measure, and quality, of mackerel, salmon, shad, &c.
38. Casks, &c., to contain same kind; penalty for shifting contents of.
39. how branded.
40. Fish of foreign catch subject to U. S. duty, how branded.

## SECTION

41. Penalty on inspector for neglect under preceding section.
42. Pickled fish inspected in other states not subject to reinspection.
43. Small fish, how packed.
44. Quality and capacity of casks.
45. Casks to be examined.
46. Fees.
47. Inspector's proportion of deputies' fees.
48. Alewives, &c., how prepared for packing.
49. Sorts of alewives, &c.
50. Quality and capacity of boxes.
51. Brands.
52. Fees.
53. Inspector-general to make returns, &c.
54. Penalty for exporting alewives, &c., contrary to law; for substituting fish of inferior quality. Fish imported need not be reinspected.
55. Fish, when forfeited.
56. Penalty for lading uninspected fish on board of vessels.
57. for selling tainted fish for food.
58. for brauding without inspecting, &c.
59. Quintal, weight of.
60. Clam bait, weight, expense of weighing.

## FRUIT, NUTS, AND VEGETABLES.

61. Fruit, nuts, and vegetables, to be sold by dry measure. Penalty.
62. Nuts and berries measured by the strike.

## GRAIN AND MEAL.

63. Grain and meal to be sold by the bushel.
64. Weight of bushel.
65. Measurers to be appointed. Duty.
66. Penalty for short weight when measurer not employed.
67. Fees of measurer, who to pay.
68. Penalty for false weights, &c., or collusion, &c.

## GUNPOWDER.

69. Quality and size of casks, &c., for gunpowder.
70. All casks to be marked.
71. Penalty for falsely marking, &c.

## HAY.

72. Weighers of hay to be appointed.
73. duty of.
74. may be removed.
75. Penalty for setting up hay scales without authority.
76. Pressed hay, how branded.
77. Forfeiture for selling without brand.
78. Inspectors of bale or bundle hay, appointment of; to be sworn.
79. duties of.
80. Hay, how numbered and marked.
81. Inspectors to furnish weights, &c.
82. Fees.
83. Penalty for selling without inspection.

## HOOPS AND STAVES.

84. Cullers of hoops and staves to be chosen.
85. Quality and size of staves.
86. of hogshhead hoops.

SECTION

- 87. Fees.
- 88. Penalty for fraud in culling.
- HOPS.
- 89. Inspector-general to give bond.
- 90. to appoint deputies.
- 91. No hops to be exported without inspection, except, &c.
- 92. Quality, and how packed.
- 93. How inspected, sorted, and branded; fees.
- 94. Inspector's return.
- 95. Penalty for delay of inspectors.
- 96. for fraud.
- 97. for shifting contents of bags.
- 98. for altering or counterfeiting marks.
- 99. for intermixing hops after inspection.
- 100. for exporting uninspected hops.
- 101. Hops when forfeited.
- 102. shipped coastwise, &c.

LEATHER, BOOTS, &c.

- 103. Inspector-general to give bonds.
- 104. Deputies to be appointed, who shall give bonds.
- 105. Leather to be weighed and stamped.
- 106. Same subject.
- 107. Fees.
- 108. Sole and belt leather not to be sold until inspected, weighed, and sealed, except, &c.
- 109. Penalty for buying or selling leather not inspected.
- 110. for counterfeiting, &c., inspector's marks.
- 111. when weight varies five per cent.
- 112. Appointment of measurers of upper leather.
- 113. Duty of measurers.
- 114. Fees.
- 115. Penalty for counterfeiting measurer's marks.
- 116. Manufacturers of boots, shoes, &c., may stamp their articles; such stamp a warranty.
- 117. Penalty for fraudulently stamping.

LIME AND LIME CASKS.

- 118. Inspectors of lime may be chosen; to be sworn.
- 119. Casks, how branded.
- 120. Fees.
- 121. Quality of lime and casks.
- 122. Description of casks for Maine lime. Same rules, &c., except as to size of casks.
- 123. Penalty for selling in other casks, &c.
- 124. Forfeitures.
- 125. Penalty for shifting contents of casks.

LUMBER, ORNAMENTAL WOOD, AND SHIP TIMBER.

- 126. Surveyor-general of lumber for Suffolk and vicinity appointed by governor, to give bond, &c.
- 127. to appoint deputies. Not to deal in lumber.
- 128. to receive applications and direct surveys.
- 129. to keep record of surveys, fees, &c.
- 130. to make annual return to secretary.
- 131. Surveyors of lumber, appointment of.
- 132. duties of.
- 133. Boards and planks.
- 134. Joists and dimension timber.
- 135. Spruce, hemlock, juniper, southern pine, &c.
- 136. Ash, maple, &c., boards, &c.
- 137. Hewn timber.
- 138. Oak, juniper, and spruce knees.
- 139. Mahogany and cedar.
- 140. Hewn and round ship timber. White and Norway pine, how marked.

SECTION

- 141. Fees.
- 142. Penalty on surveyors for fraud, neglect, &c.
- 143. on persons selling without survey.
- 144. on person acting as surveyor without authority.

MARBLE.

- 145. City and town authorities may establish ordinances for survey of marble.

METALS AND ORES.

- 146. Assayers of ores and metals; appointment.
- 147. Duties and compensation.

MILK.

- 148. Inspectors of milk, how appointed, to be sworn and give notice.
- 149. to keep office, books, &c. May enter stores, &c., and take and analyze milk, &c.
- 150. Measures to be sealed.
- 151. Penalty for neglect to record name, &c.; for selling by measures not sealed, &c.; for selling adulterated milk, &c.

NAILS.

- 152. Nails and brads, how to be made and packed.
- 153. Manufacturer's name to be branded on cask.
- 154. Forfeiture and penalty.
- 155. Penalty for counterfeiting brand, shifting contents of casks, &c.
- 156. for attempting to transport out of state nails not branded, &c.

OILS.

- 157. What shall be deemed pure spermaceti oil.
- 158. Penalty for adulteration.
- 159. for selling adulterated oil as pure oil.
- 160. Same subject.
- 161. Test to be Harris's oleometer.

PAPER.

- 162. Paper, how packed and marked.
- 163. Penalty for selling paper not packed, &c.
- 164. Forfeiture.

POT AND PEARL ASHES.

- 165. Inspector-general to give bond.
- 166. Deputies to be appointed, to give bonds, and be sworn.
- 167. Casks, quality and size of.
- 168. how branded.
- 169. Ashes, how inspected; sorts, &c.
- 170. Casks to be weighed.
- 171. Penalty for unreasonable delay.
- 172. Inspector-general to make returns.
- 173. Fees.
- 174. Inspector's proportion of deputies' fees.
- 175. Inspectors may search vessels. Forfeiture.
- 176. Penalty on masters, &c., for receiving ashes not branded.
- 177. for obstructing search.
- 178. for branding falsely.
- 179. for shifting contents of casks.

POTATOES, ONIONS, AND SALT.

- 180. Potatoes, onions, and salt; weight, measurement. Penalties.

WOOD, BARK, AND COAL.

- 181. Dimensions of cord wood.
- 182. Penalty for selling wood, &c., not measured.
- 183. Fees.
- 184. Wood brought by water, how measured. Towns may make regulations, &c.
- 185. Carters to have tickets.
- 186. Cities may regulate inspection and sale of bark.

## SECTION

187. Certain coals to be sold by weight, except, &c.  
 188. Weighers who are not sellers to be appointed and sworn.  
 189. Seller to procure certificate of weight.  
 190. Forfeiture, &c.

## SECTION

191. Form and dimensions of charcoal measures.  
 192. Dimensions of charcoal boxes, bins, or cans.  
 193. Penalties for illegal measures.  
 194. Persons to be appointed to seize illegal measures, &c., and arrest without warrant, &c.

## APPOINTMENT OF INSPECTORS-GENERAL, &amp;C.

Inspectors-general, how appointed.  
 To be sworn, &c.  
 R. S. 28, §§ 1, 2, 3.

SECTION 1. There shall be inspectors-general of butter and lard, fish, hops, leather, and pot and pearl ashes, appointed by the governor with the advice and consent of the council, for the term of five years from the time of their respective appointments, unless sooner removed by the governor and council, who, before entering upon the duties of their respective offices, shall be sworn. The inspectors-general now in office shall hold their offices according to the term of their respective commissions unless sooner removed.

Deputy-inspectors.  
 R. S. 28, § 4.

SECT. 2. Each inspector-general may appoint deputy-inspectors removable at his pleasure, who shall once in every six months make such returns to him as he requires to carry into effect the provisions of this chapter.

## BEEF.

Weighers of beef, when and how appointed.  
 R. S. 28, § 36.

SECT. 3. The mayor and aldermen and selectmen of each city and town where beef cattle are sold for the purpose of market or barrelling, shall appoint one or more persons, conveniently situated in such city or town, and not dealers in cattle, to be weighers of beef; who shall be sworn.

Fees for weighing.  
 R. S. 28, § 38.

SECT. 4. The fees for weighing shall be as follows: For weighing any number of cattle not exceeding five, twenty cents each; for all above five and not exceeding ten, fifteen cents each; for all above ten and not exceeding twenty, ten cents each; for all above twenty, five cents each after the first twenty; and twelve and a half cents for each certificate, which shall contain the several weights of all the cattle offered for weight by one person, unless otherwise regulated by the seller thereof; which shall be paid by the seller.

## BREAD.

Bread, weight of, how sold.  
 1859, 174, § 1.

SECT. 5. A loaf of bread for sale shall be two pounds in weight. Bread, except that composed in chief part of rye or maize, shall be sold in loaves, half, three-quarter, and quarter, loaves, but not otherwise.

prices of, &c., to be displayed, where sold.  
 1859, 174, § 3.

SECT. 6. In every shop or place where bread is sold by retail, and in each front window thereof, there shall be conspicuously placed a card, on which shall be legibly printed a list of the different kinds and qualities of loaves sold there, with the price of each by the loaf, half, three-quarter, and quarter, loaf.

to be weighed, &c.  
 1859, 174, § 4.

SECT. 7. Bread sold in any shop or place shall be weighed in presence of the buyer, and if found deficient in weight, bread shall be added to make up the legal weight.

Penalty.  
 1859, 174, § 5.

SECT. 8. Whoever violates either of the provisions of the three preceding sections shall forfeit ten dollars for each offence, to be recovered in an action of tort to the use of the party suing therefor.

Rolls, &c.  
 1859, 174, §§ 2, 4.

SECT. 9. The four preceding sections shall not apply to rolls or fancy bread weighing less than one-quarter of a pound.

## BUTTER AND LARD.

Inspector-general of butter, &c., to give bond.  
 R. S. 28, § 44.

SECT. 10. The inspector-general of butter and lard shall give bond with sufficient sureties to the treasurer of the commonwealth, in the penal sum of one thousand dollars.



SECT. 11. He shall, in every seaport from which butter and lard are exported, and in such other places as he shall judge necessary, appoint deputy-inspectors, for whose official conduct he shall be answerable; who shall be sworn before the inspector-general or a justice of the peace, and give bond to the inspector-general with sufficient sureties in the penal sum of five hundred dollars for the faithful discharge of the duties of their office.

Deputies to be appointed, to give bond, and be sworn.  
R. S. 28, § 45.

SECT. 12. The inspector-general or his deputies shall examine casks, kegs, or firkins, containing butter or lard intended to be exported, and with a hollow iron searcher perforate the contents thereof from one head to the other, and thereby draw out so much as shall determine the quality of the whole; and shall see that it has been preserved with a due proportion of good fine salt, that it is sweet and in all respects fit to be exported to any foreign market without danger of spoiling; and they shall return forthwith the butter or lard so drawn out of any cask, keg, or firkin.

Manner of inspecting.  
R. S. 28, §§ 46, 48.

SECT. 13. Each cask, keg, or firkin, of butter or lard, which appears to be good and fit to be exported, shall be branded in plain and legible letters with the words *butter*, or *lard*, and *first*, or *second*, or *third*; and all other butter or lard with the word *refuse*; and each cask, keg, or firkin, so inspected, shall be also branded with the letters MASS., (for Massachusetts,) the name of the place where it is inspected, the initial letter of the christian name of the inspector-general or deputy, and the whole of his surname, and the month and year in which the same is inspected. When the name of the month consists of more than one syllable it may [be] abbreviated.

Brands of casks, &c.  
R. S. 28, § 49.

SECT. 14. The several inspectors may, when requested, inspect and brand kegs of butter or lard of the following sizes, namely: kegs twelve inches long and of seven and a half inches diameter in the heads, or ten inches long with six inches head. All other casks, kegs, or firkins, in which butter or lard is packed for exportation, shall be made of sound and well-seasoned white oak or ash staves and heading, full bound, twelve and a half inches in length, and eight and a half inches diameter in the head, or fifteen inches in length, and ten and a half inches diameter in the head.

Size of kegs and quality of casks.  
R. S. 28, §§ 50, 51.

SECT. 15. Each cask, keg, or firkin, before butter or lard is packed therein, shall be filled with a strong brine, which shall remain therein three days; and as soon as the brine is emptied from the cask, keg, or firkin, it shall be weighed by the owner of such butter or lard, who shall with a marking-iron mark on one of the heads thereof the full weight of the cask, keg, or firkin, and brand the initial letter of his christian name and his surname at large.

Casks, &c., to be filled with brine before packing; how branded.  
R. S. 28, § 62.

SECT. 16. The inspector-general shall annually in the month of May make a return to the secretary's office of the whole number of casks, the different qualities, and the weight of each quality, of butter and lard inspected by him and his deputies during the year preceding the first day of said month.

Inspector-general to make returns.  
Contents.  
R. S. 28, § 47.

SECT. 17. The fees of the inspector-general or any deputy for services in inspecting, branding, weighing, and delivering to the owner an invoice or weigh note, under his hand, of the weight of each cask, keg, or firkin, shall be eight cents for each cask, keg, or firkin, to be paid by the purchaser of the same.

Fees.  
R. S. 28, § 54.

SECT. 18. If the inspector-general or a deputy, on application made for the inspection of butter or lard, unreasonably refuses, neglects, or delays, to proceed to such inspection and branding, for the space of three hours after application so made to him, he shall for each offence forfeit two dollars.

Penalty for delaying to inspect.  
R. S. 28, § 55.

SECT. 19. Butter or lard imported into this state from another of the United States may be shipped without inspection.

Imported butter.  
R. S. 28, §§ 53, 58.

SECT. 20. Whoever counterfeits a brand belonging to or used by the

Penalty for counterfeiting brands.  
R. S. 28, § 56.

inspector or his deputies, or impresses or brands a cask, keg, or firkin, of butter or lard, with a brand or brands of such inspector, or with a counterfeit brand, shall forfeit ten dollars for each offence; and if an owner of butter or lard falsely marks a cask, keg, or firkin thereof, he shall forfeit three dollars for each offence.

for putting other butter in- to branded kegs, &c.  
R. S. 28, § 57.

SECT. 21. Whoever empties a cask, keg, or firkin, of butter or lard, inspected and branded as by this chapter is required, and puts in other butter or lard for sale or exportation without first cutting out the brands and marks, shall for each such cask, keg, or firkin, forfeit ten dollars.

for exporting, &c., butter, &c., not inspected.  
R. S. 28, §§ 46, 58.

SECT. 22. Whoever exports or ships for exportation from this state butter or lard not inspected and branded as aforesaid (except butter and lard imported into this state from any other of the United States,) shall forfeit one dollar; and the master of every such vessel shall forfeit fifty cents for each cask, keg, or firkin, so shipped or exported.

When butter, &c., may be seized and libelled.  
R. S. 28, § 59.  
R. S. 118, §§ 20, 21.

SECT. 23. If butter or lard is shipped for exportation or exported from the state contrary to the provisions of this chapter, the inspector-general or a deputy-inspector may seize and libel the same according to the provisions of chapter one hundred and fifty-three, concerning the seizing and libelling of forfeited goods.

#### CHOCOLATE.

Chocolate, how to be stamped.  
R. S. 28, § 60.

SECT. 24. Manufacturers of chocolate shall not make any cake of chocolate except in pans in which shall be stamped the first letter of their christian name, the whole of their surname, the name of the town where they reside, and the quality of the chocolate in figures, *No. 1*, *No. 2*, *No. 3*, as the case may be, and the letters *MASS*.

ingredients of. Boxes, how branded.  
R. S. 28, § 61.

SECT. 25. Number one shall be made of cocoa of the first quality, number two of the second quality of cocoa, and both shall be free from adulteration; number three may be made of the inferior kinds and quality of cocoa. Each box containing chocolate shall be branded on the end thereof with the word *chocolate*, the name of the manufacturer, the town where manufactured, and the quality, as described and directed for the pans in the preceding section.

when may be seized, &c.  
R. S. 28, § 62.  
R. S. 118, §§ 20, 21, &c.

SECT. 26. If chocolate manufactured in this state is offered for sale or found within the same, not being of one of the qualities described in the two preceding sections and marked as therein directed, the same may be seized and libelled.

#### FIRE-ARMS.

Provers of fire-arms to be appointed and sworn.  
R. S. 28, § 63.  
1837, 207.

SECT. 27. The governor, with the advice and consent of the council, shall appoint suitable persons, not exceeding six in each county where the manufacture of fire-arms is carried on, to be provers of fire-arms, who shall be sworn, and who shall prove all musket barrels and pistol barrels which, being sufficiently ground, bored, and breeched, are offered to them to be proved.

Fire-arms, how to be proved.  
R. S. 28, § 64.

SECT. 28. All musket barrels and pistol barrels manufactured in this state shall before they are sold or stocked, be proved by one of the provers with a ball suited to the bore of the barrel and a charge of powder equal in weight to the ball. The powder used in such proof shall be such that one ounce thereof in a howitzer of four and a half inch calibre at an elevation of forty-five degrees shall be of sufficient power to carry a twelve-pound shot one hundred and thirty yards; or one ounce thereof in a howitzer of five and a half inch calibre at an elevation of forty-five degrees shall be sufficient to carry a twenty-four-pound shot eighty yards.

how stamped.  
R. S. 28, § 65.

SECT. 29. If they stand the proof and in no respect fail, the prover shall stamp them on the upper side, within one and a half inches of the breech, with a stamp consisting of the initial letters of the prover's name,



and over those letters the letter P, and in the line with the initial letters and farther up the barrel the figures designating the year in which the proof is made, and over such figures the letter M, which letters and figures shall be so deeply impressed on the barrel that the same cannot be erased or disfigured, and shall be in the form following: <sup>P.</sup> A. B. <sup>M.</sup> 1855. When barrels burst or in any manner fail in the proving as aforesaid, so that in the opinion of the prover they are unfit for use, they shall not be stamped.

SECT. 30. For so proving each musket barrel the prover shall be entitled to receive from the owner thirty-three cents, and for each pistol barrel twenty-five cents, whether the same stand proof and are stamped, or not.

Fees for proving fire-arms.  
R. S. 28, § 66.

SECT. 31. Whoever manufactures within this state a musket or pistol, or sells or delivers, or knowingly purchases, a musket or pistol so manufactured, without having the barrels first proved, marked, and stamped, or sells, stocks, or finishes, or knowingly purchases, a musket barrel or pistol barrel manufactured within this state, which has not been proved, marked, and stamped, shall forfeit for each offence ten dollars: *provided*, that the penalties and provisions mentioned in this section shall not extend to muskets or pistols, or musket or pistol barrels, manufactured in an armory of the United States, for the use of, or in execution of a contract for the manufacture of fire-arms made or to be made with, the United States.

Penalty for buying, selling, &c., arms not proved.  
R. S. 28, § 67.

SECT. 32. Whoever forges or alters the stamp of a prover of fire-arms, impressed on a musket or pistol barrel pursuant to law, shall pay a fine not exceeding fifty dollars.

for forging stamps.  
R. S. 28, § 68.

FISH.

SECT. 33. The inspector-general of fish shall give bond with sufficient sureties to the treasurer of the commonwealth in the penal sum of ten thousand dollars, and shall have no interest directly or indirectly in the cure or packing of pickled fish.

Inspector-general to give bond.  
R. S. 28, § 69.  
1846, 170, § 2.

SECT. 34. He may appoint deputy-inspectors in every seaport or other town where such fish is packed for exportation, for whose official conduct he shall be answerable. He shall take bonds of each of them with sufficient sureties, and shall receive from each deputy an excise or fee for his commission and bond, of one dollar, and no more. The deputies shall be sworn either before the inspector-general or some justice of the peace.

may appoint deputies, who shall give bond and be sworn.  
R. S. 28, § 70.  
1853, 160, § 1.

SECT. 35. The inspector-general and deputy-inspectors shall inspect all fish for the inspection of which provision is made in this chapter.

to inspect all fish, &c.  
R. S. 28, § 71.

SECT. 36. Under the supervision of the inspector-general and his deputies respectively, all kinds of split pickled fish and fish for barrelling, except herring, and all codfish tongues and sounds, halibut fins and napes, and sword fish, whenever said articles are intended for exportation, shall be well struck with salt or pickle in the first instance, and preserved sweet and free from rust, taint, or damage; and when the same are found in good order and of good quality, they shall be packed either in tierces containing each three hundred pounds, in barrels containing each two hundred pounds, in half barrels containing each one hundred pounds, in quarter barrels containing each fifty pounds, in eighths of a barrel or kids containing each twenty-five pounds, or in kids, or packages containing each less than twenty-five pounds on which the number of pounds therein shall be branded. Every cask, kid, or package, shall be packed with good clean salt suitable for the purpose, and after packing with sufficient salt to preserve its contents, shall be headed or well secured, and filled up with a clean strong pickle.

Fish, how prepared, packed, and branded.  
R. S. 28, § 73.  
1839, 132, §§ 1, 2.

SECT. 37. There shall be four qualities of mackerel, three of salmon



Mackerel, salmon, shad, &c., number, measure, and quality of.  
R. S. 28, § 73.  
1846, 170, § 1.

and shad, and two of other kinds of pickled fish. Mackerel of the best quality, not mutilated, measuring not less than thirteen inches from the extremity of the head to the crotch or fork of the tail, free from rust, taint, or damage, shall be branded *number one*. The next best quality, being not less than eleven inches, measuring as aforesaid, free from rust, taint, or damage shall be branded *number two*. Those that remain after the above selections, if free from taint or damage, and not less than thirteen inches, measuring as aforesaid, shall be branded *number three, large*. Those of the next inferior quality, free from taint or damage, not less than ten inches in length as aforesaid, shall be branded *number three*. All other mackerel free from taint or damage shall be branded *number four*. Those salmon and shad which are of the best quality for family use, free from rust or damage, shall be selected for number one and number two, the best of them selected and branded *number one*, the residue *number two*; all that remain free from taint and sound shall be branded *number three*. Of all other pickled fish the best which are free from taint and damage shall be branded *number one*, those that remain free from taint and sound, *number two*.

Casks, &c., to contain same kind; penalty for shifting contents of.  
R. S. 28, § 74.  
1839, 132, § 1.

SECT. 38. Each cask, kid, or package, shall be filled with fish of the same kind, or parts of the same kind of fish; and whoever intermixes, takes out, or shifts, any inspected fish which are packed or branded as aforesaid, or puts in other fish for sale or exportation, shall forfeit fifteen dollars for each package so altered. If any casualty renders it necessary to repack a cask of inspected fish, it shall in all cases be done by an inspector of such fish.

how branded.  
R. S. 28, § 75.

SECT. 39. The inspector shall brand in plain legible letters on the head of each cask of fish inspected by him, the denomination of the fish packed or repacked therein, the initials of his christian name and the whole of his surname, and, if a deputy, the name of the place for which he is appointed, the letters Mass., and the year in which the fish are packed; and shall also, when in his judgment it may be necessary, nail in a suitable manner any cask in which fish are packed.

Fish of foreign catch subject to U. S. duty, how branded.  
1850, 131, § 1.

SECT. 40. Pickled fish of foreign catch, on which an import duty is laid by the laws of the United States, which is brought into this state and here inspected or reinspected, shall, in addition to the brand mentioned in the preceding sections, be branded with the word "Foreign" on the head of each cask, barrel, or package, in letters not less than one inch in length, and separate and distinct from the other brands.

Penalty on inspector for neglect.  
1850, 131, § 2.

SECT. 41. If an inspector of fish inspects or reinspects any fish of foreign catch so imported and brought into this state, and refuses or neglects to comply with the requirements of the preceding section, he shall forfeit and pay for such refusal or neglect, fifteen dollars for every cask, barrel, or package, so neglected.

Certain fish not to be reinspected.

SECT. 42. Pickled fish, duly inspected in the state or country in which it is packed, shall not be subject to reinspection in this state.

R. S. 28, § 77.  
Small fish, how packed.  
R. S. 28, § 76.

SECT. 43. Small fish, which are usually packed whole with dry salt or pickle, shall be put in good casks of the size and materials required in this chapter for the packing of split pickled fish, and shall be packed close in the cask and well salted; the casks shall be filled full with the fish and salt, and no more salt shall be put with the fish than is necessary for their preservation; and the casks containing such whole fish shall be branded with the denomination of the fish, and a like designation of the qualities as is before prescribed in this chapter in respect to the qualities of other pickled fish.

Casks, quality and capacity of.  
R. S. 28, § 78.

SECT. 44. Casks used for packing or repacking pickled fish intended for exportation, except casks containing less than twenty-five pounds weight, shall be made of sound, well-seasoned white oak, ash, red oak, spruce, pine, or chestnut staves, of rift timber, sound and well-seasoned, with heading of either of said kinds of wood, and when of pine such

heading shall be free from sap and knots, and be planed; the barrels, half barrels, and tierces, shall be well hooped with at least three good hoops of sufficient substance on each bilge and three hoops of the like quality on each chime; the barrel staves shall be twenty-eight inches in length, and the heads shall be seventeen inches between the chimes; the barrels shall contain not less than twenty-eight nor more than twenty-nine gallons each; the half barrels not less than fifteen gallons each; and the tierces not less than forty-five nor more than forty-six gallons each. Each cask shall be made in a workmanlike manner, and branded on its side, near the [bung], with the name of the maker.

SECT. 45. The inspector-general or his deputies shall strictly examine and inspect all casks in which they may be required to pack fish; and shall reject such as are not made in a substantial manner and according to the provisions of this chapter.

Casks to be examined.  
R. S. 28, § 79.

SECT. 46. The fees for inspecting and branding, exclusive of coo-  
page, shall be, for each tierce fourteen cents, each barrel nine cents, each half barrel six cents, each cask of a smaller denomination three cents, and, in addition to the fees aforesaid, one cent for each cask nailed as before provided; and all fees shall in the first instance be paid by the original owner of the fish or by the person employing the inspector, and may be recovered by them respectively of the person who afterwards purchases or exports the same.

Fees for inspecting, &c.  
R. S. 28, § 80.

SECT. 47. The inspector-general may receive from each of his deputies for every cask of fish inspected by him, the following fees: for each tierce, four cents, for each barrel, one cent, for each half barrel, half a cent, and for each smaller cask, one-quarter of a cent.

Inspector's proportion of deputies' fees.  
R. S. 28, § 81.

SECT. 48. Alewives or herrings intended to be packed for sale or exportation, shall be sufficiently salted and smoked to cure and preserve the same, and afterwards shall be closely packed in boxes in clear and dry weather.

Alewives, &c., how prepared and packed.  
R. S. 28, § 82.

SECT. 49. Smoked alewives or herrings shall be divided and sorted by the inspector or his deputy, and denominated according to their quality, *number one* and *number two*. Number one shall consist of all the largest and best cured fish; number two of the smaller but well-cured fish; and in all cases, those which are belly broken, tainted, scorched or burnt, slack salted, or not sufficiently smoked, shall be taken out as refuse.

how sorted and numbered.  
R. S. 28, § 83.

SECT. 50. Boxes made for the purpose of packing smoked alewives or herrings, and containing the same, shall be made of good sound boards sawed and well seasoned; the sides, top, and bottom, of not less than half inch, and the ends of not less than three-quarters inch, boards, securely nailed, and shall be seventeen inches in length, eleven inches in breadth, and six inches in depth, in the clear, inside.

Boxes, quality and capacity of.  
R. S. 28, § 84.

SECT. 51. Each box of alewives or herrings inspected shall be branded on the top by the inspecting officer with the first letter of his christian name, the whole of his surname, the name of the town where it was inspected, with the addition of Mass., and also with the quality of *number one*, or *number two*. Herrings taken on the coasts of Nova Scotia, Newfoundland, Labrador, or Magdalen Islands, and brought into this state, shall also be branded with the name of the place or coast where taken.

Brands.  
R. S. 28, § 85.  
1839, 132, § 3.

SECT. 52. The fees for inspecting, packing, and branding, shall be five cents for each box, which shall be paid by the purchaser; and the inspector-general may require from his deputies one cent for each box inspected, packed, and branded by them.

Fees for inspecting, &c.  
R. S. 28, § 86.

SECT. 53. The inspector-general shall, in the month of January annually, make a return into the office of the secretary of the commonwealth, of all the fish inspected by him and his deputies during the year preceding the first day of said January, designating the quantities, kinds,

Inspector-general to make returns, &c.  
R. S. 28, § 72.  
1839, 102.



and qualities of pickled and smoked fish respectively, and distinguishing the quantities, kinds, and qualities, of pickled fish of a first inspection from those reinspected; and the secretary shall, as soon as may be after receiving such returns, cause the same to be published in any newspaper in Boston authorized to publish the laws of the commonwealth.

Penalty for exporting alewives, &c., for substituting inferior fish.  
Certain fish not to be reinspected.  
R. S. 28, § 87.

SECT. 54. No smoked alewives or herrings shall be exported from this state unless inspected and branded as aforesaid, under a penalty of two dollars for each box exported; nor shall alewives or herrings be taken from a box, inspected and branded as aforesaid, and replaced by others of an inferior quality, with intent to defraud any person in the sale of the same, under a penalty of five dollars for each box so changed: *provided*, that all smoked herrings and alewives, arriving from any other state in the United States and having been there inspected, may be exported in a vessel from this state without being reinspected.

Fish, when forfeited.  
R. S. 28, § 88.  
R. S. 118, §§ 20, 21, &c.

SECT. 55. Pickled or smoked fish, which has not been inspected and branded according to the provisions of this chapter, put on board of a boat or vessel, or into a carriage of conveyance, with intent that the same shall be sold within, or exported from, this state, shall be forfeited, and the inspector-general or a deputy may seize and libel the same.

Penalty for lading unsuspected fish.  
R. S. 28, § 89.

SECT. 56. If a master of a vessel or other person puts or receives on board of a vessel, or in a carriage of conveyance, for transportation from this state, pickled fish, or smoked fish, not inspected and branded as provided in this chapter, he shall forfeit a sum not exceeding ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity.

for selling tainted fish for food.  
R. S. 28, § 90.

SECT. 57. Whoever sells within this state or exports therefrom tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, shall forfeit the sum of ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity; and upon a trial in such case the burden of proof shall be upon the defendant to show for what purpose such fish was so exported or sold.

for branding without inspecting, &c.  
R. S. 28, § 91.

SECT. 58. If the inspector-general or a deputy-inspector brands a cask or package of fish, the contents of which he has not duly inspected, packed, salted, or coopered, or permits any other person to use his brands, in violation or evasion of the provisions of this chapter, he shall forfeit twenty dollars for each offence, and be liable to removal from office.

Quintal, weight of.  
1837, 166.

SECT. 59. When fish are sold by the quintal, it shall be understood to mean a quintal of one hundred pounds avoirdupois, and all contracts concerning fish sold in this manner shall be construed accordingly.

Clam bait, weight, expense of weighing.  
1849, 43, §§ 1, 2.

SECT. 60. When clam bait is sold by the barrel, it shall be understood to mean two hundred and thirty pounds avoirdupois of clams; and all contracts concerning clam bait sold in this manner shall be construed accordingly. If a disagreement arises between the purchaser and seller respecting its weight, either party may have it weighed, and if it is not of the weight aforesaid, the seller shall pay the expense of weighing and coopering the same; otherwise the purchaser shall pay such expense.

#### FRUIT, NUTS, AND VEGETABLES.

Fruit, nuts, &c., standard measure of.  
Penalty.  
1853, 68, § 1.  
See Ch. 51.

SECT. 61. The dry measure shall be the sole authorized public standard for measuring all fruits, vegetables, and nuts, when the same are sold by measure. Whoever sells such articles by any other than dry measure, shall forfeit and pay a sum not exceeding ten dollars for every such offence.

Nuts and berries measured by the strike.  
1850, 261, § 1.  
1851, 238, § 1.

SECT. 62. Chestnuts, walnuts, and cranberries and all other berries, when sold, shall be measured by the strike or level measure, in the same manner as flax seed and other similar articles are measured.



GRAIN AND MEAL.

SECT. 63. In all contracts for the sale and delivery of wheat, corn, rye, oats, barley, buckwheat, cracked corn, ground corn or corn meal, ground rye or rye meal, and any other meal except oatmeal, the same shall be bargained for and sold by the bushel.

Grain and meal, how sold. 1840, 82, § 1. 1855, 232, § 1. See Ch. 51, § 19.

SECT. 64. A bushel of wheat shall be sixty pounds; a bushel of corn or rye, fifty-six pounds; a bushel of oats, thirty-two pounds; a bushel of barley or buckwheat, forty-eight pounds; and a bushel of cracked corn, corn meal, rye meal, or any other meal except oatmeal, fifty pounds avoirdupois.

Weight of bushel. R. S. 28, § 160. 1840, 82, § 1. 1855, 232, § 1.

SECT. 65. The mayor and aldermen of cities and selectmen of towns shall annually appoint one or more measurers of grain, and when but one is appointed by them they may authorize him to appoint deputy-measurers. Each of such measurers and deputies shall, when called upon by either of the parties to a contract for the sale of any quantity exceeding one bushel of either of the articles mentioned in the preceding section, ascertain the weight thereof and give a certificate of the number of bushels as ascertained by weight according to the rule therein prescribed.

Measurers to be appointed. Duty. 1855, 232, § 2. 1855, 422.

SECT. 66. Whoever sells or delivers any quantity exceeding one bushel of either of the articles aforesaid, without the same having been weighed by one of the public measurers appointed under the preceding section, shall forfeit the sum of two dollars for every measured bushel so delivered not containing the number of pounds herein before required, to be recovered by the purchaser in an action of tort.

Penalty for short weight when measurer not employed. 1855, 232, § 3.

SECT. 67. The fees of such measurers shall be prescribed by the mayor and aldermen or the selectmen of the several places in which they are appointed, and shall be paid one-half by the seller and one-half by the purchaser.

Fees of measurer, who to pay. 1855, 232, § 4.

SECT. 68. If a measurer or deputy-measurer uses, or has in his possession with intent to use, for the purposes herein provided, any false weights, scales, balance, or other instrument for weighing, or colludes with the purchaser or seller with intent to defraud the other party, or makes and utters a false and fraudulent certificate under this chapter, he may be removed from office by the mayor and aldermen or selectmen, and shall also on conviction thereof be punished by a fine not exceeding five hundred dollars and by imprisonment not exceeding six months in the house of correction.

Penalty for false weights, &c., or collusion, &c. 1855, 232, § 5.

GUNPOWDER. 1860 Ch. 173

SECT. 69. Gunpowder manufactured in this state shall be put into strong and tight casks containing twenty-five pounds, fifty pounds, or one hundred pounds, each, unless the same is well secured in copper, tin, or brass canisters holding not exceeding five pounds each, and closely covered with copper, brass, or tin covers.

Quality and size of casks, &c., for gunpowder. R. S. 28, § 92. See Ch. 88, §§ 45, 49.

SECT. 70. Each cask containing gunpowder manufactured within this state, or brought into the same by land or water and landed, shall be marked on the head with black paint, in legible characters, with the word *gunpowder*, the name of the manufacturer, the weight of the cask, and the year in which the powder was manufactured; and each canister of gunpowder shall be marked with the word *gunpowder*.

All casks to be marked. R. S. 28, § 93.

SECT. 71. Whoever knowingly marks a cask of gunpowder with the name of any person other than the manufacturer of the same, or changes gunpowder from a cask marked with the name of one manufacturer into a cask marked with the name of another manufacturer, shall for each offence forfeit a sum not exceeding twenty dollars.

Penalty for falsely marking, &c. R. S. 28, § 94.

HAY. 1861 Ch. 37

Weighers of hay to be appointed.  
R. S. 15, § 38.  
R. S. 28, §§ 95, 98.

SECT. 72. In cities in which the city council and in towns in which the inhabitants shall adopt this and the three following sections, the mayor and aldermen and selectmen may from time to time appoint, for a term not exceeding one year, some person or persons to have the superintendence of the hay scales belonging to their place, who shall weigh hay offered for sale therein, and any other article offered to be weighed.

duty of.  
R. S. 28, § 96.

SECT. 73. The persons so appointed shall conform to all such rules and regulations as shall be established by the city council or selectmen respectively concerning the hay scales, and the compensation or fees for weighing hay and other articles.

may be removed.  
R. S. 28, § 97.

SECT. 74. The mayor and aldermen or selectmen may remove any weigher of hay, and fill any vacancy that may occur from death or otherwise.

Penalty for setting up hay scales without authority.  
R. S. 28, § 98.

SECT. 75. If a person not so appointed sets up hay scales in a town or city, for the purpose of weighing hay or other articles, he shall forfeit twenty dollars a month so long as the same are continued, to be recovered in an action of tort and appropriated to the use of the city or town.

Pressed hay, how branded.  
1836, 240, § 1.

SECT. 76. Pressed hay offered for sale shall be branded upon the crate enclosing it with the first letter of the christian name and the whole of the surname of the person packing and screwing or otherwise pressing said hay, and with the name of the city or town and state where the hay is pressed.

Forfeiture for selling without brand.  
R. S. 118, §§ 20, 21.  
1833, 240, §§ 2, 3.

SECT. 77. Pressed hay offered for sale without being so branded shall be forfeited, one-half to the person or persons prosecuting therefor and the other half to the use of the city or town where the same is so offered for sale, and may be seized and libelled.

Inspectors of bundle hay, appointment of; to be sworn, &c.  
1847, 246, §§ 1, 2.

SECT. 78. The mayor and aldermen and selectmen of each city and town in which bale or bundle hay is sold, may, on the petition of ten or more legal voters of such city or town, annually appoint one or more persons as inspectors of bale or bundle hay, who shall be sworn; and may remove any inspector so appointed, and fill any vacancy that may occur from death or otherwise.

duties of.  
1847, 246, § 3.

SECT. 79. Each inspector shall inspect and weigh all bale or bundle hay within the limits of the city, town, or ward, for which he may be appointed, when requested so to do by the owner or vendor.

Bundle hay, how numbered and marked.  
1847, 246, § 4.

SECT. 80. Bales or bundles of hay so inspected which are found to be sweet, of good quality, and free from damage or improper mixture, shall be branded or marked *No. 1*. Bales or bundles found to be sweet, and free from damage or improper mixture, but consisting of hay of a secondary quality, shall be branded or marked *No. 2*. Bales or bundles found to be wet, or in any way damaged, or which shall contain straw or other substances not valuable as hay, shall be branded or marked *bad*. Each bale or bundle so inspected shall be branded or marked with the first letter of the christian name and the whole of the surname of the inspector, and the name of the place for which he is inspector, together with the month and year when inspected, and also the net weight of the bundle.

Inspectors to furnish weights, &c.  
1847, 246, § 5.

SECT. 81. Each inspector shall furnish himself with proper scales, weights, seals, and other suitable instruments, for the purposes aforesaid.

Fees.  
1847, 246, § 6.

SECT. 82. The fees for inspecting, weighing, and marking, hay, as provided for in this chapter, shall be fixed by the respective officers having the power of appointment, and shall be paid by the employer of the inspector.

Penalty for selling without inspection, &c.  
1847, 246, § 7.

SECT. 83. Whoever sells bale or bundle hay in a place where an inspector is appointed, which has not been inspected and weighed as herein provided, shall forfeit for each bale or bundle so sold two dollars;



but no inspection need be made where the vendor and vendee agree to waive an inspection.

HOOPS AND STAVES.

SECT. 84. In every maritime place from which staves are usually exported, there shall be annually chosen two or more suitable persons to be viewers and cullers of staves and hoops, who shall be sworn.

Cullers of hoops and staves to be chosen.  
R. S. 28, § 99.  
Quality and size of staves.  
R. S. 28, § 101.

SECT. 85. White oak butt staves shall be at least five feet in length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge and every part thereof; white oak pipe staves shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three-quarters of an inch thick on the heart or thinnest edge; white oak and red oak hogshead staves shall be at least forty-two inches long, and not less than half an inch thick on the heart or thinnest edge; white oak and red oak barrel staves for foreign market shall be thirty-two inches long, and for home use thirty inches long, and shall average half an inch thick on the heart or thinnest edge; white oak and red oak hogshead and barrel staves shall be at least four inches in breadth, and none less than three inches in breadth in the narrowest part, and those of the breadth last mentioned shall be clear of sap; and all staves shall be well and proportionably split.

SECT. 86. Hogshead hoops that are exposed to sale or exported shall be from ten to thirteen feet in length, of white oak or walnut, of good and sufficient substance, and well shaved; those of oak shall not be less than one inch broad at the least end, and those of walnut shall not be less than three-quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve, and thirteen feet respectively, shall be made up in distinct bundles by themselves. If hoops of less dimensions than those prescribed by law, are packed, or if a bundle contains less than thirty hoops, the bundle shall be forfeited, and may be seized by the culler of hoops and libelled for the benefit of the place where it is offered for sale.

of hogshead hoops.  
R. S. 28, § 102.

SECT. 87. Cullers shall be allowed for their time and services, fifty cents a thousand for hoops, twenty-eight cents a thousand for barrel staves, thirty-three cents a thousand for hogshead staves, forty cents a thousand for pipe staves, and forty-four cents a thousand for butt staves, as well refuse as merchantable: the merchantable to be paid for by the buyer, the refuse by the seller.

Fees for culling.  
R. S. 28, § 100.

SECT. 88. If a culler connives at or is guilty of fraud in culling staves or hoops, he shall forfeit fifty dollars for each offence; and if he refuses to perform service when requested shall forfeit five dollars.

Penalty for fraud in culling.  
R. S. 28, § 103.

HOPS.

SECT. 89. The inspector-general of hops shall give bond with sufficient sureties to the treasurer of the commonwealth, in the penal sum of three thousand dollars.

Inspector-general to give bond.  
R. S. 28, § 104.

SECT. 90. He shall appoint one or more deputy inspectors in such parts of the state as will best accommodate the growers and consumers of hops; shall be responsible for their official conduct, may require from each of them sufficient bonds with sureties, and receive from each one-fifth part of the fees received by him.

to appoint deputies.  
R. S. 28, §§ 105, 110.

SECT. 91. No hops, other than those which are of the growth of another state, as hereinafter mentioned, shall be exported from this state, unless they are of the qualities prescribed by this chapter, and have been duly inspected and marked accordingly, and are in square bags or pockets, each bag to contain as nearly as may be four hundred pounds, and each pocket two hundred pounds weight of merchantable hops. Hops of the growth of another state being duly inspected therein and accom-

No hops to be exported without inspection, except, &c.  
R. S. 28, § 107.



panied with certificates of the same, shall not be subject to reinspection in this state.

Hops, quality of, and how packed.  
R. S. 28, § 108.

SECT. 92. No hops shall be deemed merchantable unless they have been well picked, are free from stems and leaves, and properly kiln-dried. The bags or pockets in which they are packed shall be made sufficiently strong to preserve the hops from damage, and of such a texture as will fairly receive the marks of the cultivator and inspector; and they shall be marked with the name of the cultivator and the place in which he lives.

how inspected, sorted, and branded.  
Fees.  
R. S. 28, § 109.

SECT. 93. The inspector-general or one of his deputies shall examine the contents of every bag and pocket of hops intended to be exported, in such manner as to ascertain the quality of such hops, and if it is found that they are merchantable as before prescribed, and firmly packed, that they have been so packed at least ten days previous to such examination, and that the bags or pockets are such as are required, the inspecting officer shall distinguish the same by marking them in legible characters with the words *first sort*, or *second sort*, or *refuse*, as their quality may be; he shall add thereto the date of the year of which in his opinion they are the growth, together with the initials of his christian and the whole of his surname, and the letters MASS.; for which services and weighing and delivering an attested schedule of the same, he shall receive at the rate of ten cents for every hundred pounds weight so inspected, to be paid to him by the purchaser, exclusive of the charges of repacking and of mending the bags or pockets, which shall be paid by the vendor of the hops, and exclusive also of the storage, should said hops be stored by said inspector more than thirty days after being inspected.

Inspector's return.  
R. S. 28, § 106.

SECT. 94. The inspector-general shall annually in January make a return to the secretary of the commonwealth of the number of bags of hops inspected and marked by him and his deputies during the year preceding the first day of said month, designating in such return the different qualities and the weight of each quality respectively.

Penalty for delay of inspectors.  
R. S. 28, § 111.

SECT. 95. If an inspector of hops on application made to him unnecessarily neglects or delays to examine, mark, and weigh, any hops, he shall for each offence forfeit five dollars.

for fraud of inspector.  
R. S. 28, § 112.

SECT. 96. If an inspector is guilty of fraud in inspecting hops, or puts his mark on any bag, pocket, or package, of hops, which has not been actually examined, inspected, and found merchantable, he shall forfeit twenty dollars for each bag, pocket, or package, so falsely marked.

for shifting contents of bags.  
R. S. 28, § 113.

SECT. 97. Whoever empties a bag or pocket of hops marked as aforesaid, and puts in other hops for sale or exportation, without first obliterating the marks, shall for each offence forfeit five dollars.

for altering or counterfeiting marks.  
R. S. 28, § 114.

SECT. 98. Whoever counterfeits or alters a mark belonging to or proper to be used by the inspector-general or his deputies, or marks a bag or pocket of hops therewith, shall forfeit ten dollars, and the hops so marked shall be forfeited, and may be seized and labelled.

for intermixing hops after inspection.  
R. S. 28, § 115.

SECT. 99. Whoever intermixes, takes out, or shifts, any hops from a bag or pocket, inspected and marked as is above required, or puts into such bag or pocket any other hops for sale or exportation, shall forfeit twenty dollars for each offence.

for exporting uninspected hops.  
R. S. 28, § 116.

SECT. 100. Whoever exports or ships for exportation out of this state, any hops not inspected and marked as aforesaid, shall forfeit twenty dollars; and the master of each vessel having the same on board, ten dollars for each bag or pocket so shipped or exported.

Hops, when forfeited.  
R. S. 28, § 117.  
R. S. 118, §§ 20, 21, &c.

SECT. 101. If hops are exported or shipped for exportation from this state contrary to the provisions of this chapter, the same shall be forfeited, and the inspector-general or any deputy-inspector may seize and libel the same.

SECT. 102. Nothing contained in this chapter shall be construed to

affect hops shipped coastwise to any place within this state for the purpose of being inspected and marked; but in such case, a certificate from the owner shall accompany them, setting forth the owner's name, the number of bags, pockets, or packages, and the name of the inspector to whom they are sent for inspection.

Hops shipped coastwise, &c.  
R. S. 28, § 118.

LEATHER, BOOTS, &c.

SECT. 103. The inspector-general of leather shall give bonds with sufficient sureties to the treasurer of the commonwealth in the penal sum of three thousand dollars.

Inspector-general, bonds of.  
R. S. 28, § 120.  
1851, 217.

SECT. 104. He shall appoint one or more deputy-inspectors in any place upon the application of the mayor and aldermen or selectmen, shall be answerable for their doings, and shall take a bond with sufficient sureties from each of them, to himself and his successors in office, in a penal sum not exceeding three hundred dollars.

Deputies to be appointed, who shall give bonds.  
R. S. 28, § 121.

SECT. 105. Each inspector shall furnish himself with proper scales, weights, and seals, and when requested shall inspect within the place for which he is appointed all sole and belt leather offered for his inspection, shall weigh each side of leather which he inspects, and shall impress thereon his name and the name of the place for which he is inspector at full length, and also the weight thereof; and on leather which he finds manufactured of good hides in the best manner, he shall impress the word *best*, on that manufactured of good hides in a merchantable manner, the word *good*, on that manufactured of damaged hides in a merchantable manner, the word *damaged*, and on leather not belonging to any of the qualities aforesaid, the word *bad*.

Leather to be inspected, weighed and stamped.  
R. S. 28, §§ 125, 127.  
1851, 217.

SECT. 106. Each deputy-inspector who is appointed for one place in a county shall, upon application made to him, inspect sole and belt leather in any other place of the same county, when there is no inspector for such other place; and he shall upon the like application inspect leather in any place of an adjoining county when there is no inspector appointed in such adjoining county.

Same subject.  
R. S. 28, § 126.  
1851, 217.

SECT. 107. The inspector-general and each deputy-inspector shall be paid for inspecting, weighing, and sealing, each side of leather, the sum of one cent, which shall be paid by the purchaser; and he may receive from each of his deputies one mill for each side of leather inspected, weighed, and sealed, by such deputy. When an inspector is called to inspect a lot of leather of less quantity than one hundred sides, or which is more than one mile distant from the inspector's place of business, he shall receive two cents a side for each side inspected, weighed, and sealed, and ten cents a mile travelling fees, to be computed both ways.

Fees.  
1850, 177, §§ 1, 2.  
1851, 217.

SECT. 108. No sole or belt leather made of the hides of neat cattle, except such as has been previously inspected and sealed by one of the inspectors of this state, or by some inspector lawfully appointed for that purpose in some other of the United States, shall be sold for any purpose whatsoever, within a place in which there is an inspector, until it has been inspected, weighed, and sealed, by one of the inspectors of such place.

Sole and belt leather, &c., not to be sold until inspected.  
R. S. 28, § 123.  
1851, 217.

SECT. 109. Whoever, within a place for which an inspector has been appointed, buys or sells sole or belt leather not inspected as aforesaid, shall forfeit one dollar for each side of leather so bought or sold.

Penalty.  
R. S. 28, § 124.  
1839, 135.  
1851, 217.

SECT. 110. Whoever counterfeits, alters, or defaces, the inspector's marks on a side of leather inspected, shall for each offence forfeit the sum of twenty-five dollars.

for counterfeiting marks.  
R. S. 28, § 128.  
1851, 217.

SECT. 111. If a side of sole or belt leather, when dried in a merchantable manner, so varies as to weigh five per cent. more or less than the weight marked thereon by the inspector, he shall be subject to the pay-

when weight varies five per cent.



R. S. 28, § 130.  
1851, 217.

Appointment of  
measurers of  
upper leather.  
1841, 119, § 1.

Duty of meas-  
urers.  
1841, 119, §§ 2, 3.

Fees.  
1841, 119, § 5.

Penalty for  
counterfeiting  
marks, &c.  
1841, 119, § 4.

Manufacturers  
of boots, shoes,  
&c., may stamp  
their articles.  
Such stamp a  
warranty.  
R. S. 28, § 131.

Penalty for  
fraudulently  
stamping.  
R. S. 28, § 132.

Inspectors of  
lime may be  
chosen; to be  
sworn.  
R. S. 28, § 133.

Casks of lime,  
how branded.  
R. S. 28, § 134.

Fees.  
R. S. 28, § 135.

Quality of lime  
and casks.  
R. S. 28, § 135.

Description of

ment of the whole variation, at a fair valuation, to be recovered in an action of tort by the party injured thereby.

SECT. 112. The mayor and aldermen or selectmen of any place, when thereto requested by two or more citizens thereof, shall annually in April appoint one or more persons as measurers of upper leather, who shall be sworn.

SECT. 113. Each measurer shall furnish himself with proper racks or measures, and suitable seals; shall, when requested, go to any place within the city or town for which he is appointed measurer, and there ascertain the number of square feet in each side of upper leather made of the hides of neat cattle, buffalo, or other animal, usually heretofore sold by measure, except such as shall have been previously measured and sealed by a measurer of some place in this state, or by some person lawfully appointed for that purpose in another of the United States; and shall seal the same, impressing thereon his name and the name of the place for which he is a measurer, at full length, and the measure thereof in square feet, as low as a quarter.

SECT. 114. Every measurer shall be paid for measuring and sealing each side of upper leather the sum of one cent, which shall be paid by the person who requests him to measure and seal the same.

SECT. 115. Whoever counterfeits, wilfully alters, or defaces, such marks on any side of upper leather so measured, shall for each offence forfeit the sum of twenty-five dollars.

SECT. 116. Each manufacturer of leather, or of boots, half boots, shoes, pumps, sandals, slippers, or over-shoes, shall have the exclusive right of stamping the articles by him manufactured, with the first letter of his christian name, the whole of his surname at large, and the name of the place of his abode; and such stamping shall be considered as a warranty that the article stamped is merchantable, made of good materials, and well manufactured. Such articles shall not be considered merchantable unless so stamped.

SECT. 117. Whoever fraudulently stamps, or aids and abets in fraudulently stamping, either of the articles enumerated in the preceding section, with the name or stamp of another person, shall be punished either by fine not exceeding one hundred dollars, or imprisonment not exceeding six months, or both.

#### LIME AND LIME CASKS.

SECT. 118. Each city and town in which lime is manufactured, or into which it is imported, may annually choose one or more inspectors of lime; who shall be sworn, and shall inspect all lime manufactured in such place at the time when it is filled at the kiln, and all lime imported or sold therein.

SECT. 119. Every cask of lime so inspected shall be branded with the word *inspected*, with the first letter of the christian name and the whole of the surname of the inspector, and with the name of the place where it is manufactured.

SECT. 120. The inspectors shall receive for the inspection and branding of each cask of such manufactured lime, four cents, to be paid by the manufacturer or owner; and for the inspection of each cask of lime so imported or sold, the same sum, to be paid by the purchaser.

SECT. 121. No stone lime manufactured within this state shall be sold, or exposed to sale, or shipped on board of a vessel, in casks, unless it is well burnt and pure, in good and sufficient new casks, containing either fifty or one hundred gallons each, made of well-seasoned heads and staves, with ten good and sufficient hoops on each cask, well driven and sufficiently secured with nails or pins.

SECT. 122. When an inspection is demanded of lime manufactured



in and imported from the state of Maine, the inspector shall require that such lime be in casks manufactured from sound and well-seasoned lumber, with at least ten good hoops well driven and secured upon each cask; the staves of the cask shall be thirty inches in length and not less than half an inch in thickness; the heads shall be not less than three-fourths of an inch in thickness and shall be well crozed in; each cask to be not less than twenty-six and one-half inches between the heads and seventeen inches between the chimes, with a good and suitable bilge, and made in a workmanlike manner; and the same rules, regulations, restrictions, and liabilities except as to the size of the cask, shall apply to lime imported from the state of Maine, as are provided respecting lime manufactured in this state.

SECT. 123. Whoever sells, exposes to sale, ships, or receives on board of a vessel, in casks, any lime manufactured within this state, or the state of Maine, other than such as is contained in casks made according to the provisions of the preceding sections, and having the aforesaid marks or brands respectively, shall forfeit one dollar and fifty cents for each cask sold, offered for sale, shipped, or received on board of a vessel: *provided*, that nothing contained in this chapter shall be construed to restrain any person from retailing lime by the bushel, or other quantities not in casks.

SECT. 124. If a cask of lime is sold, or exposed to sale, or put on board of a vessel, contrary to the provisions of this chapter, the same shall be forfeited, and an inspector may seize and libel the same.

SECT. 125. If, after a cask containing lime has been branded as aforesaid, any person shifts the contents of such cask and puts therein other lime with intent to sell the same, he shall forfeit one dollar and fifty cents for each cask of lime so shifted.

LUMBER, ORNAMENTAL WOOD, AND SHIP TIMBER.

SECT. 126. A surveyor-general of lumber shall be appointed by the governor, with the advice and consent of the council, for a district to consist of the county of Suffolk, the cities of Charlestown, Cambridge, and Roxbury, and the towns of Dorchester, Quincy, and Brighton. He shall reside in the district, keep an office in Boston conveniently located and accessible to the public, be sworn, give bond with sufficient sureties to the treasurer of the commonwealth in the sum of two thousand dollars for the faithful discharge of his duty, and hold his office for three years, and until a successor is appointed and qualified, unless sooner removed.

SECT. 127. He shall appoint a sufficient number of competent and discreet deputy-surveyors, removable at his pleasure, and for whom he shall be responsible; they shall be citizens of the places for which they are appointed, and be sworn and give bond to him for the faithful discharge of their duties. He shall appoint one or more of them to survey oak and other wood commonly used in ship-building, and one or more to survey mahogany, cedar, and other ornamental wood and lumber. No surveyor-general or deputy shall be a dealer in lumber of the kind he is appointed to survey, or survey any lumber in which he has a pecuniary interest, directly or indirectly, or for any person or persons by whom he is employed, by a salary or per diem allowance.

SECT. 128. All applications for surveys shall be made to him. All surveys made by his deputies and the order of their services, in rotation or otherwise, shall be under his directions, and he shall, by himself or his deputies, survey and admeasure all lumber brought into the district for sale, except lumber manufactured in this state, which shall also be surveyed when a request is made therefor by purchaser or seller.

SECT. 129. He shall keep a record of all lumber surveyed by himself

casks for Maine lime. Same rules, &c., except as to size of casks. 1846, 237, §§ 1, 2.

Penalty for selling in other casks, &c. R. S. 28, § 137.

Forfeitures. R. S. 28, § 138. R. S. 118, §§ 20, 21, &c.

Penalty for shifting contents of casks. R. S. 28, § 139. 1839, 135.

Surveyor-general of lumber for Suffolk and vicinity, how appointed, to give bond, &c. 1859, 224, §§ 1, 2.

to appoint deputies, not to deal in lumber. 1859, 224, §§ 2, 3.

to receive applications, and direct surveys.

to keep record

of surveys, fees,  
&c.  
1859, 224, § 4.

or his deputies for any person or firm, and the amount of fees received by each, and as often as once in three months, and when collected by them, he shall be entitled to ten per cent. thereof. The record shall be at all times open to the inspection of any members of the city councils, and to the selectmen, of the several cities and towns in the district.

to make annual return to secretary.  
1854, 224, § 6.

SECT. 130. He shall annually on or before the fifteenth day of October, make a return to the secretary of the commonwealth, specifying the amount and various kinds and qualities of all lumber surveyed in the district during the year ending on the thirtieth day of the preceding month, by whom surveyed, and the amount of fees received by him and his deputies.

Surveyors of lumber in cities, appointment of.  
R. S. 15, § 38.  
1858, 164, § 1.

SECT. 131. Cities, except those situated in the district mentioned in section one hundred and twenty-six, may from time to time establish such ordinances as they deem expedient, with suitable penalties, respecting the appointment of surveyors of lumber therein.

duties of.  
1858, 164, § 2.

SECT. 132. Surveyors of lumber in cities and towns, when requested so to do by either the purchaser or seller, shall survey oak and other hard wood commonly used in ship-building, mahogany, ash, and other ornamental wood, and all other lumber brought for sale into, or manufactured in, this state. But no surveyor shall survey lumber in which he has a pecuniary interest.

Boards and planks.  
Sorts and numbers.  
1858, 164, § 3.

SECT. 133. Of pine boards and planks, except southern pine, there shall be six sorts. The first sort shall be denominated number one, and include boards not less than one inch thick, square edged, free from rot, shakes, and nearly free from knots and sap, except such boards and planks as are not less than fifteen inches wide and not more than one-eighth waste, which shall be received as number one. The second sort shall be denominated number two, and include boards not less than one inch thick, and of which not less than seven-eighths is suitable for planing and first class finish: *provided*, that such boards as are clear but deficient in thickness as aforesaid, shall be received as number two. The third sort shall be denominated number three, and include boards not less than seven-eighths of an inch thick, and of which not less than three-fourths is suitable for planing and second class finish. The fourth sort shall be denominated number four, and include boards not less than seven-eighths of an inch thick, nearly free from rot and nearly square edged, free from loose and large branch knots, and suitable for covering buildings; all Norway pine boards and planks shall be included in the fourth, fifth and sixth sorts. The fifth sort shall be denominated number five, and include all boards and planks of every description not being within the other four denominations, except when one-third is worthless, which boards and planks shall be denominated refuse.

Joists and dimension timber.  
1858, 164, § 4.

SECT. 134. Of pine joists and dimension timber there shall be three sorts. The first sort shall be denominated number one, and include all joists and dimension timber that are sound and nearly square edged. The second sort shall be denominated number two, and include all other descriptions, except when one-third is worthless, which joists and dimension timber shall be denominated refuse.

Spruce, hemlock, juniper, southern pine, &c.  
1858, 164, § 5.

SECT. 135. Of spruce, hemlock, juniper, and southern pine, boards, planks, sawed timber, and joists, there shall be three sorts. The first sort shall be denominated number one, and include all boards, planks, sawed timber, and joists, that are sound and nearly square edged. The second sort shall be denominated number two, and include all other descriptions, except when one-third is worthless, which boards, planks, sawed timber, and joists, shall be denominated refuse.

Ash, maple, &c., boards, &c.  
1858, 164, § 6.

SECT. 136. Of ash, maple, and other hard wood and ornamental boards, planks, and joists, there shall be three sorts. The first sort shall be denominated number one, and include all boards, planks, and joists, that are free from rot, shakes, and bad knots. The second sort shall be



denominated number two, and include all other descriptions, except when one-third is worthless, which boards, planks, and joists, shall be denominated refuse.

SECT. 137. Of hewn timber, except mahogany and cedar, there shall be three sorts. The first sort shall be denominated number one, and include all timber that is sound and nearly square edged. The second sort shall be denominated number two, and include timber of all other descriptions, except [when] one-third is worthless, which timber shall be denominated refuse.

Hewn timber.  
Sorts and numbers.  
1858, 164, § 7.

SECT. 138. Of oak, juniper, and spruce knees, there shall be two sorts. The first sort shall be denominated number one, and include all sound knees of the following dimensions: arm or root one foot six inches long, body of knee three feet long, working thickness four inches; arm or root two feet and six inches long, body of knee three feet long, working thickness five inches; arm or root two feet and nine inches long, body of knee three feet and six inches long, working thickness six inches; arm or root three feet and three inches long, body of knee four feet and six inches long, working thickness seven inches; arm or root three feet and six inches long, body of knee four feet and three inches long, working thickness eight inches; arm or root three feet and nine inches long, body of knee four feet and six inches long, working thickness nine inches; arm or root four feet long, body of knee five feet long, working thickness ten inches and upwards. The second sort shall be denominated refuse, and shall include all other descriptions of less dimensions than those specified in the first denomination; all knees shall have the working thickness marked thereon, and on the first sort, the number "one" shall be marked.

Oak, juniper,  
and spruce  
knees.  
1858, 164, § 8.

SECT. 139. Of mahogany and cedar there shall be but one sort, and it shall be the duty of the surveyors who are especially appointed to survey mahogany and cedar, to number all the mahogany and cedar logs or sticks contained in each lot or cargo in regular numerical order, and to mark the number of each log or stick upon the same in legible characters. And the said surveyor shall, to the best of his ability, ascertain the whole number of feet, board measure, in each and every log or stick, and what quantity thereof is merchantable, and what is refuse. And said surveyor shall thereupon issue a certificate or survey bill, of said survey, in which shall be stated the number of each log or stick, and the whole number of feet contained in the same, and specifying the number of feet which is merchantable and refuse, respectively.

Mahogany and cedar.  
1858, 164, § 9.

SECT. 140. Hewn timber, and round timber, used for masts and ship-building, shall be surveyed and sold as ton timber, at the rate of forty cubic feet to the ton; oak and other timber and planks commonly used in ship-building, shall have the true contents marked thereon in cubic feet or board measure, and in the first and second sorts, the numbers "one" and "two" shall be marked thereon respectively. In the survey of white and Norway pine boards, planks, joists, sawed timber, and dimensions, the contents of the same shall be truly marked thereon in legible numbers, and on the first, second, third, fourth, and fifth sort of white and Norway pine boards, planks, and dimensions, the numbers shall be marked respectively. All boards, planks, joists, sawed timber, and dimension lumber, shall be received and sold according to the contents thereof, as fixed and marked under the aforesaid regulations. In the admeasurement of round timber, one-fourth of the girth shall be taken for the side of the square.

Hewn and round ship timber. White and Norway pine.  
1858, 164, § 10.

SECT. 141. The fees for surveying and marking shall be paid by the purchaser, as follows: for white, southern, and Norway pine, spruce, hemlock, juniper, and white wood boards, planks, joists, sawed timber, and dimension, twenty-four cents for every thousand feet board measure; for southern pine flooring boards, thirty-four cents for every thou-

Fees.  
1858, 164, § 11.



sand feet board measure; for all kinds of pine, spruce, hemlock, and juniper timber, twelve cents for every ton; for oak and other hard wood, twenty-four cents for every ton; for knees commonly used in ship-building, three cents for each knee; for ash, maple, and other hard wood and ornamental boards, planks, and joists, forty cents for every thousand feet board measure; for Cuba, Saint Domingo, and other branch or hard mahogany, one dollar for every thousand feet board measure; and for mahogany from the bay of Honduras, and for cedar, seventy-five cents for every thousand feet board measure.

Penalty on surveyors for fraud, neglect, &c.  
1853, 164, § 12.

SECT. 142. If a surveyor is guilty of or connives at any fraud or deceit, in the surveying, numbering, or marking, the contents of any kind of wood or lumber, required by this chapter to be surveyed; or if a surveyor when requested by the owner of lumber to survey the same refuses, without good reason, to perform the duty, he shall forfeit for each offence a sum not less than ten nor more than fifty dollars.

on persons selling without survey.  
1853, 164, § 13.

SECT. 143. Whoever sells or purchases any lumber or wood herein named, brought into this state for sale, which has not been surveyed, numbered, and marked, according to the provisions hereof, shall forfeit a sum equal to double the amount of fees for surveying the same.

on person acting as surveyor without authority.  
1853, 164, § 14.

SECT. 144. Whoever presumes to perform any of the duties of surveyor of lumber, without authority, shall forfeit not less than fifty nor more than two hundred dollars.

#### MARBLE.

City and town authorities may establish ordinances for survey of marble.  
1851, 100.

SECT. 145. The mayor and aldermen and selectmen of a city or town may establish such regulations, with suitable penalties, respecting the appointment of a surveyor, and the survey and admeasurement of marble of every description, foreign or American, that is imported or brought into such place for sale, as they from time to time deem expedient.

#### METALS AND ORES.

Assayers of ores, &c., how appointed.  
1846, 123, § 1.

SECT. 146. The governor with the advice and consent of the council may appoint one or more suitable persons to be assayers of ores and metals, who shall be sworn.

duties and compensation of.  
1846, 123, § 2.

SECT. 147. Each assayer shall assay such ores and metals as may be offered to him for assay, and give a certificate thereof, for which service he shall be paid a reasonable compensation by the person procuring such assay to be made.

#### MILK.

Inspectors of milk, how appointed; to be sworn, and give notice.  
1859, 206, §§ 1, 3.

SECT. 148. The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more persons to be inspectors of milk for their respective places, who shall, before entering upon the duties of their offices, be sworn. Each inspector shall give notice of his appointment by publishing the same two weeks in a newspaper published in his city or town, or if no newspaper is published therein, by posting up such notice in two or more public places in such town.

1860 ch. 165  
to keep office, books, &c., may enter stores, &c., and take and analyze milk, &c.  
1859, 206, §§ 1, 2, 3.

SECT. 149. The inspectors shall keep an office and books for the purpose of recording the names and places of business of all persons engaged in the sale of milk within their limits; they may enter any place where milk is stored or kept for sale, and all carriages used in the conveyance of milk, and whenever they have reason to believe any milk found therein is adulterated, they shall take specimens thereof and cause the same to be analyzed, or otherwise satisfactorily tested, the result of which they shall preserve as evidence, and shall prosecute for all violations of the provisions of section one hundred and fifty-one. They shall receive such compensation as the mayor and aldermen or selectmen determine.

SECT. 150. All measures, cans, or other vessels, used in the sale, or buying at wholesale, of milk, shall be annually sealed by the sealer of weights and measures by wine measure; and all cans so used shall be marked by the sealer with figures showing the quantity which they hold.

Measures to be sealed.  
1859, 206, § 4.  
See Ch. 51.

SECT. 151. Whoever neglects to cause his name and place of business to be recorded in the inspector's books, and his name legibly placed upon all carriages used by him in the conveyance of milk, before engaging in the sale thereof, and whoever sells, or buys at wholesale, milk by any other measures, cans, or vessels than those sealed as before provided, or adulterates, by water or otherwise, milk to be sold in this state, or being recorded in the books of the inspector as a dealer in milk, conveys from place to place, or knowingly sells or causes to be sold adulterated or unwholesome milk, shall forfeit twenty dollars for each offence. And whoever offers for sale milk produced from cows fed upon the refuse of breweries or distilleries, or any substance deleterious to the quality of the milk, shall forfeit twenty-five dollars for the first, and fifty dollars for every subsequent, offence.

Penalty for neglect to record name, &c.  
for selling by measures not sealed; for selling adulterated milk, &c.  
1859, 222.  
1859, 206, §§ 2, 4, 5.  
1860 Ch. 153.  
*Allen 372.*

NAILS.

SECT. 152. Wrought nails, cut nails, and brads of all sizes, manufactured within this state, shall be packed in strong and sufficient casks made of seasoned timber, well hooped, not containing more than three hundred pounds each, and shall be well made and packed free from waste pieces of iron (unless refuse nails or brads) or any fraudulent mixture increasing the weight.

Nails and brads, how to be made and packed.  
R. S. 28, §§ 163, 164.

SECT. 153. Every cask of wrought or cut nails or brads, shall be marked or branded on the head by the manufacturer, in plain, legible letters, with the initials of his christian name and the whole of his surname, (or, if manufactured by a corporation or company, by the name of such corporation or style of such company,) and the net weight of its contents.

Casks, how branded.  
1837, 111, § 1.

SECT. 154. If any cask, package, or quantity, of wrought or cut nails or brads, manufactured in this state and not so branded or marked, is offered for sale or is put on board of a vessel or carriage of conveyance to be carried out of this state, the same shall be forfeited; and the manufacturer shall for each pound of refuse, scraps, or waste, which is mixed with said nails or brads, forfeit one dollar.

Forfeiture and penalty.  
R. S. 28, § 165.

SECT. 155. Whoever counterfeits a brand used or intended to be used for the purpose aforesaid, or destroys or alters a mark or impression made by another person's brand on a cask of wrought or cut nails or brads, and causes a different impression by such counterfeit brand to be marked or impressed thereon, or shifts any such nails or brads from one branded cask to another, and thereby avails himself of another person's brand, shall forfeit the sum of twenty dollars.

Penalty for counterfeiting brand; shifting contents of casks, &c.  
R. S. 28, § 166.

SECT. 156. Whoever places on board a vessel or carriage of conveyance any cask or other quantity of wrought or cut nails or brads manufactured in this commonwealth, which are apparently intended to be transported out of the same, and are not branded and marked as above provided and directed, shall forfeit a sum equal to the full value of such nails or brads.

for attempting to transport out of state nails not branded, &c.  
R. S. 28, § 167.

OILS.

SECT. 157. All descriptions of oils sold under the names of sperm, spermaceti, lamp, summer, fall, winter, and second winter oils, shall be deemed pure winter pressed or summer strained spermaceti oil.

Pure spermaceti oil.  
R. S. 28, § 169.

SECT. 158. Oils sold under the names aforesaid which are adulterated with whale, tallow, or any other oil of less value than pure spermaceti oil, shall be deemed whale oil, and the vendor shall be liable

Penalty for adulteration.  
R. S. 28, § 170.



to the purchaser for double the amount of the difference in value between pure spermaceti oil and whale oil, when the quantity sold exceeds five gallons, and four times the difference when said quantity is less than five gallons, unless the proportions of the respective oils of which the mixture consists are disclosed to the purchaser in writing at the time of sale; and when the quantity sold is less than five gallons, the vendor shall attach to the vessel in which it is delivered a label, upon which shall be legibly written the names and proportions of the respective oils composing such mixture.

Penalty for selling adulterated oil as pure oil.  
R. S. 28, § 171.  
1852, 312.

SECT. 159. Whoever sells any oil or oils commonly known under the names of sperm, spermaceti, lamp, summer, fall, winter, and second winter oils, which have been adulterated from pure spermaceti oil, by a mixture of whale, tight pressed, or other inferior oil, and does not, in the manner prescribed in the preceding section, disclose to the purchaser the proportion of the oils of which it consists, shall for each offence forfeit the sum of fifty dollars, to be recovered in an action of tort by the person suing for the same, and to his use.

Same subject.  
R. S. 28, § 172.

SECT. 160. Oils sold under any of the names mentioned in the preceding section which have been mixed with tight pressed oil shall be deemed tight pressed oil, and the vendor thereof, or of tight pressed oil under any of the names aforesaid, shall be liable to the purchaser for double the value of the difference between the first quality of spermaceti oil and tight pressed oil, and to the penalties provided in the preceding section; unless at the time of sale the vendor discloses in writing the mixture aforesaid, and, if not mixed, its quality.

Test.  
R. S. 28, § 173.

SECT. 161. The test of pure spermaceti oil shall be Harris's oleometer.

#### PAPER.

Paper, how packed and marked.  
R. S. 28, § 174.

SECT. 162. No paper, excepting paper of foreign manufacture, press paper, bonnet paper, and paper usually sold by weight, shall be sold or offered for sale, unless the same is packed in reams, half reams, or quarter reams, each ream containing twenty quires, each half ream, ten quires, each quarter ream, five quires, and each quire, twenty-four sheets; and unless on the face of each parcel there are stamped or otherwise legibly marked the names of the manufacturers, their place of residence, and the words *one ream*, *half ream*, or *quarter ream*, as the case may be: *provided*, that printing paper may be packed in parcels of two reams each, and shall be stamped or otherwise legibly marked with the words *two reams*, and the names of the manufacturers, and their place of residence.

Penalty for selling paper not packed, &c.  
R. S. 28, § 175.  
1839, 133.

SECT. 163. Whoever offers for sale or sells any paper contrary to the provisions of the preceding section, or transports or causes to be transported out of this state, or puts on board of a vessel or carriage of conveyance, with intention to transport the same out of this state, any paper, contrary to said provisions, shall, for each ream, package, or parcel, so offered for sale, sold, or put on board of a vessel or carriage of conveyance, forfeit the sum of four dollars.

Forfeiture.  
R. S. 28, § 176.  
R. S. 118, §§ 20, 21.

SECT. 164. All such paper not packed, or not stamped, as aforesaid, shall be forfeited to the use of any person who may seize and libel the same.

#### POT AND PEARL ASHES.

Inspector-general to give bond.  
R. S. 28, § 177.

SECT. 165. The inspector-general of pot and pearl ashes shall give bond with sufficient sureties to the treasurer of the commonwealth in the penal sum of five thousand dollars.

to appoint deputies, who shall give bonds, &c.  
R. S. 28, § 178.

SECT. 166. He shall appoint deputy-inspectors in every seaport where pot and pearl ashes are exported, and in such other places as he judges necessary, who shall be sworn either before him or before a justice of



the peace, and for whom he shall be answerable; and he shall take bond from each of them with sufficient sureties for the faithful discharge of the duties of his office.

SECT. 167. Every cask in which pot or pearl ashes are packed for exportation shall be made of sound and well-seasoned oak or white ash staves and heading, full bound, twenty-nine inches in length, nineteen inches diameter in the head, and of such weight in proportion to its contents as will amount as near as may be to fourteen per cent. tare thereon.

Casks for pot, &c., ashes, quality and size of.  
R. S. 28, § 185.

SECT. 168. Every manufacturer of pot and pearl ashes shall brand each cask containing the same with the initial letters of his christian name and the whole of his surname, and with the name of the town where they were manufactured, before the same are removed from the manufactory, and shall forfeit one dollar for each cask so removed before being so branded.

how branded.  
R. S. 28, § 180.

SECT. 169. No person shall ship any pot or pearl ashes for exportation before he has submitted the same to the examination of the inspector or his deputy, who shall if necessary start them out of the casks and carefully inspect and sort them into three different sorts; and put each sort by itself in tight new casks, well hooped and coopered, which the inspector shall distinguish by the words *first sort, second sort, or third sort*, with the words *pot ashes*, or *pearl ashes*, as the case may be, branded in plain, legible letters, together with the letters of his name, the place of inspection, and the word MASSACHUSETTS at full length on each cask: *provided*, that pot or pearl ashes which have been imported into this state from any of the United States where laws exist for the inspection of the same, may be exported without being reinspected in this state, if they are accompanied by a certificate of inspection signed by an inspector of the state whence they were imported, describing the quality and weight thereof, and if the casks containing them are branded with the name of the state from which they were imported, and are in all respects made conformably to law.

Ashes, how inspected. Sorts, &c.  
R. S. 28, § 181.

SECT. 170. The inspector, at the time of starting pot or pearl ashes for inspection, shall weigh the casks and mark the weight with a marking iron on each head.

Casks to be weighed.  
R. S. 28, § 186.

SECT. 171. If an inspector of pot and pearl ashes unreasonably refuses, neglects, or delays, to make an inspection, for the space of three hours after an application therefor, he shall for each offence forfeit five dollars.

Penalty for unreasonable delay.  
R. S. 28, § 184.

SECT. 172. The inspector-general shall annually in January make a return into the office of the secretary of the commonwealth, of the number of casks of pot and pearl ashes inspected by him and his deputies during the year preceding the first day of said January, specifying the number under each brand and the weight of each quality.

Inspector-general to make returns.  
R. S. 28, § 179.

SECT. 173. An inspector shall receive for inspecting, weighing, and delivering to the owner an invoice or weight note under his hand of the weight of each cask of pot or pearl ashes, six cents for every hundred weight so inspected; and the further sum of twelve cents for coopering and nailing each cask and putting the same in shipping order, to be paid by the purchaser.

Fees.  
R. S. 28, § 182.

SECT. 174. The inspector-general shall not receive from any deputy more than seven and a half per cent. on the sum first mentioned in the preceding section, nor any part of the sum allowed for cooperage.

Inspector's part of deputies' fees.  
R. S. 28, § 183.

SECT. 175. Any inspector may enter on board of vessels lying in the harbor where he is authorized to make inspection, and if upon search he discovers any cask of pot or pearl ashes not branded as before directed in this chapter, the same shall be forfeited, and the inspector shall seize and libel the same.

Inspectors may search vessels. Forfeiture.  
R. S. 28, § 187.  
R. S. 118, §§ 20, 21.

SECT. 176. The master or commander of a vessel who receives on board a cask of pot or pearl ashes not branded as aforesaid, shall forfeit twenty dollars for each cask so received.

Penalty for receiving ashes not branded.  
R. S. 28, § 188.

Penalty for obstructing search.  
R. S. 28, § 189.  
1839, 135.

for branding falsely.  
R. S. 28, § 190.

for shifting contents of casks.  
R. S. 28, § 191.

SECT. 177. If the master or commanding officer of a vessel, or any of his servants or seamen, obstructs or hinders the inspector in making search as aforesaid, the person so offending shall for each offence forfeit fifty dollars.

SECT. 178. Whoever, with intent to defraud, brands with the name of another person a cask of pot or pearl ashes manufactured by himself, or brands such cask manufactured by another person with his own name, or counterfeits a brand belonging to or proper to be used by an inspector, or impresses or brands a cask with a brand of such inspector, or with a counterfeited brand, shall for each offence forfeit two hundred dollars.

SECT. 179. Whoever empties a cask inspected and branded as is required by this chapter, and puts in other pot or pearl ashes for sale or exportation, without first cutting out the brand marks, shall for each cask forfeit two hundred dollars.

#### POTATOES, ONIONS, AND SALT.

Potatoes, onions, and salt; weight; measurement. Penalties.  
R. S. 28, § 199.  
1847, 14.  
1856, 271.  
See Ch. 51, § 19.

SECT. 180. In purchases and sales of potatoes, onions, or salt, the standard weight of the bushel of potatoes shall be sixty pounds, of onions fifty-two pounds, and of salt seventy pounds. In order to ascertain the mean or true weight, the vendor shall weigh ten measures at least in every hundred bushels, five measures at least in every fifty bushels, and two measures at least in every less quantity than fifty bushels sold. And every person who sells potatoes, onions, or salt, without ascertaining the weight as aforesaid, shall for every bushel so sold, and in like proportion for a greater or less quantity, forfeit the sum of two dollars to be recovered in an action of tort to the sole use of any person who first prosecutes therefor: *provided*, that this section shall not extend to sales of such articles when the vendor and purchaser appoint a third person to measure or ascertain the weight or quantity of the same or mutually agree thereon, nor to such sales not exceeding ten bushels, where the purchaser does not require the same to be weighed.

#### WOOD, BARK, AND COAL.

Cord wood, dimensions of.  
R. S. 28, § 200.

Penalty for selling wood, &c., not measured.  
R. S. 28, § 201.  
1839, 135.  
7 Cush. 371.

Fees.  
R. S. 28, § 202.

Wood, brought by water, how measured. Towns may make regulations, &c.  
R. S. 28, § 203.

SECT. 181. Cord wood exposed for sale shall be either four, three, or two feet long, including half the kerf; and the wood, being well and close laid together, shall measure in quantity equal to a cord of eight feet in length, four in width, and four in height.

SECT. 182. If any fire wood or bark exposed to sale in a market, or upon a cart or other vehicle, is offered for sale before the same has been measured by a public measurer of wood and bark and a ticket thereof signed by him delivered to the driver, certifying the quantity which the load contains, the name of the driver, and the place in which he resides, the driver and owner shall for each load thereof severally forfeit the sum of five dollars.

SECT. 183. The measurers of wood and bark in any place shall be entitled to such fees for their services as the mayor and aldermen or selectmen shall establish; and the fees shall in each case be paid to the measurer by the driver, and shall be repaid by the purchaser.

SECT. 184. Cord wood brought by water into a place for sale and landed, shall be measured by a public measurer; and for that purpose the wood shall be corded and piled by itself in ranges, making up in height what shall be wanting in length, and being so measured, a ticket shall be given to the purchaser, who shall pay the stated fees for such service. But cities and towns may establish ordinances and regulations with suitable penalties, for the inspection, survey, admeasurement, and sale, of wood, coal, and bark for fuel, brought into such places for sale, and may also provide for the appointment of such surveyors, inspectors, and other officers, and establish their fees of office.



SECT. 185. Each wharfinger, carter, or driver, who conveys any firewood or bark from a wharf or landing place, shall be furnished by the owner or seller with a ticket certifying the quantity which the load contains and the name of the driver; and if firewood or bark is thus conveyed without such ticket accompanying the same, or if a driver refuses to produce and show such ticket on demand to any sworn measurer, or to give his consent to have the same measured, or if such ticket certifies a greater quantity of wood or bark than the load contains, in the opinion of the measurer after measuring the same, the driver and owner shall for each load thereof forfeit the sum of five dollars. But nothing contained in this chapter shall be construed to extend to a person who transports, carts, or causes to be transported or carted, from a wharf or landing place to his own dwelling house or store, cord wood or bark which he has purchased on a wharf or landing place, or has landed thereon upon his own account.

Carters to have tickets.  
R. S. 28, § 204.  
1839, 135.

SECT. 186. The city council of a city may establish ordinances and regulations, with suitable penalties, for the inspection, survey, admeasurement, and sale of bark for fuel or manufacturing purposes brought into said city for sale, whether the same is exposed for sale in ranges or upon a cart or other vehicle; and said city may provide for the appointment of such surveyors, inspectors, and other officers, as may be necessary to carry into effect said ordinances, and may establish their fees: *provided*, that no penalty for any one violation shall exceed the sum of five dollars.

Cities may regulate inspection and sale of bark.  
1854, 361.

SECT. 187. Anthracite, bituminous, or mineral coal when sold in quantities of five hundred pounds or more, except by the cargo, shall be sold by weight, and two thousand pounds avoirdupois shall be the standard for the ton by which the same shall be weighed and sold.

Certain coals to be sold by weight, except, &c.  
1855, 188, § 1.

SECT. 188. The mayor and aldermen or selectmen of every place where such coal is sold shall appoint one or more persons not engaged in the business of selling coal to be weighers of such coal, who shall be sworn, and be removable at the pleasure of the board appointing them, and shall receive such fees as may be ordered by the board, which shall be paid by the seller.

Weighers who are not sellers to be appointed and sworn.  
1855, 188, §§ 3, 5.

SECT. 189. On or before the delivery of such coal the seller shall cause the same to be weighed by a sworn weigher of the place in which the same is sold or delivered, and a certificate of the weight thereof signed by the weigher shall be delivered to the buyer or his agent at the time of the delivery of the coal.

Seller to procure certificate of weight.  
1855, 188, § 2.

SECT. 190. Whoever violates any provision of the three preceding sections, shall for each offence forfeit thirty dollars.

Forfeiture, &c.  
1855, 188, § 4.

SECT. 191. In the sale of charcoal, the baskets, tubs, or vessels used in measuring the same, except as hereinafter provided, shall be of a cylindrical form and of the following dimensions in the inside thereof, to wit: nineteen inches in diameter in every part and eighteen inches and one-tenth of an inch in depth, measured from the highest part of the bottom thereof; each of which shall be deemed to be of the capacity of two bushels, and shall be filled level full; and every such vessel shall be sealed by a sealer of the place in which the person using the same shall usually reside or do business.

Form and dimensions of charcoal measures.  
1853, 305, § 1.

SECT. 192. Charcoal may be measured in boxes, bins, or cans, of the following capacities, to wit: of five, ten, twenty, thirty, forty, or fifty bushels, such boxes, bins, or cans, being first lawfully sealed as aforesaid; and five thousand one hundred and thirty-two cubic inches shall be deemed equal to two bushels, or the level basket, tub, or vessel, described in the preceding section.

Dimensions of charcoal boxes, bins, or cans.  
1853, 305, § 2.

SECT. 193. Every vendor of charcoal, who has in his possession any basket, tub, box, bin, vessel or measure of less dimensions than those required by the two preceding sections, or not sealed as therein provided,

Penalty for having, &c., illegal measures.  
1839, 135.



1853, 305, § 3.  
1859, 250, §§ 1, 2.

with intent to use the same or permit the same to be used for measuring charcoal, sold or agreed to be sold, shall forfeit ten dollars for every such measure in his possession. And every person who measures, in any such basket, vessel, or measure, any charcoal sold or offered for sale, unless by special agreement of the buyer and seller, shall forfeit a sum not exceeding one dollar for every two bushels so measured or pretended to be measured, and such basket, vessel, or measure shall be destroyed.

Persons to be appointed to seize illegal measures, &c., and arrest without warrant, &c. 1859, 250, §§ 1, 2.

SECT. 194. The mayor and aldermen or selectmen of every place shall appoint one or more suitable persons to seize all baskets, vessels, or measures used or intended to be used for measuring charcoal, and not conforming to the foregoing provisions; and to arrest without warrant any person having in his possession such baskets, vessels, or measures, and take him and them before the proper tribunal for prosecution; and upon his being convicted or found guilty, such tribunal shall order said baskets, vessels, and measures to be destroyed.

## CHAPTER 50.

### OF SALES BY AUCTIONEERS, AND HAWKERS AND PEDLERS.

#### AUCTIONEERS.

##### SECTION

1. Auctioneers to be licensed by selectmen, &c., for one year. Fees for license. License to be recorded.
2. If license is refused, application may be made to county commissioners, &c.
3. Auctioneers to give bond.
4. to keep an account of sales.
5. Penalty for receiving goods from minors, &c.
6. Auctioneer may sell within his county, &c. Penalty.
7. Forfeitures.
8. Tenants answerable if they permit unlicensed sales in their premises.
9. Penalty for selling without license.
10. Sales by sheriffs, executors, &c., not included in this chapter.
11. Penalty for fraud or deceit.
12. Licenses in cities, &c. Penalty for selling at places not authorized.

#### HAWKERS AND PEDLERS.

13. Articles which may be sold by hawkers and pedlers without license.

##### SECTION

14. Cities and towns may regulate such sales by minors. Penalty.
15. Prohibited articles.
16. Secretary may grant licenses on certificate of mayor, &c., for sale of goods not prohibited.
17. Form and effect of license. Party may sell on payment, &c.
18. Fees for license.
19. Residents paying taxes, &c., may be licensed without fee.
20. State licenses. County licenses.
21. Records of licenses.
22. Sums paid for licenses, how appropriated.
23. Licenses may be transferred.
24. Persons licensed, to post name, &c., on parcels or vehicles, and exhibit license on demand, &c.
25. Licenses not to protect party, &c. Shall be void, if, &c.
26. Penalty for counterfeiting, &c., licenses, and selling without license.
27. for unauthorized sales.
28. Hawkers, &c., licensed as auctioneers, not to sell, &c.

#### AUCTIONEERS.

Auctioneers to be licensed, &c. R. S. 29, §§ 1, 2, 12.

SECTION 1. The mayor and aldermen and selectmen of any city or town, by writing under their hands, may license one or more suitable inhabitants of their respective cities and towns, to be auctioneers within the same for the term of one year, and may receive to the use of the city or town for each license the sum of two dollars. They shall record every license in a book to be kept by them for that purpose.

If selectmen refuse, county commissioners may license. R. S. 29, § 3.

SECT. 2. If on application made to them in writing they unreasonably refuse or neglect to license the applicant, he may, after giving them fourteen days' notice and bonds to pay all costs, apply to the county commissioners, who, upon hearing the parties, may grant a license.

SECT. 3. Each auctioneer shall, if required, give bonds, in a reason-

able penalty with sufficient sureties to the treasurer of the city or town where he is licensed, with condition that he shall in all things conform to the laws relating to auctions.

Auctioneers to give bond. 1857, 232, § 1.

SECT. 4. Every auctioneer shall keep a fair and particular account of all goods and chattels sold by him, and of the persons from whom received, and to whom sold.

to keep an account of sales. R. S. 29, § 5.

SECT. 5. An auctioneer who receives for sale by auction any goods from a minor, knowing him to be such, or sells by auction any of his own goods before sunrise or after sunset, shall forfeit to the use of the town a sum not exceeding two hundred dollars for each offence.

Penalty for receiving goods from minors, &c. R. S. 29, § 4. 5 Mass. 505.

SECT. 6. An auctioneer may sell at public auction in any place within his county; and when employed by others may sell real or personal estate upon the premises where the same is situated in any place within the state. If an auctioneer sells by auction in any place where he is not authorized to sell, he shall forfeit fifty dollars.

Auctioneer may sell within his county, &c. 1837, 233. 1852, 115, § 1.

SECT. 7. If a person sells or offers for sale by auction any goods or chattels in any city or town except as is provided in this chapter, the same shall be forfeited to the use of the city or town, and may be seized by the mayor and aldermen or selectmen, and libelled according to the provisions of chapter one hundred and fifty-three.

Forfeitures. R. S. 29, § 9.

SECT. 8. The tenant or occupant of any house or store, having the actual possession and control of the same, who knowingly permits a person to sell real or personal estate by public auction in such house or store, or in any apartment or yard appurtenant to the same, contrary to the provisions of this chapter, shall forfeit a sum not exceeding five hundred dollars.

Tenants answerable, if they permit unlicensed sales in their premises. R. S. 29, § 10.

SECT. 9. If a person, not licensed and qualified as an auctioneer, sells or attempts to sell any real or personal estate by public auction, he shall for each offence forfeit a sum not exceeding five hundred dollars.

Penalty for selling without license. R. S. 29, § 7.

SECT. 10. Nothing in the preceding sections shall extend to sales made by sheriffs, deputy-sheriffs, coroners, constables, collectors of taxes, executors, administrators, guardians, assignees of insolvent debtors, or any other person required by law to sell real or personal estate.

Sales by sheriffs, &c., not included in this chapter. R. S. 29, § 11.

SECT. 11. Every auctioneer or other person who is guilty of fraud or deceit in relation to any sale by auction, shall for each offence forfeit a sum not exceeding one thousand dollars.

Penalty for fraud or deceit. 1857, 232, § 2.

SECT. 12. Licenses may be granted upon such conditions respecting the places of selling goods and chattels within a city or town as the mayor and aldermen or selectmen deem expedient; and if an auctioneer makes a sale by auction at a place not authorized by his license, he shall be liable to like penalties as if he had sold without a license.

Licenses in cities, &c. R. S. 29, §§ 13, 14. 1854, 448, § 33.

HAWKERS AND PEDLERS.

SECT. 13. Any person may go about from town to town, or from place to place, or from dwelling-house to dwelling-house in the same town, exposing to sale and selling fruits and provisions, live animals, brooms, agricultural implements, fuel, newspapers, books, pamphlets, agricultural products of the United States, and the products of his own labor or the labor of his family.

Articles which may be sold by pedlers without license. 1846, 244, § 2. See §§ 15, 25.

SECT. 14. The city council of any city, and the inhabitants of any town, may authorize the mayor and aldermen or selectmen thereof to restrain the sale by minors of any goods, wares, or merchandise, the sale of which is permitted in the preceding section, and while such authority remains in force the mayor and aldermen and selectmen may make rules restraining such sales by minors, or may grant licenses to minors to make such sales upon such terms and conditions as they shall prescribe; but such restraints and licenses shall not remain in force beyond their term of office. Whoever is guilty of a violation of the rules and regu-

Cities and towns may regulate such sales by minors. Penalty. 1846, 244, § 2.



lations so made, or sells any such articles without a license when the same has been required, shall forfeit a sum not exceeding ten dollars for each offence.

Prohibited articles.  
1846, 244, § 2.  
See §§ 17, 20, 25.

SECT. 15. The sale of jewelry, wines, spirituous liquors, playing cards, indigo, and feathers, in the manner specified in section thirteen, is prohibited.

Secretary may grant licenses on certificate of mayor, &c., for sale of goods not prohibited.  
1846, 244, §§ 3, 6.  
See §§ 18, 19, 20, 23, 25.

SECT. 16. The secretary of the commonwealth may grant a license to go about exposing to sale and selling any goods, wares, or merchandise, not prohibited in the preceding section, to any applicant who files in his office a certificate signed by the mayor of a city or by a majority of the selectmen of a town, stating that to the best knowledge and belief of such mayor or selectmen, the applicant therein named resides in such city or town, is a citizen of the United States and of good repute for morals and integrity. The mayor or selectmen before granting such certificate shall require the applicant to make oath that he is the person named therein, that he is a resident of such city or town, and a citizen of the United States; which oath shall be certified by a justice of the peace, and accompany the certificate. Every license so granted shall bear date the first day of January of the year in which it is granted, and shall continue in force one year, and no longer.

Form and effect of license.  
Party may sell on payment, &c.  
1846, 244, § 4.  
See §§ 18, 19, 25.

SECT. 17. The secretary shall cause to be inserted in every license the names of such cities and towns as the applicant selects, with the sum to be paid to the respective treasurers thereof annexed, and shall receive from the applicant one dollar for each city or town so inserted. Every person so licensed may sell as aforesaid any goods, wares, and merchandise, not prohibited in section fifteen, in any city or town mentioned in his license, upon first paying the sum so required to the treasurer of such city or town, who shall certify on the face of the license the sum so received.

Fees for license.  
1846, 244, § 5.  
See § 25.

SECT. 18. Every person licensed under the two preceding sections shall pay to the treasurer of each city or town mentioned in his license, the sums following: for every town containing not more than one thousand inhabitants, according to the United States census next preceding the date of his license, three dollars; for every town containing more than one thousand and not more than two thousand inhabitants, six dollars; for every town containing more than two thousand and not more than three thousand inhabitants, eight dollars; for every town containing more than three thousand and not more than four thousand inhabitants, ten dollars; and for every city and town containing more than four thousand inhabitants, ten dollars, and one dollar for every one thousand inhabitants over four thousand contained therein; but the sum so to be paid to a treasurer shall in no case exceed twenty-five dollars.

Residents paying taxes, &c., may be licensed without fee.  
1851, 208, § 1.  
See §§ 23, 25.

SECT. 19. Any person resident, paying taxes upon his stock in trade, and qualified to vote, in a city or town, may there expose to sale and sell goods, wares, or merchandise, upon obtaining a license pursuant to the provisions of sections sixteen and seventeen, and shall not be required to pay to the treasurer of such city or town any sum therefor.

State licenses County licenses.  
1846, 244, § 7.  
See § 25.

SECT. 20. The secretary, upon the conditions required in section sixteen, may grant special state licenses, upon payment by the applicant of one hundred dollars for each license; and the person so licensed may expose to sale any goods, wares, or merchandise, not prohibited, in any city or town. He may also grant as aforesaid, upon payment by the applicant of one dollar for each county mentioned therein, special county licenses; and the person so licensed may expose to sale, within such counties, any tin, britania, glass, or wooden wares, of the manufactures of the United States, or any other goods, wares, or merchandise, manufactured by himself or his employer, and not prohibited in section fifteen, upon tendering to the treasurer of each county mentioned in said license, respectively, the sums following: for Suffolk, Essex, Middlesex, and



Worcester, each four dollars; for Norfolk, Berkshire, Hampden, Bristol, and Plymouth, each three dollars; for Franklin, Hampshire, and Barnstable, each two dollars; for Nantucket, one dollar; for the county of Dukes County, one dollar. And the county treasurers, respectively, upon the receipt of any sum, as aforesaid, shall certify the amount so received on the face of the license.

SECT. 21. The secretary shall keep a record of all licenses granted, with the number of each, the name and residence of the persons licensed, the counties, cities, and towns, mentioned therein, of all special state licenses, and of all transfers of licenses. The treasurers of the counties, cities, and towns, shall severally keep records of all licenses upon which the sums provided in this chapter have been paid, with the number of each, the name and residence of the persons licensed, and the sums received thereon, and all such records shall be open for public inspection.

Records of licenses.  
1846, 244, § 6.  
See § 25.

SECT. 22. All sums paid to the secretary under this chapter shall be for the use of the state; and all sums paid to the treasurer of a county, city, or town, shall be for the use of such county, city, or town.

Sums paid for licenses, how appropriated.  
1846, 244, § 8.  
See § 25.

SECT. 23. A license granted under the provisions of section sixteen or nineteen may be transferred by the secretary, upon application therefor and upon evidence furnished by the applicant like that required for granting a license. The person to whom it is transferred shall thereafter be liable in all respects as if he were the person originally licensed. No person shall sell under such license except the person named therein or in such transfer.

Licenses may be transferred.  
1846, 244, §§ 6, 8.  
See § 25.

SECT. 24. Every person licensed to peddle as herein before provided shall post his name, residence, and the number of his license, in a conspicuous manner upon his parcels or vehicle, and when such license is demanded of him by any mayor, alderman, selectman, town or city treasurer or clerk, constable, police officer, or justice of the peace, shall forthwith exhibit it, and if he neglects or refuses so to do, shall be subject to the same penalty as if he had no license. So much of this chapter as relates to hawkers and pedlers, or a synopsis thereof, shall be printed on every license.

Persons licensed to post name, &c., on parcels or vehicle, and exhibit license on demand, &c.  
1846, 244, § 9.  
1851, 298, § 2.  
See § 25.

SECT. 25. No license to go about offering for sale or selling as aforesaid shall operate to defeat or bar a prosecution against the person licensed, if it is proved that he exposed to sale any article except such as are permitted in section thirteen in any county, city, or town, where he was not licensed to sell, or in which he had not paid the sum mentioned in his license; but no person so licensed shall be required to make payment to the treasurer of any county, city, or town, before he is prepared to trade therein. The license of any person convicted of a violation of any provision of this or the ten preceding sections shall be void.

Licenses, when not to protect party, &c.  
Shall be void, if, &c.  
1846, 244, §§ 4, 10.

SECT. 26. Whoever counterfeits or forges a license, or has a counterfeited or forged license in his possession, with intent to utter or use the same as true, knowing it to be false or counterfeit, or attempts to sell under a license which has expired, or is forfeited, or which was not granted or has not been transferred to him, shall forfeit a sum not exceeding one thousand dollars.

Penalty for counterfeiting, &c., licenses, and selling without license.  
1846, 244, § 10.

SECT. 27. Whoever goes from town to town, or from place to place, or from dwelling-house to dwelling-house, carrying for sale or exposing to sale any goods, wares, or merchandise, or takes a residence in any town for that purpose for a less term than one year, except as herein before provided, shall forfeit a sum not exceeding two hundred dollars for each offence.

for unauthorized sales.  
1846, 244, § 1.

SECT. 28. No hawker, pedler, or other itinerant trader, holding an auctioneer's license, shall sell or expose for sale by public auction any goods, wares, or merchandise, in any other city or town than that from whose authorities such license was obtained; nor in any place in such city or town, except such as shall be expressly described or set forth in said license.

Hawkers, &c., licensed as auctioneers, not to sell, &c.  
1852, 115, § 2.

CHAPTER 51.

OF WEIGHTS AND MEASURES.

SECTION

1. What weights, measures, and balances to be authorized standards.
2. To be replaced when necessary, and marked, stamped, &c.
3. Treasurer to keep and furnish duplicates to sworn deputy; deputy to keep and use duplicates as standards.
4. to furnish towns with sets.
5. County, city, and town treasurers to provide for safe keeping, &c.
6. Penalty on treasurers for neglect.
7. Treasurers to have standards proved. Penalty.
8. Each town sealer to have set of standards.
9. Sealers accountable to towns for preservation of standards.

SECTION

10. Treasurers, deputies, and sealers, to have seal. Form of.
11. Sealers annually to notify inhabitants, &c., to have weights, &c., proved.
12. to annually visit and prove platform, &c., not to remove standards, &c.
13. Penalty for neglect.
14. Fees of sealers.
15. Vibrating steelyards allowed to be used, if sealed.
16. Penalty for using unsealed weights, &c.
17. "Hundred weight" to be construed the net hundred.
18. Rules for weighing. Penalty for violation. Who to be deemed public weighers.
19. Provisions respecting measures for salt and grain.

What weights, measures, and balances to be authorized standards. U. S. const. art. 1, § 8. 1847, 242, §§ 1, 2. Resolves, 1847, 55.

SECTION 1. The weights, measures, and balances, received from the United States and now in the treasury of the commonwealth, to wit, one half bushel, one wine gallon, one wine quart, one wine pint, one wine half pint, one yard measure; a set of avoirdupois weights consisting of fifty, twenty-five, twenty, ten, five, four, three, two, and one pounds, and from eight ounces down to one drachm; one set of troy weights, from five thousand pennyweights down to half a grain, and from one pound down to the ten-thousandth part of an ounce; and three sets of balances: also the measures caused to be made by the treasurer and now in the treasury, to wit, one of eight quarts, one of four quarts, one of two quarts, and one of one quart, dry measure, shall be, remain, and be used, as the sole authorized public standards of weights and measures.

To be replaced when necessary, and marked, stamped, &c. R. S. 30, § 3.

SECT. 2. Such weights, measures, and balances, as may be procured from time to time to replace those before mentioned, shall be preserved in the same form and of the same dimensions, the denominations of the weights and measures being marked and stamped thereon respectively, and they shall be sealed with the seal which is kept for that purpose by the treasurer.

Treasurer to keep and furnish duplicates to deputy; deputy to use duplicates as standards. R. S. 30, § 4. 1847, 242, § 1.

SECT. 3. The treasurer shall keep the authorized public standard weights, measures, and balances, in the treasury, in his care and custody. He shall furnish duplicates thereof to a deputy appointed by him, who shall be sworn and give bond for the faithful discharge of the duties of his office. The duplicates shall be kept by the deputy and used by him for sealing weights, measures, and balances, in like manner as the standards kept in the treasury may be used by the treasurer.

to furnish towns with sets. 1848, 332, § 2. 1850, 295. Resolves, 1847, 55.

SECT. 4. The treasurer shall furnish to each town hereafter incorporated, at a cost not exceeding one hundred and fifty dollars, a complete set of standard weights, measures, and balances, such as have been furnished to other towns, made to conform as near as practicable to the models caused to be made by the treasurer as town standards. The expense of transportation shall be defrayed by the town.

County, city, and town treasurers to provide for safe keeping, &c. R. S. 30, § 5. 1848, 332, §§ 2, 3.

SECT. 5. The several county, city, and town treasurers shall, at the expense of their respective counties, cities, and towns, provide therein, places for the safe and suitable keeping and preservation of the weights, measures, and balances, furnished by the commonwealth, which shall be used only as standards. They shall have the care and oversight thereof; shall see that they are kept in good order and repair; and if any portion of them are lost, destroyed, or irreparably damaged, shall at



the expense of the county, city, or town, replace the same by similar weights, measures, or balances.

SECT. 6. Each treasurer who neglects to provide a suitable place for keeping such weights, measures, and balances, or to keep them in good order and repair, or who suffers any of them through his neglect to be lost, damaged, or destroyed, shall forfeit two hundred dollars to be recovered by indictment.

Penalty on treasurers for neglect.  
1847, 332, § 4.

SECT. 7. Each treasurer shall once at least in every ten years have the standards in his custody, tried, adjusted, and sealed by the treasurer of the commonwealth or his deputy; the expense whereof shall be paid by the respective counties, cities, and towns. Every treasurer who neglects to have the standards under his charge so sealed, shall forfeit a sum not exceeding fifty dollars.

Treasurers to have standards proved. Penalty.  
1847, 242, § 7.  
1848, 332, § 5.

SECT. 8. When a city or town votes to have more than one sealer of weights and measures, the treasurer shall, at the expense thereof, procure and preserve the necessary additional seals, weights, and measures, before specified; so that each sealer may have a complete set of the same.

Each town sealer to have set of standards.  
R. S. 30, § 14.

SECT. 9. Every sealer of weights and measures shall receive of the treasurer a set of the standards and seal, and shall give him a receipt therefor, expressing the condition in which the same are; and he shall be accountable to the city or town for the due preservation of the same in the like condition, until he redelivers them to the treasurer.

Sealers accountable to towns for preservation of standards.  
R. S. 30, § 15.

SECT. 10. The treasurer of the commonwealth and his deputy, the county treasurers, and the city and town sealers, shall each keep a seal for their several uses. The seals of the treasurer and of his deputy shall be the letters *C. M.*, those of county treasurers shall be the initial and final letters of their respective counties, followed by the letters *Co.*; those of city and town sealers, the name of their respective cities or towns, or such intelligible abbreviation thereof as the mayor and aldermen or selectmen may prescribe.

Treasurers, deputies, and sealers, to have seal. Form of.  
R. S. 30, §§ 3, 4, 5, 8.  
1847, 242, § 3.  
See § 13.

SECT. 11. Every sealer of weights and measures shall annually in May advertise in some newspaper, or post up notifications in different parts of the city or town, for every inhabitant who uses weights and measures for the purpose of buying and selling, and for public weighers who have the same, to bring in their measures, weights, balances, scales, and beams, to be adjusted and sealed; and he shall forthwith adjust and seal all weights and measures brought to him for that purpose.

Sealers to notify inhabitants, &c., to have weights, &c., proved.  
R. S. 30, § 16.  
1847, 242, § 5.  
See § 13.

SECT. 12. The sealers of each city and town shall go annually to every hay scale or platform balance which cannot be readily removed, and try, adjust, and seal, the same. No sealer, except for the purposes of this section, shall carry his standards of weights, measures, or scales, from one place to another, for the purpose of adjusting others.

to visit and prove hay scale, &c.  
not to remove standards, &c.  
1847, 242, § 6.  
See § 13.

SECT. 13. For every neglect of any duty prescribed in the three preceding sections, the sealer shall forfeit a sum not exceeding twenty dollars.

Penalty for neglect.  
R. S. 30, § 21.

SECT. 14. Each sealer of weights and measures, including the deputy of the treasurer and county treasurers, shall receive a fee of three cents for every weight, measure, scale, beam, or balance, by him sealed, except platform balances. For sealing each platform balance weighing five thousand pounds and upwards, the sealer shall receive one dollar, and for each platform balance weighing less, fifty cents. Every sealer shall also have a reasonable compensation for all repairs, alterations, and adjustments, which it is necessary for him to make.

Fees of sealers.  
1847, 242, §§ 4, 6.

SECT. 15. The vibrating steelyards which have been heretofore allowed and used in this state, may continue to be used: *provided*, that each beam and the poises thereof shall be annually tried, proved, and sealed, by a sealer of weights and measures, like other beams and weights.

Vibrating steelyards allowed to be used, if sealed.  
R. S. 30, § 22.

SECT. 16. Whoever sells by any other weights, measures, scales,

Penalty for



using unsealed weights, &c. 1847, 242, §§ 5, 6, 1851, 68.

“Hundred weight” to be construed the net hundred. R. S. 30, § 25.

Rules for weighing. Penalty for violation. Who to be deemed public weighers. R. S. 30, §§ 26, 27.

Provisions respecting measures for salt and grain. R. S. 30, § 23. See Ch. 44, §§ 63, 180.

beams, or balances, than those which have been sealed as before provided, shall forfeit a sum not exceeding twenty dollars for each offence; and when by the custom of trade they are provided by the buyer, if he purchases by any other weights, measures, scales, beams, or balances, he shall be subject to a like penalty, to be recovered by an action of tort to the use of the complainant.

SECT. 17. When commodities are sold by the hundred weight, it shall be understood to mean the net weight of all packages from one to one hundred pounds avoirdupois; and all contracts concerning goods sold by weight shall be understood and construed accordingly.

SECT. 18. Every public weigher of goods or commodities shall weigh the same according to the provisions of the preceding section, and make his certificate accordingly; and for each refusal or neglect he shall forfeit a sum not exceeding ten dollars. Every weigher of goods appointed by a city or town, and every weigher for hire or reward, shall be deemed and taken to be a public weigher within the provisions of this section.

SECT. 19. In every city and town in which section twenty-three of chapter thirty of the Revised Statutes has been adopted according to the provisions thereof, or in which the provisions of this section shall be accepted by the city council of the city, or by the inhabitants of the town at a legal meeting, every measure by which salt or grain is sold, in addition to being conformable in capacity and diameter to the public standards, shall have a bar of iron across the middle thereof at the top, to be approved by a scaler of weights and measures, and a bar or standard of iron from the centre of the first mentioned bar to the centre of the bottom of the measure, to be approved in like manner; and every such measure shall be filled by shovelling such salt or grain into the same, and the striking thereof shall always be lengthwise of the first described bar. And whoever sells or exposes to sale any salt or grain in any other measure, or fills or strikes such measure in any other manner than is provided in this section, shall forfeit fifty cents for every bushel of salt or grain so measured, filled, or stricken: *provided*, that salt may be measured from vessels in such measures as are used by the government of the United States, and that nothing contained in this section shall prevent the measuring of salt in tubs, or any proportional parts of hogsheads, without bars, as may be determined by any city or town.

## CHAPTER 52.

### OF SHIPPING AND PILOTAGE.

#### PILOTS AND PILOTAGE.

- SECTION
1. Commissioners of pilots. Appointment, tenure of office, and removal of.
  2. to grant commissions as port and bay pilots.
  3. Duties, &c., of bay pilots. Fees.
  4. Pilots not to interfere upon each other's limits.
  5. within limits, &c., to take charge of all vessels, except, &c.
  6. Vessels inward bound, except, &c., to pay fees to first pilot, &c.
  7. Lien for fees.
  8. to give bond.
  9. Surety on bond may terminate liability, &c.

#### SECTION

10. Persons without pilot commissions not to exercise duties.
  11. Commissioners to keep an office, register complaints, &c.
  12. Pilots to render accounts. Penalty.
  13. Commissioners to make, amend, and publish, regulations.
  14. to keep record.
  15. Vessels of two hundred tons and under to pay half pilotage.
  16. Vessels exempt.
  17. Pilotage of vessels taking steam towage.
- SHIP OWNERS, MARINERS, AND CHARTERERS.
18. Ship owners, how far answerable for embezzlement, loss, &c.

SECTION

- 19. Contribution for embezzlement, loss, &c., in certain cases.
- 20. Charterer, to be deemed the owner, in case, &c.
- 21. Preceding provisions not to affect other remedies.
- 22. Boarding certain vessels without leave. Penalty.
- 23. Persisting when forbidden, &c. Penalty.
- 24. Enticing crew to leave, &c. Penalty.
- 25. persons to leave who have received advancements.
- 26. Seamen exempt from arrest for debt to landlord, &c.
- 27. Penalties, how recovered. Arrest.
- 28. Harbor limits.
- 29. Word "vessel" construed.

VESSELS AND BOATS TRANSPORTING STONE, &C.

SECTION

- 30. Weighers of lighters, &c., to be appointed by selectmen, &c.
- 31. Lighters, &c., to be marked.
- 32. Duty of weighers.
- 33. Deduction, when may be made, &c.
- 34. Persons on board, where to keep while marks are being taken.
- 35. Marks, to be annually examined.
- 36. Fees.
- 37. Penalty for neglecting to have lighters weighed.
- 38. Penalty for falsely placing marks, &c.
- 39. Cities, &c., may establish ordinances, &c., respecting weighing, &c., lighters, &c., employed in transporting stone, &c.

PILOTS AND PILOTAGE.

SECTION 1. There shall be appointed by the governor with the advice and consent of the council, three persons to be commissioners of pilots, who shall hold their offices for the term of three years unless sooner removed by the governor and council. The commissioners now in office shall, unless so removed, hold their offices according to the tenor of their respective commissions. When a vacancy occurs, a new appointment shall be made for the full term.

Commissioners of pilots. Appointment, tenure of office, and removal of. 1855, 421, § 1.

SECT. 2. The commissioners shall grant commissions as pilots in and for the several ports or harbors, to such number of competent and trustworthy persons as they may deem necessary; and general commissions as bay pilots, to all port pilots who may on examination prove competent to serve as such, for any two or more ports within the state. They may also grant to not more than ten persons who are not port pilots, and who upon examination prove competent for the service, general commissions as bay pilots, with authority to pilot vessels into the ports with which they are familiar.

to grant commissions as port and bay pilots. 1855, 421, § 2.

SECT. 3. General or bay pilots may take charge of vessels boarded by them outside of the lines established as the limits of the peculiar pilotage ground of the several ports, and pilot such vessels into their port of destination, if included within their commission; and no other pilot subsequently boarding such vessel shall have the right to interfere or claim any part of the pilotage fees therefor. If the port of destination of such vessel is not included within the commission of the pilot first boarding her, any pilot subsequently boarding her, and within whose commission her port of destination is included, may take charge of such vessel, and carry her into port, and in such case the pilotage fees shall be divided between the two pilots *pro rata*, according to the distances passed under the charge of each, to be adjusted in case of dispute by the decision of the commissioners or either of them; but the pilot first boarding the vessel shall receive not less than five dollars.

Duties, &c., of bay pilots. Fees. 1855, 421, § 2.

SECT. 4. No pilot shall interfere with the regular port pilots within the lines established as the limits of the peculiar pilotage ground of any port, by boarding a vessel within said lines, if a pilot of said port is at the time out in the waters of said port, and in sight. But if no pilot of the port is so out and in sight, a general or bay pilot commissioned for the port may take charge of any vessel within said lines, pilot her into port, and receive the usual fees therefor. If in such case the vessel is subsequently boarded by a regular pilot of the port, the general pilot first boarding her shall receive *pro rata* pilotage, not less in amount than five dollars, as provided in the preceding section.

Pilots not to interfere upon each other's limits. 1855, 421, § 2. 5 Met. 412. 1 Gray, 257.

SECT. 5. Every pilot shall, within the limits of his commission, and according to the provisions of the two preceding sections, take charge

within limits, &c., to take charge of all

vessels except, &c.  
R. S. 32, §§ 7, 12.  
1841, 45, § 1.  
1847, 279, § 4.

of all vessels, except fishing vessels other than whaling vessels, single-decked vessels of not more than three hundred and fifty tons sailing under a coasting license, vessels sailing from one port in the state to another, and not in completion of a voyage from a place out of the state, and passenger steam vessels regulated by United States laws, and carrying a United States pilot.

Vessels inward bound, except, &c., to pay fees to first pilot, &c.  
R. S. 32, §§ 7, 12.  
1841, 45, § 1.  
1847, 279, § 4.

SECT. 6. Every vessel inward bound, other than those included in the exception in the preceding section, and excepting also vessels of not more than two hundred tons and those drawing less than seven feet of water, shall pay to the first pilot offering his services and commissioned for her port of destination, the regular pilotage fee. But vessels of not more than two hundred tons, not taking a pilot, shall pay only half pilotage fees, and those drawing less than seven feet of water and not taking a pilot, shall be wholly exempt therefrom.

Lien for fees.

SECT. 7. Every pilot shall have a lien for his pilotage fees, for the space of sixty days, upon the hull and appurtenances of any vessel liable to him therefor.

to give bond.  
1855, 421, § 3.

SECT. 8. No person shall receive a commission or exercise the office of a pilot, until he has given to the treasurer of the commonwealth a bond with sureties satisfactory to the commissioners, in the penal sum of one thousand dollars, for the faithful performance of all the duties required by law of a pilot.

Surety on bond may terminate liability, &c.  
R. S. 32, § 18.  
1844, 168.

SECT. 9. A surety on a pilot's bond may, at the end of any year, terminate his liability thereon for the future acts of the pilot, by giving to the treasurer and the commissioners at least thirty days' notice of his determination; and the commissioners shall thereupon immediately notify the pilot, and require him to procure a new surety, under penalty of forfeiting his commission at the end of the year. And if at any time a pilot's bond appears to the commissioners insufficient, they may require him, under a like penalty, to furnish a new bond.

Persons without pilot commissions not to exercise duties.  
1857, 221, § 4.  
5 Met. 412.

SECT. 10. Whoever, not holding a commission as a pilot, (except persons employed on board of the vessel for the voyage,) exercises the duties of a pilot on board of any vessel within the waters of this state, when a commissioned pilot offers his services, or can be obtained at a reasonable time, shall forfeit not less than twenty and not more than fifty dollars, whether the vessel is liable to compulsory pilotage or not.

Commissioners to keep an office, register complaints, &c.  
1855, 421, § 4.

SECT. 11. The commissioners of pilots shall keep an office open at all times to receive, consider, and register in a book kept for the purpose, complaints by and against pilots, and shall examine the evidence concerning the same. If a pilot is guilty of an act whereby the condition of his bond is broken, the commissioners shall make complaint thereof to the treasurer, who shall cause a suit to be forthwith commenced and security to be taken for the benefit of all persons who have suffered by the misconduct or negligence of such pilot, and like proceedings shall be had as in suits on sheriff's bonds.

Pilots to render accounts. Penalty.  
1855, 421, § 5.

SECT. 12. Each pilot shall once in every three months render to the commissioners an account of all vessels piloted and of all money received by him, or by any person for him, for pilotage, and pay to the commissioners six per cent. on the amount thereof, which shall be in full for their official services, and for the expenses of the office; and pilots may add six per cent. to the rates established by law at the time when they perform the service of piloting any vessel, and collect the same in like manner as they are authorized to collect the pilotage fees. If a pilot makes a false return of moneys so received, he shall forfeit a sum not exceeding fifty dollars.

Commissioners to make, amend, and publish regulations.  
R. S. 32, §§ 13, 24.

SECT. 13. The commissioners may from time to time make rules and regulations concerning pilots and pilotage, establishing the port and harbor lines of the several ports and harbors, and the limits within which vessels shall be exempt from compulsory pilotage, and fixing the rates



of pilotage, which shall be in proportion to a vessel's draught of water. Such rules and regulations, after being approved by the governor and council, and published one week in one of the newspapers printed in the city or county to which they apply, shall be in full force. All existing rules and regulations not inconsistent herewith, shall continue in force until altered, amended, or repealed, as above provided. The commissioners shall, at least twice a year, at their own expense, publish all the regulations in force concerning the pilotage of the state; and shall cause the regulations and laws concerning pilots and pilotage to be observed and executed.

1847, 279, § 2.  
1855, 421, § 6.

SECT. 14. They shall keep a record of all their official acts, and annually on or before the fifteenth day of October shall make a report to the secretary of the commonwealth of their proceedings for the year ending on the last day of the preceding month.

Commissioners to keep record.  
1855, 421, § 7.  
1857, 40.  
1858, 46.

SECT. 15. Vessels of two hundred tons and under, sailing under a register in any of the navigable waters or ports of the state, shall be held to pay only one-half of the rates of pilotage to which vessels of that class are at the time liable.

Vessels of 200 tons and under, to pay half pilotage.  
1857, 221, § 1.

SECT. 16. No single-decked vessel of three hundred and fifty tons and under sailing under a coasting license, shall be liable to pay compulsory pilotage for any navigable waters or ports of this state; but if the services of a commissioned pilot are voluntarily requested or accepted for the conduct of such vessel, they shall be paid for at the rates and in the manner prescribed by the regulations of the pilot commissioners.

Vessels exempt.  
1857, 221, § 2.

SECT. 17. Vessels taking steam towage into or out of a port or harbor of this state, by direction of the owner or master, shall pay full pilotage; but when steam towage is taken by request of the pilot, the vessel shall be liable to pay only seventy-five per cent. of the rates of pilotage to which such vessels would otherwise be liable.

Pilotage of vessels taking steam towage.  
1857, 221, § 3.

SHIP OWNERS, MARINERS, AND CHARTERERS.

SECT. 18. No ship owner shall be answerable, beyond the amount of his interest in the ship and freight, for any embezzlement, loss, or destruction, by the master or mariners, of goods, wares, or merchandise, or any property put on board of his ship or vessel, nor for any act, matter, or thing, damage, or forfeiture, done, occasioned, or incurred, by the master or mariners, without his privity or knowledge.

Ship owners, how far answerable for embezzlement, &c.  
R. S. 32, § 1.  
11 Mass. 99.

SECT. 19. If such embezzlement, loss, or destruction, is suffered by several freighters or owners of goods, wares, or merchandise, or any property whatever, on the same voyage, and the whole value of the ship or vessel and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the ship, in proportion to their respective losses; and for that purpose, the freighters and owners of property, and the owners of the ship or vessel or any of them, may prosecute a suit in equity for a discovery of the amount of the loss or damage, and of the value of the ship and freight, and for the equal distribution and payment of the sum for which the owners of the ship may be liable, among the parties entitled to the same.

Contribution for embezzlement, loss, &c., in certain cases.  
R. S. 32, § 2.

SECT. 20. The charterer of a vessel, if he navigates such vessel at his own expense, shall be deemed the owner within the meaning of the two preceding sections.

Charterer to be deemed owner, &c.  
R. S. 32, § 3.

SECT. 21. Nothing contained in the preceding sections, shall take away or affect the remedy to which a party is entitled against the master or mariners, on account of the embezzlement, loss, or destruction, of goods, wares, or merchandise, or any property, on board of a ship or vessel, or on account of fraud or malversation of such master or mariners.

Preceding provisions not to affect other remedies.  
R. S. 32, § 4.

Boarding certain vessels without leave. Penalty. 1857, 139, §§ 1, 3.

SECT. 22. Any person except a pilot or public officer, who boards or attempts to board a vessel arriving in Boston Harbor, Salem Harbor, Fall River Harbor, or the harbor of New Bedford and Fairhaven, before such vessel has been made fast to the wharf, without obtaining leave from the master or person having charge of such vessel, or leave in writing from her owners or agent, shall forfeit a sum not exceeding fifty dollars for each offence.

Persisting when forbidden, &c. Penalty. 1857, 139, §§ 2, 3.

SECT. 23. Whoever without such leave, and without authority of law, boards a vessel in either of said harbors after having been ordered not to do so by a person having charge of such vessel at the time, or having boarded such vessel refuses or neglects to leave her when ordered so to do by the person having charge of such vessel, shall forfeit a sum not exceeding fifty dollars.

Enticing crew to leave, &c. Penalty. 1857, 139, § 4.

SECT. 24. Whoever entices or persuades, or attempts to entice or persuade, any member of the crew of a vessel arriving in, or about to sail from, either of said harbors, to leave or desert said vessel before the expiration of his term of service therein, shall forfeit a sum not exceeding fifty dollars for each offence.

persons to leave who have received advancements. 1857, 139, § 5.

SECT. 25. Whoever knowingly and wilfully persuades or aids any person who has shipped on a voyage from a port in this state, and received advanced wages therefor, wilfully to neglect to proceed on such voyage, shall forfeit a sum not exceeding one hundred dollars.

Seamen exempt from arrest for debt to landlord, &c. 1859, 235.

SECT. 26. No seaman or mariner who has shipped for, or entered into contract for a voyage, from any port in this commonwealth, shall be liable to arrest on mesne process on account of a debt or obligation to any landlord or boarding-house keeper; nor shall such landlord or boarding-house keeper detain, or have a lien upon the wearing apparel or other property of such seaman or mariner, or hinder, obstruct, or delay him in the performance of said contract of shipment, under a penalty of not exceeding two hundred dollars.

Penalties, how recovered. Arrest. 1857, 139, § 6.

SECT. 27. When either of the offences mentioned in the five preceding sections is committed in Boston or Boston Harbor, the penalty may be recovered by complaint in the police court of Boston; when in Salem or Salem Harbor, in the police court of Salem; when in Fall River or Fall River Harbor, in the police court of Fall River; when in New Bedford or Fairhaven, or in the harbor of New Bedford and Fairhaven, in the police court of New Bedford. Whoever commits any such offence may be arrested without warrant by any officer qualified to serve criminal process in the city where the offence may be tried: *provided*, he shall be forthwith brought before the court.

Harbor limits. 1857, 139, § 7. 8 Met. 329. 9 Met. 371. 6 Cush. 308.

SECT. 28. For the purposes of the six preceding sections, the outer limits of Boston Harbor, for vessels bound thereto, shall be a line drawn from Harding's Rock to the Outer Graves, and from thence to Nahant Head, and said harbor shall include the shores of Chelsea and Charlestown; the outer limits of Salem Harbor, for vessels bound thereto, shall be the chops of said harbor; the harbor of Fall River shall include the waters of Taunton Great River and Mount Hope Bay, from the south line of the town of Freetown to Rhode Island State line, including the shores of Somerset; and the harbors of New Bedford and Fairhaven shall be considered one harbor, the outer limits of which, for vessels bound thereto, shall be the outer limits of Buzzard's Bay.

Word "vessel" construed. 1857, 139, § 7.

SECT. 29. The word vessel in the seven preceding sections shall include vessels propelled by steam.

#### VESSELS AND BOATS TRANSPORTING STONE, &C.

Weighers of lighters, &c. R. S. 31, § 1. 11 Met. 59. See § 39.

SECT. 30. The mayor and aldermen and selectmen of cities and towns where lighters or other vessels are employed in transporting stones, gravel, or sand, shall annually in March or April appoint one or more weighers of vessels, who shall be sworn.



SECT. 31. Every lighter or other vessel employed in transporting stone sold by weight, or gravel, or sand, shall be marked on the stem and stern post, nearly level with the bend of the vessel, with stationary marks of bar iron, not less than six inches in length, and two and a half inches in breadth, fastened with two good and sufficient iron bolts driven through said stem and stern post and riveted into said bar iron, from which all other marks shall take their distance in feet, inches, and parts of inches, as the distance may require, from the lower edge of the stationary marks to the lower edge of the other marks; which marks shall be as follows: light-water marks, not less than four inches in length and one inch and a half in breadth; and every four tons above said light-water marks, legibly cut, or cast, in figures of 4, 8, 12, 16, 20, and so forth, up to the full capacity of the vessel. Said figures shall express the weight which such vessel is capable of carrying when the lower part of the respective numbers aforesaid shall touch the water; and all the marks shall be of good and sufficient lead or copper, fastened on the stem and stern post of each vessel with sufficient nails not less than one inch in length.

Lighters, &c., to be marked.  
R. S. 31, § 2.

SECT. 32. Each weigher, when thereto requested, shall furnish the requisite marks and nails, and shall cause lighters and other vessels to be weighed and marked in conformity with the provisions of the preceding section; and during the time of weighing and marking them, all persons employed on board shall be stationed between the bulk head and the fore chains. He shall keep a correct account of the distance of each mark below the stationary marks, in feet, inches, and parts of inches, in a book provided for that purpose, and give a certificate thereof expressing the distance, to the master of every such vessel.

Duty of weighers.  
R. S. 31, § 3.

SECT. 33. In taking the tonnage of every such vessel, a deduction may be made of one ton, for every inch that the light-water marks may be under water, after such vessel has discharged her loading.

Deduction, when may be made.  
R. S. 31, § 4.

SECT. 34. Every person on board of such vessel, who does not keep within the bounds of the bulk head and fore chains during the time of taking her marks, or while any weigher is employed in weighing or marking, unless in case of absolute necessity, shall forfeit a sum not exceeding twenty dollars for each offence.

Persons on board, where to keep while marks are being taken.  
R. S. 31, § 5.

SECT. 35. Such vessels shall have their marks examined annually in June, by a sworn weigher, and if the marks agree with their former certificates, he shall certify the same accordingly. Otherwise he shall keep such certificates in his possession, to be used as evidence against the master or owner of such vessel in any prosecution under the provisions of this chapter, and such vessel shall be weighed again.

Marks to be annually examined.  
R. S. 31, § 6.  
11 Met. 59.

SECT. 36. Each weigher shall receive from the owner or master of a vessel weighed and marked, twenty cents for every ton of such vessel, and four dollars for furnishing marks, nails, and other necessary articles, fastening the same, and giving the certificate. For the services required by the preceding section, he shall receive one dollar and fifty cents.

Fees.  
R. S. 31, § 7.

SECT. 37. Every owner or master of any such vessel who neglects to have the same weighed, marked, and examined, according to the provisions of this chapter, or who removes any marks, or alters his certificate, shall forfeit a sum not exceeding three hundred dollars for each offence.

Penalty for neglecting to have lighters weighed.  
R. S. 31, § 8.

SECT. 38. Every weigher who places any such mark contrary to the provisions of this chapter, or who gives a false certificate, shall forfeit a sum not exceeding three hundred dollars for each offence.

Penalty for falsely placing marks, &c.  
R. S. 31, § 9.

SECT. 39. Any city or town may establish ordinances respecting marking and weighing of lighters and other vessels employed in transporting stones, gravel, sand, or other ballast; the inspection and weighing of such ballast within the city or town, and the appointment and compensation of weighers, markers, inspectors, and other officers, neces-

Cities, &c., may establish ordinances, &c., respecting weighing, &c., lighters, &c., employed in trans-



porting stone,  
&c.  
1848, 308, §§ 1, 2.

sary to carry the same into effect; and may affix penalties for breaches thereof, not exceeding those mentioned in sections thirty-four, thirty-seven, and thirty-eight; which ordinances, so far as they extend, shall regulate the subject matter thereof within the limits of the city or town.

## CHAPTER 53.

### OF MONEY, BONDS, BILLS OF EXCHANGE, AND PROMISSORY NOTES.

#### MONEY OF ACCOUNT.

##### SECTION

1. The money of account of this state.
2. All accounts to be reduced to legal money of account, in suits.

#### INTEREST OF MONEY.

3. Rate of interest to be six per cent.
4. Contracts not avoided by usury, but defendant to forfeit threefold interest and costs.
5. Party paying usury may recover threefold the sum paid.

#### BONDS.

6. Bonds of corporations negotiable.

#### BILLS OF EXCHANGE AND PROMISSORY NOTES.

7. Payment and protest of bills, &c., maturing on Fast, Christmas day, &c.

##### SECTION

8. When demand must be made, &c., to charge indorsers of notes on demand.
9. Liability of indorsers of notes payable on demand.
10. Defence to suits on notes payable on demand.
11. Damages on bills payable beyond limits of United States, except, &c.
12. on bills payable beyond Cape of Good Hope, &c.
13. on bills payable without this state, but within the United States.
14. on bills payable within this state.
15. Days of grace allowed on bills, &c.
16. not when payable on demand.

#### MONEY OF ACCOUNT.

The money of  
account.  
R. S. 35, § 5.

SECT. 1. The money of account of this commonwealth shall be the dollar, cent, and mill. Accounts in the public offices, and other public accounts and proceedings in court, shall be had and kept in conformity to this regulation.

All accounts to  
be reduced to  
legal money.  
R. S. 35, § 6

SECT. 2. Nothing contained in the preceding section shall vitiate or affect an account, charge, or entry, originally made, or a note, bond, or other instrument, expressed in any other money of account; but in a suit thereon the same shall be reduced to dollars and parts of a dollar.

#### INTEREST OF MONEY.

Rate of interest.  
R. S. 35, § 1.  
12 Pick. 586.

SECT. 3. The interest of money shall continue to be at the rate of six dollars, and no more, upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or shorter time.

Contracts not  
void by usury.  
Forfeiture, &c.  
R. S. 35, § 2.  
1846, 199, § 1.  
7 Pick. 40.  
1 Met. 398, 488.  
3 Met. 211, 522.  
6 Met. 296.  
7 Met. 14.  
11 Met. 526.  
12 Cush. 156.

SECT. 4. No contract or assurance for the payment of money, with interest at a greater rate than is allowed by the preceding section, shall be thereby rendered void; but when in an action brought on such contract or assurance it appears that a greater rate of interest than is allowed by law has been directly or indirectly reserved, taken, or received, the defendant shall recover his full costs, and the plaintiff shall forfeit threefold the amount of the interest unlawfully reserved or taken, and no more, and shall have judgment for the balance remaining due after deducting said threefold amount.

Threefold may  
be recovered,  
&c.  
R. S. 35, § 3.  
1846, 199, § 2.  
1855, 194.  
1 Met. 553.  
7 Met. 525.  
3 Met. 225.  
4 Gray, 593.

SECT. 5. When a greater rate of interest than is allowed by law has been paid, the party paying the same may either by an action of contract or suit in equity recover back threefold the amount of the unlawful interest so paid, and no more: *provided*, that such action or suit shall be prosecuted within two years from the time of payment.

BONDS.

SECT. 6. Bonds and other obligations under seal for the payment of money purporting to be payable to the bearer, or some person designated or bearer, or payable to order, issued by any corporation or joint stock company, shall be negotiable in the same manner, and to the same extent, as promissory notes.

Bonds of corporations negotiable. 1852, 76.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

SECT. 7. Bills of exchange, drafts, promissory notes, and contracts, due and payable, or to be executed, on Sunday or Thanksgiving, Fast, or Christmas day, the twenty-second day of February, the fourth day of July, or on the following day when either of the two days last mentioned occurs on Sunday, shall be payable or performable upon the business day next preceding said days; and in case of non-payment or non-fulfilment, may be noted and protested upon such preceding day; but the holder or holders of such obligations need not give notice of the dishonor, non-payment, or non-fulfilment thereof, until the business day next following the days above specified.

Payment and protest of bills, &c., maturing on Fast, Christmas day, &c. 1856, 113, §§ 1, 2. 1860 Ch. 17.

SECT. 8. Upon a promissory note payable on demand, a demand made at the expiration of sixty days from the date thereof, without grace, or at any time within that term, shall be deemed to be made within a reasonable time; and any act, neglect, or other thing, which by the rules of law and the customs of merchants is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within said term of sixty days, shall be deemed a dishonor thereof, and shall authorize the holder of such note to give notice of the dishonor to the indorser, as upon a presentment to the promisor and his neglect or refusal to pay the same. No presentment of such note to the promisor and demand of payment, shall charge the indorser, unless made on or before the last day of said term of sixty days.

When demand must be made, &c., to charge indorsers of notes on demand. 1839, 121, § 2. 11 Met. 400.

SECT. 9. The several indorsers of promissory notes payable on demand, upon due and reasonable notice of the dishonor of such notes, shall be liable in the same manner and to the same effect as upon the dishonor of promissory notes payable at a fixed time, and not otherwise.

Notes payable on demand, liability of indorser. 1839, 121, § 3.

SECT. 10. In any action by an indorsee against the promisor brought upon a promissory note made after the sixth day of May, eighteen hundred and thirty-nine, and payable on demand, any matter shall be deemed a legal defence which would be a defence to a suit thereupon if brought by the promisee: *provided*, that no matter arising after notice of the indorsement or transfer of such note is given to the promisor shall constitute a defence.

defence to suits on. 1839, 121, § 1. 1845, 68. 1858, 70, § 1. 6 Met. 513. 9 Met. 367. 11 Met. 399. 8 Cosh. 207. 4 Gray, 148.

SECT. 11. When a bill of exchange, drawn or indorsed within this state and payable without the limits of the United States, (excepting places in Africa beyond the Cape of Good Hope, and places in Asia and the islands thereof,) is duly protested for non-acceptance or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand, and damages at the rate of five per cent. upon the contents thereof, together with interest on the contents, to be computed from the date of the protest; and said amount of contents, damages, and interest, shall be in full of all damages, charges, and expenses.

Damages on bills payable beyond limits of U. S., except, &c. R. S. 33, § 1.

SECT. 12. When a bill of exchange, drawn or indorsed as mentioned in the preceding section, and payable at any place in Africa beyond the Cape of Good Hope, or any place in Asia or the islands thereof, is duly protested for non-acceptance or non-payment, every party liable for the

on bills payable beyond Cape of Good Hope, &c. R. S. 33, § 2.

contents thereof shall, on due notice and demand, pay the same at the par value thereof, with twenty per cent. thereon, in full of all damages, interest, and charges.

Damages on bills payable without this state, but within U. S.  
R. S. 33, § 3.  
1837, 239.

SECT. 13. The rates of damages to be allowed upon bills of exchange duly protested for non-acceptance or non-payment, if drawn or indorsed within this state, payable at a place without this state but within the United States, shall, in addition to the contents of such bill with interest and costs, be as follows: if payable within the states of Maine, New Hampshire, Vermont, Rhode Island, Connecticut, or New York, two per cent.; New Jersey, Pennsylvania, Maryland, or Delaware, three per cent.; Virginia, North Carolina, South Carolina, Georgia, or in the District of Columbia, four per cent.; and if in any other of the United States or the territories thereof, five per centum.

on bills payable within this state.  
R. S. 33, § 4.  
5 Greenl. 174.

SECT. 14. The rate of damages, upon bills of exchange or orders for the payment of money, drawn or indorsed within this state, for a sum not less than one hundred dollars, and payable within the state at a place not less than seventy-five miles distant from the place where the same is drawn or indorsed, when such bills or orders are not duly accepted or paid, shall be one per cent. in addition to the contents thereof, and interest on the contents.

Days of grace.  
R. S. 33, § 5.  
4 Mass. 251.  
21 Pick. 483.  
6 Met. 13.

SECT. 15. On bills of exchange payable within this state at sight or at a future day certain, and on promissory negotiable notes, orders, and drafts, payable within this state at a future day certain, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or sight.

not when payable on demand.  
R. S. 33, § 6.

SECT. 16. The provisions of the preceding section shall not extend to any bill of exchange, note, or draft, payable on demand.

## CHAPTER 54.

### OF AGENTS, CONSIGNEES, AND FACTORS.

#### SECTION

1. Shippers of merchandise in possession to be deemed true owners, unless, &c.
2. Factors, &c., in possession of merchandise, or bill of lading, to be deemed true owner.
3. Consignee of person having possession of merchandise with authority to sell, to have lien for advances, if, &c.
4. Pledge of person having possession of

#### SECTION

- merchandise or bill of lading with power to sell, to acquire rights of such person, if, &c.
5. When pledge is for antecedent debt, pledge to acquire no other right, &c.
6. Limitations and restrictions on preceding sections.

Shippers of merchandise in possession to be deemed true owners, &c.  
1845, 193, § 1.

SECTION 1. Every person in whose name merchandise is shipped for sale by a person in the lawful possession thereof at the time of the shipment, shall be deemed to be the true owner thereof so far as to entitle the consignee to a lien thereon for money advanced or securities given to the shipper for or on account of such consignment, unless the consignee, at or before the time when he made the advances or gave the securities, had notice, by the bill of lading or otherwise, that the shipper was not the actual and *bona fide* owner.

Factor, &c., in possession of merchandise, &c., to be deemed owner.  
1845, 193, § 2.

SECT. 2. Every factor or other agent intrusted with the possession of merchandise, or a bill of lading consigning merchandise to him, for the purpose of sale, shall be deemed to be the true owner thereof so far as to give validity to any *bona fide* contract made by him with any other person for the sale of the whole or any part of such merchandise.

Consignee of

SECT. 3. When a person intrusted with merchandise, and having



authority to sell or consign the same, ships or otherwise transmits or delivers it to any other person, such other person shall have a lien thereon for any money or merchandise advanced or negotiable security given by him on the faith of such consignment, to or for the use of the person in whose name such consignment or delivery was made; and for any money, negotiable security, or merchandise, received for the use of the consignee by the person in whose name such consignment or delivery was made; if such consignee had at the time of such advance or receipt probable cause to believe that the person in whose name the merchandise was shipped, transmitted, or delivered, was the actual owner thereof, or had a legal interest therein to the amount of said lien.

person having possession of merchandise with authority to sell, to have lien for advances, if, &c. 1849, 216, §§ 1, 2.

SECT. 4. When a consignee or factor having possession of merchandise with authority to sell the same, or having possession of a bill of lading, permit, certificate, or order, for the delivery of merchandise, with like authority, deposits or pledges such merchandise or any part thereof, or such document, with any other person as a security for money or merchandise advanced or a negotiable instrument given by him upon the credit thereof, such other person (if he makes such loans, advances, and exchanges, in good faith and with probable cause to believe that the agent making the deposit or pledge had authority so to do, and was not acting fraudulently against the owner of such merchandise) shall acquire the same interest in, and authority over, such merchandise and documents as he would have acquired thereby if the agent had been the actual owner thereof, notwithstanding he had notice of such agency.

Pledgee of person having possession of merchandise or bill of lading with power to sell, to acquire rights of such person, if, &c. 1849, 216, § 3.

SECT. 5. When such merchandise or document is accepted in deposit or pledge for an antecedent debt due from such consignee or factor, the person receiving the same shall thereby acquire no other or further right, or interest in, or authority over, or lien upon, the same, than the consignee or factor might have enforced against the actual owner.

When pledge is for antecedent debt, pledgee to acquire no other right, &c. 1849, 216, § 4.

SECT. 6. The provisions of the three preceding sections shall not affect the lien of a consignee or factor at law for the expenses and charges attending the shipment, transportation, and care, of merchandise intrusted to him; nor prevent the actual owner from recovering such merchandise from the consignee or factor previous to the pledge thereof, or from his assignees in case of his insolvency; nor prevent such owner from recovering any merchandise or document so deposited or pledged, upon tender of the money and restoration of the negotiable security or property so advanced to such consignee or factor, and upon tender of such further sum of money and restoration of such negotiable instrument or property as may have been advanced or given by the consignee or factor to the owner, or upon tender of a sum of money equal to the amount or value thereof; nor prevent him from recovering from the person with whom such merchandise may have been so deposited or pledged, any balance of money remaining in his hands as the proceeds of the sales thereof, after deducting the amount of the moneys or of the negotiable security so advanced thereon.

Limitations and restrictions on preceding sections. 1849, 216, § 5.

## CHAPTER 55.

## OF LIMITED PARTNERSHIPS.

## SECTION

1. Limited partnerships may be formed, except for banking, &c.
2. General and special partners, and their liabilities.
3. Certificates to be made by partners, specifying names, stock, &c.
4. to be acknowledged and recorded. If false, all liable, as general partners.
5. to be published for six weeks, otherwise partnership shall be deemed general.

## SECTION

6. Provision for renewal of partnerships.
7. Partnership style, &c.
8. Capital stock not to be withdrawn, &c.
9. Suits to be by and against the general partners, except, &c.
10. Dissolution, how effected.
11. Liability of partners, in cases not specially provided for.

Limited partnerships may be formed, except for banking, &c.  
R. S. 34, § 1.

SECTION 1. Limited partnerships for the transaction of mercantile, mechanical, or manufacturing business within this state may be formed by two or more persons, upon the terms and subject to the conditions and liabilities prescribed in this chapter; but nothing herein contained shall authorize such partnerships for the purpose of banking or insurance.

General and special partners, and their liabilities.  
R. S. 34, § 2.

SECT. 2. Such partnerships may consist of one or more persons, who shall be called general partners, and shall be jointly and severally responsible as general partners now are by law, and of one or more persons who shall contribute to the common stock a specific sum in actual cash payment as capital, and who shall be called special partners, and shall not be personally liable for any debts of the partnership except in the cases hereinafter mentioned.

Certificates to be made by partners, specifying names, stock, &c.  
R. S. 34, § 3.

SECT. 3. The persons forming such partnerships shall make and severally sign a certificate, which shall contain the name or firm under which the partnership is to be conducted, the names and respective places of residence of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate.

to be acknowledged and recorded.  
if false, all liable as general partners.  
R. S. 34, § 4.

SECT. 4. No such partnership shall be deemed to have been formed, until a certificate so made shall be acknowledged by all the partners before some justice of the peace, and recorded in the registry of deeds of the county or district in which the principal place of the business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business in different counties or districts, a copy of the certificate certified by the register of deeds in whose office it is recorded, shall be filed and recorded in like manner in the office of the register of deeds in every such county or district. If a false statement is made in such certificate, all the persons interested in the partnership shall be liable, as general partners, for all the engagements thereof.

to be published; otherwise partnership shall be general.  
R. S. 34, § 5.

SECT. 5. The partners shall, for six successive weeks immediately after such registry, publish a copy of the certificate above mentioned in a newspaper printed in the county where their principal place of business is situated; or if no such paper is there printed, then in a newspaper printed in the city of Boston; if such publication is not so made, the partnership shall be deemed general.

Provision for renewal of partnerships.  
R. S. 34, § 6.

SECT. 6. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded, and published, in like manner as is provided in this chapter for the original formation of limited partnerships; and every such partnership not renewed in con-

formity with the provisions of this section shall be deemed a general partnership.

SECT. 7. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word company or any other general term. If the name of any special partner is used in such firm with his consent or privity, he shall be deemed and treated as a general partner, or if he personally makes any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted as special partner only. If the firm consists of more than three general partners, all their names need not be inserted in the style of the firm.

Partnership style, &c. 1850, 91. 1858, 143.

SECT. 8. During the continuance of any partnership under the provisions of this chapter, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made, so as to reduce such capital stock below the sum stated in the certificates before mentioned; and if at any time during the continuance or at the termination of the partnership, the property or assets are not sufficient to pay the partnership debts, then the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn, respectively.

Capital stock not to be withdrawn, &c. R. S. 34, § 8.

SECT. 9. All suits respecting the business of such partnership shall be prosecuted by and against the general partners only; except in those cases in which provision is made in this chapter that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners deemed general partners may join or be joined in such suits; and excepting also those cases where special partners are held severally responsible on account of sums by them received or withdrawn from the common stock, as before provided.

Suits to be by and against the general partners, except, &c. R. S. 34, § 11.

SECT. 10. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution is recorded in the registry in which the original certificate, or the certificate of renewal or continuation of the partnership, was recorded, and in every other registry where a copy of such certificates was recorded; nor unless such notice is also published for six successive weeks in some newspaper printed in the counties where the certificates of the formation of such partnership were published according to the provisions of this chapter; and if there is no such paper at the time of such dissolution, then in some newspaper printed in the city of Boston.

Dissolution, how effected. R. S. 34, § 12.

SECT. 11. In all cases not otherwise provided for in this chapter, the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

Liability of partners in other cases. R. S. 34, § 13.

CHAPTER 56.

OF THE UNAUTHORIZED USE OF TRADE MARKS AND NAMES.

SECTION

- 1. Trade marks of another not to be used without consent.
- 2. Penalty.

SECTION

- 3. No person to use another's name in business without written consent.
- 4. Supreme court may restrain such use.



Trade marks of another not to be used without consent, &c. 1859, 234, § 1.

SECTION 1. When a person uses any peculiar name, letters, marks, device, or figures, cut, stamped, cast, or engraved upon, or in any manner attached to or connected with any article manufactured or sold by him to designate it as an article of a peculiar kind, character, or quality, or as manufactured by him, no other person, without his consent, shall use the same or any similar names, letters, marks, devices, or figures, for the purpose of falsely representing any articles to have been manufactured by, or to be of the same kind, character, or quality as that manufactured or sold by, the person rightfully using such name, letters, mark, device, or figure.

Penalty. 1859, 234, § 2.

SECT. 2. Whoever violates the provisions of the preceding section, or knowingly sells, or exposes for sale, any article having any name, letters, mark, device, or figure attached to or connected with it, in violation of the preceding section, shall be liable to any party aggrieved thereby for all damages actually incurred, to be recovered in an action of tort.

No person to use another's name in business without written consent. 1853, 156, § 1.

SECT. 3. No person carrying on business in this state shall assume or continue to use in his business the name or names of any persons formerly connected with him in partnership, or of any other persons, either alone or in connection with his own or any other name or designation, without the consent in writing of such person or his legal representatives.

S. J. C. may restrain such use. 1852, 197. 1853, 156, § 2. 2 Gray, 379.

SECT. 4. The supreme judicial court may restrain by injunction any use of trade marks or names in violation of the provisions of this chapter.

## TITLE XIV.

### OF CORPORATIONS AND PROPRIETORS OF COMMON LANDS.

- CHAPTER 57. — Of Banks and Banking.
- CHAPTER 58. — Of Insurance Companies.
- CHAPTER 59. — Of Loan and Fund Associations.
- CHAPTER 60. — Of Manufacturing and other Corporations organized under Special Charters.
- CHAPTER 61. — Of Corporations organized under General Statutes.
- CHAPTER 62. — Of Turnpike, Canal, and Bridge Corporations.
- CHAPTER 63. — Of Railroad Corporations.
- CHAPTER 64. — Of Telegraph Companies.
- CHAPTER 65. — Of Aqueduct Corporations.
- CHAPTER 66. — Of Agricultural and Horticultural Societies.
- CHAPTER 67. — Of Proprietors of Wharves, General Fields, and Real Estate lying in common.
- CHAPTER 68. — Of the Powers, Duties, and Liabilities, of Corporations.

CHAPTER 57.

OF BANKS AND BANKING.

BANK COMMISSIONERS.

SECTION

1. Bank commissioners established; tenure of office.
2. shall be sworn. May appoint clerk.
3. to visit banks, savings institutions, &c., once in two years. Powers and duties at such visits. To make record.
4. to visit banks whose charters have been annulled.
5. may summon and examine under oath all directors, &c.
6. shall examine any bank upon request of five or more officers.
7. to apply to S. J. C. for injunction, upon insolvent banks.
8. to make annual report.
9. to report violation of laws, &c., to secretary. Attorney-general to prosecute.
10. banks not to discount note of.
11. compensation.

BANKS ORGANIZED UNDER CHARTERS.

*General Provisions.*

12. Banks subject to provisions of this chapter.
13. name of, privileges, and liabilities.
14. where to be kept.
15. may receive deposits, &c., and divide profits.
16. not to go into operation till one-half of capital is paid in, &c.
17. Stock not to be sold until, &c.
18. No loan to stockholder, until, &c.
19. Specie to be kept in bank. What to be deemed such specie.
20. Increased capital, how paid in, &c.
21. No person to own more than half the stock.
22. State may take stock in banks.
23. Limit of loans on its own stock.
24. Banks not to hold their own stock, except, &c. Penalty.
25. Limit of debts due to and from banks.
26. Preceding section, how construed.
27. Liability of directors, when debts exceed, &c.
28. Absent, &c., directors, how exonerated.
29. Corporations to remain liable.
30. Banks shall not trade, &c.
31. Right of banks to hold real estate, limited.

*Meetings. Votes. Proxies.*

32. Notices of meetings.
33. Votes allowed to each stockholder. Proxies.
34. List of stockholders. Record of proxies. Penalty.
35. Proxies, &c., form, execution, and filing of.
36. for what time and meetings valid.
37. list of, &c., to be read at meeting.
38. not to be received, &c., by salaried officers. Penalty.
39. Penalty on officers.

*Directors.*

40. Directors, number of.
41. to be citizens and residents of this state.
42. where to reside, &c. Exception.

SECTION

43. Directors to be chosen annually by stockholders. Time when chosen.
44. legislature may appoint.
45. may be removed.
46. quorum of.
47. to record notes, &c., offered for discount, and proceedings, &c. Penalty.
48. Special meetings.
49. President.
50. Cashier, &c.

*Cashier and Loans to Officers.*

51. Cashier to give bond.
52. when to call special meetings.
53. not to be director, &c. Penalty.
54. Amount of liability of officers on notes, &c., limited.

*Bills and Notes.*

55. Banks to pay out no bills but their own.
56. Amount of bills to be issued. Loans, where made.
57. Bills, how issued, and when corporation liable to redeem.
58. Banks to pay altered bank-notes.
59. Penalty for delay in payment of notes.
60. Denominations of bank-notes that may be issued. Penalty.
61. Banks may stamp, &c., counterfeit and worthless bills, &c.
62. Liability of banks, &c., for not stamping, &c.
63. Banks not to issue notes, &c., payable on a day certain, or with interest, except, &c. What deposits may bear interest.
64. Bills to be first redeemed.
65. Banks may replevy bills unlawfully detained.
66. Proceedings in such case.

*Loans and Discounts.*

67. Notes not to be issued, to be kept from circulation.
68. Loans, &c., payable on demand, &c. Penalty.
69. Banks not to take more than six per cent interest, and exchange. Penalty.
70. All bills, &c., redeemable in specie on demand, at banking-house. Penalty.
71. Preceding section not to extend to certain checks and drafts.
72. Banks may draw for balances.

*Taking Land, &c., on Execution.*

73. Real estate of banks may be sold on execution.
74. Officer may adjourn sale.
75. Lands mortgaged to banks may be seized on execution, &c.
76. Cashier or clerk to furnish copies of notes, &c., to officer levying, &c.
77. No transfer of such note or mortgage after notice, &c., to be valid, except, &c.

*Liability of Stockholders.*

78. In case of deficiency, &c., stockholders liable.
79. Liability of stockholders for redemption of bills.
80. at expiration of charter.
81. Stockholders may compel contribution.

## SECTION

82. Corporations owning bank-stock, to be under same liabilities, &c., as individuals.

*Loans to Commonwealth.*

83. Banks to loan to commonwealth.  
84. When treasurer borrows, to give notice to banks.  
85. Treasurer to apportion amount of loans required.  
86. Forfeiture, if banks refuse to loan to treasurer.  
87. Treasurer to institute suit for such refusal.

*Taxes.*

88. Statement of capital to be furnished treasurer.  
89. Bank tax.  
90. Remedy when bank neglects to pay tax.

*Weights to be sealed.*

91. Weights of banks to be proved every five years.  
92. No tender of gold valid, unless, &c.

*Weekly and Monthly Returns.*

93. Weekly returns of banks in Boston.  
94. Monthly returns of banks out of Boston, and in South Boston.  
95. Penalties for neglect under preceding section.  
96. Secretary to publish abstract of returns. Bills to be approved.  
97. Blanks to be furnished.

*Annual Returns.*

98. Cashiers to make returns annually to secretary. Form of return; how authenticated.  
99. Penalty for neglect.  
100. Secretary to provide forms.  
101. to prepare abstracts of the returns, &c.

*Investigations.*

102. Legislature may examine any bank by committee; and declare its charter forfeited, in case, &c.  
103. Penalty on officers of banks refusing to exhibit books, &c.  
104. One-eighth of the stockholders in number or value, may choose a committee to make an investigation, &c.

*Annulling and Expiration of Charters.*

105. Stockholders may annul charter. Not to exempt from liability.  
106. Banks exempt from further tax after commissioners certify, &c.  
107. S. J. C. may limit time of liability of banks surrendering charters.  
108. When charter of bank expires, directors to deliver plates and dies to court of record. Penalty.

*New Privileges.*

109. New privileges extended to all banks.

## BANKS ORGANIZED UNDER GENERAL LAWS.

110. Ten or more persons may be a corporation for banking purposes.  
111. Amount of capital stock, how paid in.  
112. Certificate to be made and recorded.  
113. May increase capital.

## SECTION

114. Shall carry on business only at banking-house. Forfeiture of privilege.  
115. Auditor to obtain engraved bank-notes, &c. When delivered, to be countersigned, numbered, and registered.  
116. to destroy bank notes, returned.  
117. Public stock to be transferred to auditor. Exempt from taxation.  
118. Stocks may be exchanged or surrendered.  
119. Securities to be stamped.  
120. Banks may circulate notes.  
121. Proceedings when payment of bills refused.  
122. Penalty on auditor countersigning too many notes.  
123. Plates, dies, &c., to be kept by auditor. Expense of, by whom paid.  
124. What bills banks may pay out.  
125. Banks to receive interest, &c., on public stock pledged.  
126. Bank to return stocks deposited.  
127. Secretary to prepare separate abstracts. Time of annual meeting.  
128. Bank commissioners to examine stocks, &c.  
129. When stock may be redeemed and returned to bank.  
130. Bank may thereafter be discharged upon six years' notice.  
131. Injunction may be had in certain cases.  
132. When in hands of receivers, auditor to transfer stocks, &c.  
133. Preceding sections may be altered, and corporations dissolved, &c.  
134. Banks heretofore organized.

## SAVINGS BANKS.

135. Savings banks to be governed by following sections.  
136. officers of.  
137. to be sworn. Tenure of office. Treasurer to give bond.  
138. choice and appointment of officers.  
139. Special meetings, how called.  
140. Members, how elected, and how they may withdraw.  
141. Deposits may be received not exceeding, &c.  
142. how to be invested.  
143. Investments restricted.  
144. Same subject.  
145. Same subject.  
146. Investing officers, &c., not to borrow, &c.  
147. Dividends, how made, and deposits, how withdrawn.  
148. Savings banks, &c., to make annual returns. Contents of.  
149. Secretary to furnish forms and make abstracts.  
150. Returns by savings institutions to assessors.  
151. to overseers of poor on request.  
152. to assessors on request.  
153. Penalty.  
154. Money deposited in name of minors.  
155. Legislature may make further regulations, &c.

## BANKS AND SAVINGS BANKS.

156. Banks, &c., closing concerns, to make annual report.  
157. Penalty.

## BANK COMMISSIONERS.

SECTION 1. There shall be a board of bank commissioners consisting of three persons appointed and commissioned by the governor with

Bank commissioners estab-



advice and consent of the council, and subject to removal in like manner. Before the first day of June in each year one member of the board shall be appointed for the term of three years, who shall hold his office until his successor is appointed and qualified. Upon the occurrence of a vacancy before the expiration of a term an appointment shall be made for the remainder of the term. The commissioners now in office shall hold their respective offices according to the tenor of their respective commissions, unless removed as aforesaid.

lished; tenure of office. 1851, 127, § 1.

SECT. 2. Before entering on the duties of their office the commissioners shall severally be sworn. They may appoint a clerk of their board, prescribe his duties, and fix his compensation, when in their opinion the public good demands such appointment.

Commissioners shall be sworn. May appoint clerk. 1851, 127, §§ 5, 7.

SECT. 3. Said commissioners, or two of them, shall visit every bank in [the] state within one year after it goes into operation, and every bank obtaining leave to increase its capital stock within one year after the additional stock is paid in; and shall visit every bank, savings bank, and institution for savings incorporated by authority of this state, once in every two years, and as much oftener as they deem expedient; visiting as nearly as they are able one-half of all such institutions each year. At such visits they shall have free access to the vaults, books, and papers, and shall thoroughly inspect and examine all the affairs of each of said corporations, and make such inquiries as may be necessary to ascertain its condition, ability to fulfil all its engagements, and whether it has complied with the provisions of law. They shall preserve in a permanent form a full record of their proceedings, including a statement of the condition of each bank.

to visit banks, savings institutions, &c., once in two years. powers and duties. To make record. 1851, 127, § 2.

SECT. 4. When the charter of a bank has been annulled by an act of the legislature or by the surrender of the stockholders, the commissioners shall, in the manner and with the powers and duties set forth in the preceding section, visit such bank once at least in every twelve months, so long as it continues a body corporate.

to visit banks whose charters have been annulled. 1838, 14, §§ 2, 3. 1839, 27, § 1. 1843, 93, § 1.

SECT. 5. The commissioners or either of them may summon and examine all directors, officers, or agents, of any corporation mentioned in section three, and such other witnesses as they think proper, in relation to the affairs, transactions, and condition, of such corporation, and for that purpose may administer oaths; and whoever refuses without justifiable cause to appear and testify when thereto so required, or obstructs a commissioner in the discharge of his duty, shall be punished by fine not exceeding one thousand dollars, or imprisonment for a term not exceeding one year.

may summon and examine under oath all directors, &c. 1851, 127, § 3

SECT. 6. If any five or more persons who are officers, stockholders, or creditors, of any bank or institution for savings, make and sign a certificate, under oath, setting forth their interest and the reasons for making such examination, directed to the commissioners, requesting them to examine such bank or institution for savings, the commissioners shall proceed forthwith and make a full investigation of the affairs of such corporation in the manner before provided.

shall examine any bank, upon request of five or more officers. 1851, 127, § 4.

SECT. 7. If, upon examination of any such corporation, a majority of the commissioners are of opinion that the same is insolvent, or that its condition is such as to render its further progress hazardous to the public or those having funds in its custody, they shall apply, or if upon such examination they are of opinion that such corporation has exceeded its powers, or failed to comply with any of the rules, restrictions, or conditions, provided by law, they may apply to one of the justices of the supreme judicial court to issue an injunction to restrain such corporation in whole or in part from further proceeding with its business until a hearing can be had. Such justice shall forthwith issue process for such purpose, and, after a full hearing of the corporation, may dissolve or modify the injunction or make the same perpetual, and make such orders

to apply to S. J. C. for injunction upon insolvent banks. 1851, 127, § 5. 3 Met. 581. 7 Met. 340. 9 Met. 194. 11 Met. 129. 1 Gray, 382. 1850 Ch. 157 § 1. Ch. 229 § 6.

and decrees, to suspend, restrain, or prohibit, the further prosecution of the business of the corporation, as may be needful in the premises according to the course of proceedings in equity; and he may appoint one or more receivers or trustees to take possession of the property and effects of the corporation, subject to such rules and orders as may from time to time be prescribed by the supreme judicial court or any justice thereof in vacation.

Commissioners to make annual report.  
1851, 127, § 6.  
1857, 40.  
1858, 46.

SECT. 8. The commissioners shall annually, on or before the fifteenth day of October, make a report to the secretary of the commonwealth of the general conduct and conditions of the corporations visited by them, making such suggestions as they deem expedient. Such report shall be printed and laid before the legislature at the next session thereof.

to report violation of laws, &c., to secretary.

SECT. 9. If in the opinion of the commissioners any such corporation or its directors or cashier shall be found to have violated any law in relation to banks and banking, they shall forthwith report the same to the secretary with such remarks as they deem expedient; the secretary shall notify the attorney-general thereof, who shall forthwith institute a prosecution for such violation, in behalf of the state.

Attorney-general to prosecute.  
1851, 127, §§ 6, 10.

SECT. 10. No bank shall discount a note or bill of exchange to which a bank commissioner is a party either as principal, surety, indorser, or otherwise.

banks not to discount note of.  
1851, 127, § 8.

SECT. 11. Each bank commissioner shall receive a salary of two thousand dollars a year, and his travelling expenses while in the performance of the duties of his office.

compensation.  
1859, 148.  
See Ch. 15, §§ 36, 48.

#### BANKS ORGANIZED UNDER CHARTERS.

##### *General Provisions.*

Banks subject to provisions of this chapter.  
R. S. 36, § 1.

SECT. 12. Every bank incorporated by a charter under the authority of this state shall be subject to the liabilities and governed by the rules and provisions contained in this chapter, except so far as they are not applicable to such corporations.

name of, privileges, and liabilities.  
R. S. 36, § 2.  
5 Mass. 97, 99.

SECT. 13. Each bank shall be known by the corporate name of The President, Directors, and Company, of the Bank, (this blank to be filled with the name of the bank,) and shall, except when special provision is otherwise made, be entitled to the powers and privileges and subject to the liabilities specified in chapter sixty-eight.

where to be kept.  
R. S. 36, § 34.

SECT. 14. Every bank shall be kept in the city or town in which it is established, and in such part thereof as is prescribed by its charter.

may receive deposits, &c., and divide profits.  
R. S. 36, § 3.  
10 Mass. 284.

SECT. 15. Every bank may receive deposits, and may loan and negotiate its moneys and effects by discounting on banking principles upon such security as the stockholders shall deem expedient; and dividends of the profits may be made by the directors every six months.

not to go into operation till one-half of capital is paid in, &c.  
R. S. 36, § 4.

SECT. 16. No bank shall go into operation until one-half of its capital stock has been paid in gold and silver money, and is in its vaults, and until the money has been examined by three commissioners appointed by the governor. Such commissioners shall, at the expense of the bank, examine and count the money actually in the vaults, and ascertain by the oaths of a majority of the directors that such money has been paid in by the stockholders towards payment of their respective shares, and not for any other purpose, and that it is intended that the same shall remain therein as part of said capital; and shall return a certificate thereof to the governor.

Stock not to be sold until, &c.  
R. S. 36, § 7.

SECT. 17. No part of the capital stock of a bank shall be sold or transferred until the whole amount thereof is paid in.

Loans to stockholders.  
R. S. 36, § 5.

SECT. 18. No loan shall be made to a stockholder until the full amount of his shares is paid into the bank.

Specie to be kept in bank.

SECT. 19. Every bank shall keep in the bank an amount of specie equal to fifteen per cent. of its liability for circulation and deposits; and



when by the returns required by sections ninety-three and ninety-four it appears that the weekly or monthly average of specie required thereby to be returned by a bank is less than that amount, such bank shall make no new loans until its specie is restored to such amount. Specie specially deposited by a bank in Boston in the bank of deposit of the Boston Clearing House, and balances payable on demand due from other banks to banks out of Boston or in South Boston which may be applied to the redemption of their bills, shall be deemed specie in the bank for the purposes of this section.

What to be deemed such specie.  
1856, 95, § 1.  
1858, 69, § 1.  
1858, 165.  
1859, 218.

SECT. 20. When authority is granted to a bank to increase its capital, such increased capital may be paid in such instalments, not exceeding four, as the directors determine; and each instalment shall be regarded as a part of the capital of the bank as soon as it is paid in and a certificate thereof forwarded to the secretary of the commonwealth according to the provisions of the act authorizing the increase.

Increased capital, how paid in, &c.  
1830, 263.

SECT. 21. No person shall directly or indirectly hold or own more than one-half of the amount of the capital stock of a bank, exclusive of stock which he holds as collateral security.

No person to own more than half the stock.  
R. S. 36, § 16.

SECT. 22. In addition to the capital stock to which a bank is entitled, the state may subscribe thereto to an amount not exceeding fifty per cent. of its authorized capital, when provision is made therefor by law; and the state, from the time of making any payment towards such capital stock, shall be entitled to its proportionate share of the profits and dividends.

State may take stock in banks.  
R. S. 36, § 42.

SECT. 23. No bank shall have owing to it at one time, on loans made on a pledge of its own stock, a greater amount than one-half of its capital actually paid in.

Limit of loans on its own stock.  
R. S. 36, § 6.

SECT. 24. A bank which purchases or holds its own stock except as security for debts, or neglects to sell all stock so received as security within six months after it has become the property of the bank, shall for each offence forfeit five hundred dollars.

Banks not to hold their own stock, except.  
1838, 196, § 7.  
1851, 339, § 1.

SECT. 25. The debts of a bank shall not at any time exceed twice the amount of its capital stock actually paid in, exclusive of sums due on account of deposits not bearing interest; nor shall there at any time be due to a bank more than double the amount of its capital stock actually paid in.

Limit of debts.  
R. S. 36, § 9.  
4 Pick. 314.

SECT. 26. Debts due from one bank to another, including bills of the bank so indebted and loans to the state not exceeding five per cent. of the capital stock of the bank, shall not be deemed debts due within the meaning of the preceding section.

Preceding section, how construed.  
R. S. 36, § 10.  
1854, 7.

SECT. 27. If a bank shall become indebted beyond the amount allowed by the two preceding sections, the directors under whose administration it shall happen shall be liable for the excess in their private capacities; and an action of contract may in such case be brought against them or any of them, their or any of their heirs, executors, or administrators, by any creditor of the bank, or such creditor may have a remedy by a suit in equity.

Liability of directors, when debts exceed, &c.  
R. S. 36, § 11.  
1852, 312.

SECT. 28. Directors dissenting or absent when such excess of debts is authorized or contracted, may exonerate themselves from liability, by forthwith giving notice of the fact and of their absence or dissent to either of the bank commissioners.

Absent, &c., directors, how exonerated.  
R. S. 36, § 12.  
1838, 196, § 5.  
1851, 127.

SECT. 29. The provisions of the two preceding sections shall not be construed to exempt any bank, or the lands, goods, or chattels, of the same, from liability for such excess.

Corporations to remain liable.  
R. S. 36, § 13.

SECT. 30. No bank shall use or employ any of its moneys, goods, chattels, or effects, in trade or commerce; but any bank may sell all kinds of property held by it in pledge; and if the proceeds of such sale are more than sufficient to repay the sum loaned on such pledge, together with interest and expenses, the surplus shall upon request be

Banks shall not trade, &c.  
R. S. 36, § 14.  
7 Mass. 433.



paid over by the bank to the person who conveyed the property in pledge, or to his assigns.

Right of banks to hold real estate, limited. R. S. 36, § 15.

SECT. 31. Every bank may hold real estate requisite for the convenient transaction of its business; but such estate shall not, unless by virtue of special authority for that purpose, exceed twelve per cent. on the amount of the capital stock, exclusive of what the bank may hold on mortgage, receive on execution, or take as security for or in payment of debts.

### *Meetings, Votes, Proxies.*

Notice of meetings. R. S. 36, §§ 22, 28. 1857, 243, § 6. See § 39.

SECT. 32. Written notices of the time and place of each meeting of the stockholders of a bank, properly directed to each stockholder, shall be mailed by the cashier ten days at least before the meeting; and the directors shall give public notice of all meetings fourteen days previously thereto in some newspaper published in the county, or, if there is no such paper, in some newspaper published in the city of Boston.

Votes of stockholders. Proxies. R. S. 36, § 23. 1840, 61, §§ 1, 2. 1857, 243, § 1.

SECT. 33. Every stockholder may vote according to the number of shares he holds, in the following proportion: for one share one vote, and for every two additional shares one vote more; but no stockholder shall have more than ten votes. Absent stockholders may vote by proxy, but no salaried officer of the bank shall vote as proxy. No officer shall as proxy cast more than ten votes, and no person shall as proxy cast more than fifty votes.

List of stockholders. Record of proxies. Penalty. 1857, 243, §§ 3, 7.

SECT. 34. Each bank shall at least once in every six months prepare a list of its stockholders, with the amount of stock held by each; and shall provide a book in which all proxies filed under the following section shall be forthwith entered, with the date of execution, acknowledgment, and filing, of the same, and the names of the stockholder and proxy or attorney named therein, and such list, book, and proxies filed, shall at all times be open to the inspection of every stockholder. A bank failing to comply with the provisions of this section shall for each offence forfeit a sum not exceeding five hundred dollars.

Proxies, &c., form, execution, and filing of. 1857, 243, § 2. See § 39.

SECT. 35. Proxies and letters of attorney appointing an attorney or proxy to act at a meeting of the stockholders of a bank, shall have the date of execution and the name of the proxy or attorney fully written in ink, shall be attested by at least one witness and acknowledged before a justice of the peace who is not an officer or director of said bank, shall bear the date of their acknowledgment, and shall within ten days from the date of acknowledgment and three days at least before the meeting referred to therein be filed with the cashier or bookkeeper of the bank.

for what time and meetings valid. 1857, 243, § 4. See § 39.

SECT. 36. Proxies shall be valid for three months only from date, and only for the meeting named therein and adjournments thereof; but proxies for stockholders who are citizens of this state and absent therefrom, shall be valid if, three days at least before the meeting at which the same is to be used, the attorney named therein files his affidavit that his principal has not since the date of the proxy been within the state.

list of, &c., to be read at meeting. 1857, 243, § 5. See § 39.

SECT. 37. Within three days before any meeting of stockholders, the directors shall prepare a list of the proxies in force therefor, with the names of the stockholders and their respective attorneys or proxies; which list shall be read at the meeting before proceeding to any other business.

not to be received, &c., by salaried officers. Penalty. 1857, 243, § 1. See § 39.

SECT. 38. No salaried officer of a bank shall ask for, receive, or be the medium of transmission of, a proxy in a bank of which he is such officer, except for the purpose of causing the same to be recorded as provided in section thirty-four; and every officer violating the provisions of this section shall in addition to the penalty provided in the following section be disqualified from being an officer in such bank; and upon notice and satisfactory proof of the same, the directors of the bank or bank commissioners shall forthwith remove him.

SECT. 39. A cashier who violates any provisions of section thirty-two, and any officer of a bank who violates any provision of the four preceding sections, shall for each offence forfeit a sum not exceeding five hundred dollars.

Penalty on officers.  
1857, 243, § 7.

*Directors.*

SECT. 40. No bank shall have less than seven nor more than twelve directors, the number to be determined by the by-laws. 1860 Ch. 209 § 21.

Directors.  
R. S. 36, § 19. 1860 Ch. 218  
2 Met. 163.

SECT. 41. No person shall be a director of a bank unless he is a stockholder holding unpledged stock therein and a citizen of and resident in the state, nor shall any person be a director in two banks at the same time.

to be citizens, &c., of this state.  
R. S. 36, § 17.  
1838, 196, § 6.

SECT. 42. A majority of the directors of every bank shall reside or have their places of business within the county where the bank is established, or within ten miles of the bank. This and the two preceding sections shall not apply to the Bank of Mutual Redemption.

where to reside, &c.  
R. S. 36, § 18.  
1853, 401.  
1855, 450, § 3.  
1856, 126, § 3.

SECT. 43. The directors shall be chosen annually by ballot, at a meeting of the stockholders on any day in October designated in the by-laws of the bank where there is but one bank in a city or town; and where there is more than one, on successive days, beginning on the first Monday of October in the order of the bank abstract for the year preceding, or in case of omissions in said abstract, in the order of the dates of the charters of the banks so omitted, on days next succeeding the meeting of the bank in the same city or town last named in said abstract; and said meeting shall be held at such hour and place within the city or town as the directors appoint.

to be chosen annually.  
Time when chosen.  
R. S. 36, § 22.  
1838, 196, § 1.  
1843, 93, § 10.  
1848, 121, § 1.

SECT. 44. In addition to the directors to be chosen by the stockholders, the legislature may from time to time appoint a number of directors in such proportion to the whole number as the sums paid by the state towards the stock of the bank bear to the whole amount of the stock actually paid in.

legislature may appoint.  
R. S. 36, § 43.

SECT. 45. Directors chosen by the stockholders may be removed at any special meeting of the stockholders, the notification of which states that a change in the board of directors is contemplated; and vacancies in the board may be filled at a special meeting.

may be removed.  
R. S. 36, § 24.  
1838, 196, § 2.

SECT. 46. A majority of the directors shall always be necessary to constitute a quorum for doing business.

quorum of.  
R. S. 36, § 21.

SECT. 47. The directors of every bank shall cause a book to be kept in which shall be entered all notes and bills offered them for discount, specifying all that are discounted; they shall also keep a record of the names and proceedings of all the directors present at any meeting for discounts or other official business; and every bank the directors of which fail to comply with the provisions of this section shall for each neglect forfeit five hundred dollars.

to record notes, &c., offered for discount, &c.  
Penalty.  
1838, 196, § 9.  
1843, 93, §§ 5, 8.  
1851, 339, § 1.

SECT. 48. They may call special meetings of the stockholders as often as the interest of the corporation requires.

Special meetings.  
R. S. 36, § 25.

SECT. 49. They shall choose one of their own number to act as president, and may make him such compensation as they think reasonable.

President.  
R. S. 36, § 20.

SECT. 50. They shall appoint a cashier, and may appoint clerks and other officers for conducting the business of the bank; all of whom shall be removable at the pleasure of the directors.

Cashier, &c.  
R. S. 36, § 26.

*Cashier and Loans to Officers.*

SECT. 51. The cashier before he enters on the duties of his office shall give a bond or bonds, with two or more sureties to the satisfaction of the directors, conditioned for the faithful performance of the duties of his office; and in no case shall bonds be taken for a less sum than twenty thousand dollars.

Cashier to give bond.  
R. S. 36, § 27.  
1838, 196, § 3.  
3 Pick. 335.  
4 Pick. 314.



Cashier to call special meetings.  
R. S. 36, § 28.

not to be director, &c.  
1838, 196, § 8.  
1843, 93, §§ 2, 8.  
1851, 339, § 1.

Liability of officers on notes, &c., limited.  
1838, 196, § 6.  
1851, 339, § 1.

SECT. 52. He shall, on the application in writing of the proprietors of one-fifth part of the capital stock, call special meetings of the stockholders.

SECT. 53. He shall not be a director of the bank of which he is cashier, nor shall he or any officer under him be permitted to hire money of such bank; and every bank violating the provisions of this section shall for each offence forfeit five hundred dollars.

SECT. 54. Unless by a special vote passed at a meeting called by written notification to the stockholders, giving notice of the proposed vote, no officer of a bank shall be in any way liable to it upon notes, checks, drafts, or other security, to an amount greater than eight per cent. of its capital actually paid in, nor exceeding forty thousand dollars; nor its whole board of directors be so liable to an amount exceeding thirty per cent. of its capital stock; and such vote shall have no validity after one year and thirty days from its passage, nor unless it states the amount so authorized; and every bank violating any provision of this section shall for each offence forfeit five hundred dollars.

### *Bills and Notes.*

Bank to pay out its own bills.  
1843, 93, § 11.  
1851, 257, § 12.

Amount of bills.  
Loans, where made.

R. S. 36, § 8.  
1852, 236, § 2.  
1858, 69, § 2.

Bills, issue and redemption.  
R. S. 34, § 55.  
17 Mass. 133.  
19 Pick. 532.

Altered notes.  
R. S. 36, § 44.

Penalty for refusal, &c., to pay.  
R. S. 36, § 29.  
8 Mass. 445-7.  
5 Pick. 106.  
19 Pick. 532.  
3 Met. 581.

Denominations of bank bills.  
R. S. 36, § 56.  
1853, 392, § 1.  
See Ch. 101, § 20.

Banks may stamp, &c., counterfeit and worthless bills, &c.  
1853, 378, §§ 1, 2.  
1857, 231, §§ 1, 4.

Penalty for not stamping, &c.  
1853, 378, § 3.

SECT. 55. No bank shall pay out from its counter bills other than its own.

SECT. 56. No bank shall issue bills exceeding at any one time the amount of capital stock actually paid in; and no loan or discount shall be made, nor shall any bill or note be issued by such bank, or by any person on its account, in any other place than at its banking house.

SECT. 57. All bills shall be issued in the name of the president, directors, and company, of the bank issuing them, and shall be signed by the president and cashier; but bills signed by either the president or cashier and in circulation through the agency or neglect of any officer of the bank, shall be redeemed by the corporation.

SECT. 58. Every bank shall be liable to pay to a *bona fide* holder the original amount of any bill of such bank which is altered to a larger amount in the course of its circulation.

SECT. 59. If the officers of a bank refuse or delay payment in gold or silver money of any note or bill of such bank presented for payment in their usual hours of business, such bank shall be liable to pay to the holder of such note or bill, as damages, at the rate of twenty-four per cent. a year for the time during which such payment is delayed or refused.

SECT. 60. Every bank may issue bills under five dollars to the amount of one-quarter part of its capital actually paid in, and no more; but no bank shall issue, loan, or receive bank bills of any fractional denomination, whether greater or less than one dollar; and a bank which so issues, loans, or receives fractional bills, shall for each offence forfeit one hundred dollars.

SECT. 61. A bank which receives in payment, or upon deposit, or for redemption from any other bank, or from any person, a counterfeit or uncurrent and worthless bank bill, or a bank bill which has been altered from its original denomination, or paper not a bank bill but made in the similitude thereof, or paper purporting to be the bill of a bank which never existed, shall write or stamp upon all such counterfeit bills the word "Counterfeit," upon all such altered bills the word "Altered," and upon all such other bills and papers the word "Worthless;" adding thereto the name of the bank, and initials of the officer by which the writing or stamp is made.

SECT. 62. Any bank neglecting or refusing to write upon or stamp any bill or bills, as prescribed in the preceding section, shall forfeit and pay the full amount of the bill or bills allowed to pass without being



so written upon or stamped. And if a bank or bank officer, by mistake or inadvertence, and not fraudulently, so writes upon or stamps a bank bill which is not a counterfeit, or altered, or worthless bill, such bank shall be liable to pay to the holder its value on demand.

SECT. 63. No bank shall make or issue a note, bill, check, draft, acceptance, certificate, or contract, in any form whatever, for the payment of money at a future day certain, or with interest, except for money borrowed of the state or of an institution for savings incorporated under authority of the state, or money deposited by an assignee as provided in section forty-nine of chapter one hundred and eighteen; and except also that all debts due to one bank from another, including bills of the bank indebted, may draw interest; and banks may contract with cities and towns in this commonwealth for the payment or receipt of interest, at a rate not exceeding that established by law, upon an account current of money deposited with and drawn from them by said cities and towns.

Banks not to issue certain notes, &c. What deposits may bear interest. R. S. 36, § 57. 1842, 98. 22 Pick. 181.

SECT. 64. The property and effects of every bank shall be first applied to the redemption of its bills in circulation.

Bills preferred. 1 Gray, 382. 1860 Ch. 167.

SECT. 65. A bank may, in like manner as in case of goods unlawfully detained, cause to be replevied any of its bills or notes issued as currency, detained by the holder after it has paid or tendered to him the amount due thereon, together with any interest and costs accrued; if they are so secreted or withheld that they cannot be replevied, remedy may be had in equity, as in case of goods so secreted or withheld.

Banks may replevy bills unlawfully detained. 1859, 116, § 1.

SECT. 66. If upon the hearing it appears that the full amount of principal, interest, and costs has been paid or tendered to the defendant, the plaintiff's damages for the detention shall be assessed by the jury, or by the court upon a hearing in equity, and the plaintiff shall recover the same with his costs of suit, in which case the defendant shall have judgment for any sum tendered and not received. But if it appears that said bills and notes were withheld for any amount due to the defendant beyond the amount paid or tendered, he shall have judgment for the sum due at that time, and unpaid, with interest and costs.

Proceedings in such case. 1859, 116, § 2.

*Loans and Discounts.*

SECT. 67. A bank which loans or issues any of its notes or bills with an agreement or understanding that such notes or bills shall not be put into immediate unrestricted circulation, or that they shall not be returned to the bank within a limited time, shall forfeit a sum not exceeding one-half nor less than one-fourth part of the amount so loaned or issued.

Bills not to be issued to be kept from circulation. 1837, 224, § 1. 3 Met. 587.

SECT. 68. No bank shall directly or indirectly make a loan or discount unless the amount of the loan or the proceeds of the discount are payable by the bank on demand in specie or in the bills of the bank; and every loan or discount made contrary to the provisions of this section shall be void; and the bank for each offence shall forfeit five hundred dollars.

Loans, &c., payable on demand, &c. R. S. 36, § 58. 7 Cush. 545. 10 Cush. 22. 6 Gray, 458.

SECT. 69. No bank shall take a greater rate of interest or discount on any note, draft, or security, than six per cent. a year; but such interest or discount may be calculated and taken according to the established rules of banking; and in discounting drafts, bills of exchange, or notes of hand, the bank may in addition to such interest charge the then existing rate of exchange between the place where such draft, bill, or note is discounted and the place where it is payable. For every offence against the provisions of this section the bank offending shall forfeit five hundred dollars.

Banks not to take more than six per cent. interest, and exchange. R. S. 36, §§ 59, 60. 1838, 196, § 4. 12 Pick. 556.

SECT. 70. Every bank which issues a bill, note, check, or draft,

Bills, &c., when,

where, and how  
redeemable.  
Penalty.  
R. S. 36, § 61.  
15 Mass. 453.  
4 Pick. 314.

redeemable in any other manner than by payment in specie on demand, or payable at any place other than the place where such bank is by law established and kept, shall be liable to pay the same in specie to the holder thereof on demand at said bank, without a previous demand at the place where the same is on the face of such bill, note, check, or draft, made payable; and if the bank which issued the same neglects or refuses so to pay on demand, it shall be liable to pay to the holder thereof two per cent. a month damages so long as such neglect or refusal continues.

Preceding section  
not to extend to certain  
checks and  
drafts.  
R. S. 36, § 62.

SECT. 71. Nothing contained in the preceding section shall extend to a check or draft drawn by the president or cashier of a bank within this state, on any other bank either within or without the state, for a sum exceeding one hundred dollars; but all such checks or drafts shall first be presented for payment at the bank on which the same are drawn, and in default of payment the holder shall be entitled to recover against the bank which issued the same, the amount of such check or draft, with additional damages of two per cent. a month on the amount thereof from the time of such default.

Banks may  
draw for balances.  
R. S. 36, § 63.

SECT. 72. Nothing contained in this chapter shall restrain a bank from drawing a check or draft for any balance due to it.

#### *Taking Land, &c., on Execution.*

Real estate of  
banks may be  
sold on execu-  
tion.  
R. S. 36, § 50.  
See Ch. 133, § 28.

SECT. 73. The lands of a bank may be taken in execution and sold by public auction to the highest bidder; and the officer levying such execution, having first given notice of the time and place of sale at least fourteen days previous thereto in two or more public places in the city or town where such lands lie, and also in some newspaper printed in the county, and if there is no such paper, then in a newspaper printed in the city of Boston, shall convey such lands to the purchaser, and such conveyance shall be effectual to transfer to the purchaser all the estate and interest of the bank therein.

Officer may ad-  
journ sale.  
R. S. 36, § 51.

SECT. 74. The officer who levies such execution may adjourn the sale from time to time, not exceeding seven days at any one time, until the sale is completed.

Lands mort-  
gaged to banks  
may be seized  
on execution,  
&c.  
R. S. 36, § 52.

SECT. 75. All the right, title, claim, and interest of a bank in lands mortgaged for security of a debt due or assigned to such bank, may be seized on execution and sold by public auction in the manner prescribed in the two preceding sections; and any debt secured by such mortgage and due to the bank at the time of the sale of the mortgage, shall pass by deed of conveyance executed by the officer who levies such writ of execution. The purchaser or his legal representatives, may in his or their own name maintain any action proper to recover such debt or obtain possession of such lands which might have been maintained in the name of the bank had no such sale been made, and a copy of such mortgage deed duly certified by the register of deeds for the county or district where such lands are situate and where such mortgage deed is recorded, shall be admissible evidence of the same.

Cashier, &c., to  
furnish copies  
of notes, &c., to  
officer, &c.  
R. S. 36, § 53.

SECT. 76. The cashier or clerk of such bank on reasonable request shall furnish the officer serving such execution, or the judgment creditor, with a certified copy of the note or obligation and the indorsement thereon secured by such mortgage, together with a statement of all payments made thereon by the debtor, and after the sale of such mortgage shall deliver said note or obligation to the purchaser.

No transfer of  
such note, &c.,  
after notice, &c.,  
to be valid, ex-  
cept.  
R. S. 36, § 54.

SECT. 77. The officer making such seizure on execution shall if required by the creditor file a notice thereof in the registry of deeds, and give a like notice to the cashier or president or leave the same at the banking house; and no sale or transfer of such note, obligation, or mortgage, made by the bank after such notice, shall have any validity or



effect against the purchaser under such sale, but the same shall be void except only as between the bank and the person to whom a bank makes such sale or transfer, his heirs, executors, administrators, or assigns.

*Liability of Stockholders.* 1860 Ch. 167 § 1, 2.

SECT. 78. If a loss or deficiency of the capital stock in a bank arises from the official mismanagement of the directors, the stockholders at the time of such mismanagement shall, in their individual capacities, be liable to pay the same; but no stockholder shall be liable to pay a sum exceeding the amount of the stock actually held by him at that time.

In case of deficiency, &c., stockholders liable.  
R. S. 36, § 30.  
23 Pick. 112.  
9 Met. 182.

SECT. 79. Stockholders in a bank at the time when it stops payment shall be liable in their individual capacities, for the payment and redemption of all bills issued by such bank and remaining unpaid, in proportion to the stock they respectively held at the time aforesaid; and stockholders, who, having reason to believe that a bank is about to stop payment, transfer their shares, or any part thereof, with intent to avoid this liability, shall be subject to the same, on the shares so transferred.

Liability of stockholders for redemption of bills.  
1849, 32, §§ 1, 2.

SECT. 80. Stockholders in a bank, at the time its charter expires, shall be liable, in their individual capacities, for the payment and redemption of all bills issued by such bank and remaining unpaid; and stockholders, who, having reasonable cause to believe such bank insolvent, have transferred any of their stock within six months before such expiration, with intent to avoid this liability, shall be subject to the same on the shares so transferred.

at expiration of charter.  
R. S. 36, § 31.  
1849, 32, § 3.  
23 Pick. 334.  
9 Met. 195.  
10 Met. 524, 569.  
12 Met. 363.  
1 Gray, 386.

SECT. 81. A stockholder of a bank who is obliged to pay any debt or demand against said bank out of his individual property, may have a suit in equity to recover the proportional parts of such sums of money so paid from the other stockholders liable for the same, and such damages and costs as the court may decree.

Stockholders may compel contribution.  
R. S. 36, § 32.

SECT. 82. A corporation being a stockholder in a bank, shall be liable in its corporate capacity to pay any loss or deficiency of the capital stock in such bank arising from the official mismanagement of its directors, and for the payment and redemption of all bills issued by said bank, and remaining unpaid when its charter expires, or when it has stopped payment, in the same manner as individual stockholders are liable in their individual capacities; and such corporation may compel a contribution from other stockholders in the manner prescribed in the preceding section.

Corporations owning bank stock to be under same liabilities, &c., as individuals.  
R. S. 36, § 33.  
1849, 32, § 1.

*Loans to Commonwealth.*

SECT. 83. Upon requisition of the legislature each bank shall loan to the state a sum not exceeding five per cent. of its capital stock at any one time, reimbursable by five annual instalments or at any shorter period at the election of the state, with the annual payment of interest at rate not exceeding five per cent.; but the state shall not be entitled to demand of any bank loans which together at any one time exceed one-tenth part of its capital.

Banks to loan to commonwealth.  
R. S. 36, § 35.

SECT. 84. When the treasurer is authorized by an act or resolve of the legislature to borrow money of a bank, he shall give notice in writing to the president or cashier thereof, of the amount to be furnished by such bank, and shall require a loan of the same conformably to the provisions of this chapter; and thereupon the bank shall forthwith place to the credit of the state the amount of the loan required.

Treasurer to give notice to banks.  
R. S. 36, § 36.

SECT. 85. The treasurer in making demand upon the banks for such loan shall equalize as far as shall be conveniently practicable the amount of such demand among the several banks within the state, having reference to the amount of the obligation of each bank to loan to the state,

to apportion amount of loans required.  
R. S. 36, § 37.



and to the amount previously borrowed of each bank under authority thereof.

Forfeiture if banks refuse to loan to treasurer.  
R. S. 36, § 38.

SECT. 86. If a bank neglects or refuses for the space of thirty days after notice from the treasurer to make such loan and to place the amount thereof to the credit of the state, such bank shall forfeit and pay into the state treasury at the rate of two per cent. a month upon the amount so long as such refusal or neglect continues: *provided*, that the notice demanding such loan is approved by the governor in writing and accompanied by an attested copy of such act or resolve.

Treasurer to institute suit for such refusal.  
R. S. 36, § 39.

SECT. 87. The treasurer, at the expiration of thirty days after such demand and after such neglect or refusal of a bank, shall institute an action in the name of and for the use of the commonwealth against the bank so neglecting or refusing, for the recovery of said penalty; and from month to month shall institute similar suits so long as such neglect or refusal continues; and upon obtaining judgment and execution he shall cause the amount thereof to be forthwith levied and the judgment satisfied.

#### *Taxes.*

Statement of capital to be furnished treasurer.  
R. S. 36, § 46.

SECT. 88. Every bank shall, until all its capital is paid in and reported to the treasurer, furnish him on or before the first Mondays of April and October after each payment of its capital, with a statement of the amount of stock actually paid in by its stockholders, and the time when the several instalments were paid.

Bank tax.  
R. S. 9, §§ 1, 2.  
R. S. 36, § 45.  
12 Mass. 252.  
22 Pick. 176.  
11 Met. 135.

SECT. 89. Every bank shall annually within ten days after the first Monday of April and October, pay to the treasurer of the commonwealth a tax of one-half of one per cent. upon all its capital stock which has been for six months actually paid in, and at the same rate for any shorter time any of its capital has been so paid in.

Remedy for neglect to pay tax.  
R. S. 9, § 3.  
22 Pick. 176.

SECT. 90. If a bank neglects to make such payment, the treasurer shall forthwith commence an action of contract in the name of the commonwealth for the recovery of the same with interest.

#### *Weights to be sealed.*

Weights of banks to be proved every five years.  
R. S. 36, § 47.

SECT. 91. The directors of the several banks, once in five years, shall have the weights used in their respective banks compared, proved, and sealed, by the treasurer of the commonwealth or some person specially authorized by him for that purpose; which shall supersede so far as respects such banks the sealing of their weights by the city or town sealer.

No tender of gold valid, unless, &c.  
R. S. 36, § 48.

SECT. 92. No tender by a bank of gold weighed with weights other than those compared, proved, and sealed, as required in the preceding section, shall be legal; and the payer or receiver may also require that the gold shall be weighed in each scale, and the mean weight resulting therefrom shall be considered as the true weight.

#### *Weekly and Monthly Returns.*

Weekly returns of banks in Boston.  
1854, 307, §§ 1, 7.  
1856, 95.  
1858, 69, § 1.  
See § 19.

SECT. 93. Every bank doing business in Boston except in that portion called South Boston shall on every Monday morning transmit to the secretary, according to a form to be furnished by him, a statement under the oath of the president or cashier of the amount of its capital stock, the average amounts due to and from other banks, of deposits, circulation, loans, and discounts, specie actually in the bank, including specie specially deposited in the bank of deposit of the Boston Clearing House, which statement shall be based upon the condition of the bank on each day of the week next preceding said Monday.

SECT. 94. Every bank in South Boston and bank out of Boston shall

on the first Monday of each month transmit to the secretary, according to a form to be so furnished, a like statement, except that banks out of Boston shall not include in their returns specie deposited in the bank of deposit of the Boston Clearing House, and all the banks mentioned in this section shall state the balances payable on demand due from other banks, which may be applied to the redemption of their bills; which returns shall be based upon the condition of the several banks on each Saturday since their preceding return.

Monthly returns of banks out of Boston, and in South Boston. 1854, 307, §§ 3, 7. 1856, 95. 1858, 69, § 1. 1858, 165. 1859, 218. See § 49.

SECT. 95. Every bank in Boston except in that portion called South Boston neglecting to comply with the requirements of section ninety-three shall for each neglect forfeit five hundred dollars; and every other bank neglecting to comply with the requirements of the preceding section shall, unless the secretary and treasurer are duly satisfied that said returns were duly made, properly directed to the secretary and deposited in the post office where said bank is situated, and that there was no neglect on the part of the officers of the bank, for each neglect forfeit twenty-five dollars, and the secretary shall immediately notify such bank of its neglect, and if such neglect continues ten days from said first Monday of any month, the bank shall forfeit five hundred dollars.

Penalty for neglect. 1855, 101, § 1, 2.

SECT. 96. The secretary shall cause to be published in one or more of the Boston daily papers, an abstract of the returns of said banks in Boston, on the Wednesday after the same are received, and a like abstract of the returns of other banks as soon as may be after the receipt of the same; and he shall have regard to prices at which offers may be made to make the required publication of such abstracts. All bills therefor shall be approved by the governor and council.

Secretary to publish abstract of returns, &c. 1854, 307, §§ 2, 4, 5.

SECT. 97. The secretary shall transmit to each bank blank forms for the returns required by sections ninety-three and ninety-four, and the banks shall adopt said forms in making the returns.

Blanks to be furnished. 1854, 307, § 7.

*Annual Returns.*

SECT. 98. The cashier of each bank shall annually make a return of the state of such bank as it existed at seven o'clock in the afternoon of any Saturday the governor may direct; and he shall transmit the same as soon as may be, not exceeding fifteen days thereafter, to the secretary of the commonwealth; which return shall specify the amount due from the bank, designating in distinct columns the several particulars included therein, and shall also specify the resources of the bank, designating in distinct columns the several particulars included therein; which return shall be in substance as follows, to wit:—

Cashiers to make returns annually. R. S. 36, § 65, 67. 1837, 65. 1842, 49. 1854, 309. 1856, 95. 1858, 115, §§ 1, 2. 1859, 218.

*State of Bank, on the Saturday of 18 , 7 clock, P. M. Form of return.*

DUE FROM THE BANK.

1. Capital stock.
2. Bills in circulation of denomination of five dollars and upwards.
3. Bills in circulation of denomination less than five dollars.
4. Net profits on hand.
5. Balances due to other banks.
6. Cash deposited, including all sums whatsoever due from the bank, not bearing interest, its bills in circulation, profits and balances due to other banks excepted.
7. Cash deposited bearing interest.
8. Total amount due from the bank.

RESOURCES OF THE BANK.

9. Gold, silver, and other coined metals in its banking house, including, in case of Boston banks, specie in the bank of deposit of the Boston Clearing House.
10. Real estate.
11. Bills of banks in this and of the other New England states.
12. Balances due from other banks.
13. If the bank is in South Boston, or any place out of Boston, state balances in any other bank to be applied to the redemption of bills, and payable on demand.
14. Amount of all debts due, including notes, bills of exchange, and all stocks and funded debts of every description, excepting the balances due from other banks.
15. Total amount of the resources of the bank. Rate, amount, and date of dividends since last return. Amount of reserved profits at the time of declaring the last dividend. Amount of debts due to the bank, secured by a pledge of its stock. Amount of debts due and not paid, and considered doubtful. Amount of liabilities of directors.



Returns, how authenticated.

Such return shall be signed by the cashier of the bank, who shall make oath before some justice of the peace to the truth of said return according to his best knowledge and belief; and a majority of the directors of each bank shall certify and make oath that the books of the bank indicate the state of facts so returned by the cashier, and that they have full confidence in the truth of said return.

Penalty for neglect.

R. S. 36, § 66.

SECT. 99. Every bank neglecting to comply with the provisions of the preceding section shall forfeit one hundred dollars for each day's neglect, to be recovered by the treasurer of the commonwealth.

Secretary to provide forms.

R. S. 36, § 67.

SECT. 100. The secretary of the commonwealth shall annually in the month of March or April furnish four printed copies of the form of the return required by section ninety-eight to the cashier of every bank.

to prepare abstracts of the returns, &c.

R. S. 36, § 68.

SECT. 101. The secretary shall as soon as may be after he has received the annual returns from the several banks cause to be prepared and printed a true abstract of the same, with each column added up; and he shall transmit by mail one copy to the cashier of each bank in the state, and shall submit the same to the legislature at its next session.

[Investigations.]

Legislature may examine banks and declare charters forfeited.

R. S. 36, § 40.

9 Met. 195.

SECT. 102. Any committee, appointed by the legislature for the purpose, may examine into the doings of any bank, and shall have free access to its books and vaults. If upon such examination it appears, and after a hearing of said bank thereon it is determined by the legislature that said bank has exceeded its powers or failed to comply with any of the rules, restrictions, and conditions, provided by law, its charter may be declared forfeited, and thereby shall be annulled.

Penalty on officers of banks for refusing to exhibit books, &c.

R. S. 36, § 41.

SECT. 103. If any officer of a bank, or any other person having charge of the books and property of a bank, refuses or neglects to exhibit them to such committee, or in any way obstructs the examination thereof by the committee, he shall be deemed guilty of a misdemeanor and punished by a fine not exceeding ten thousand dollars or imprisonment not exceeding three years.

One-eighth of stockholders may choose committee to investigate, &c.

1843, 93, § 9.

SECT. 104. One-eighth of the stockholders in number or value in any bank may when they consider it necessary choose a committee of their own number to make an investigation of its concerns. If upon examination such committee are of opinion that the bank is insolvent, or that its condition is such as to render its further progress hazardous to the public or to those having funds in its custody, or that the bank has exceeded its powers or failed to comply with all the rules, restrictions, and conditions, provided by law, they shall forthwith report the facts in the case to one of the justices of the supreme judicial court. If upon inquiry into the circumstances of the bank such justice considers it necessary, he may issue an injunction to restrain such corporation in whole or in part from further proceeding with its business until a hearing of the corporation can be had. He shall forthwith issue process for that purpose, and after a full hearing of the corporation may dissolve or modify the injunction or make the same perpetual, and make such orders and decrees to suspend, restrain, or prohibit, the further prosecuting of the business of such corporation as may be needful in the premises, according to the course of proceedings in equity; and he may appoint agents or receivers to take possession of the property and effects of the corporation, subject to such rules and orders as may from time to time be prescribed by the supreme judicial court, or any justice thereof in vacation.

*Annulling and Expiration of Charters.*

Stockholders may annul charter.

SECT. 105. The stockholders of any bank, at a meeting called by a written notice from the cashier, stating the time, place, and object, of the meeting, sent to each stockholder thirty days at least before the



time of holding the same, and published in one or more newspapers printed in the city or town, or if there is no such paper then in one or more newspapers printed in the county where such bank is situated, for three weeks before the time of such meeting, may, by a majority of the votes all the stockholders could cast if present, or, when the bank commissioners or a majority of them have so recommended, by a majority of the votes cast at such meeting, surrender and thereby annul the charter of such bank ; but such annulling shall not exempt the stockholders from any liability imposed by this chapter or chapter sixty-eight.

Not to exempt from liability. 1838, 108, §§ 1, 2, 1841, 113, §§ 1, 2, 3.

SECT. 106. Every bank availing itself of the provisions of the preceding section shall be exempt from the bank tax from the time a majority of the bank commissioners report to the governor that such bank may with safety to the public close its concerns under the provisions of section thirty-six of chapter sixty-eight.

Banks exempt from further tax, when, &c. 1838, 108, § 2.

SECT. 107. Any stockholder or creditor of a bank that has surrendered its charter, may for the purpose of limiting the time beyond which its liabilities shall be barred, apply by petition to the supreme judicial court, which shall have as full power to fix such limitation as if the bank were before it by a creditors' bill in equity, or under chapter sixty-eight.

S. J. C. may limit time of liability of banks surrendering charters. 1848, 251.

SECT. 108. When the charter of a bank expires or is forfeited, or when a bank closes its business, the members of the board of directors last in office shall forthwith deliver up all their plates and dies to the court of record having jurisdiction of the offence of counterfeiting in the county in which the bank has been established, and the court shall cause them to be disposed of in such manner as shall be deemed expedient in order to prevent their use for any unlawful purpose. A member of the board who wilfully refuses or neglects so to do shall be punished by a fine not exceeding five hundred dollars.

Plates and dies to be delivered to court, when bank charter expires. Penalty. 1855, 108, §§ 2, 2. 1850 Ch. 109 § 3.

*New Privileges.*

SECT. 109. If new or greater privileges are granted to any bank hereafter created by charter, every such bank in operation at the time of such grant shall be entitled to the same privileges, and subject to the same liabilities.

New privileges extended to all banks. R. S. 36, § 69.

BANKS ORGANIZED UNDER GENERAL LAWS.

SECT. 110. Ten or more persons and their successors may become a body corporate for the purpose of carrying on the business of banking on the terms and conditions prescribed in this chapter, and in all general laws which are at any time in force in this state in relation to banks and banking, so far as they are not inconsistent with the following sections.

Who may be a corporation for banking purposes. 1851, 267, §§ 1, 12. 1852, 236, § 1. 1859, 267.

SECT. 111. The capital stock of each bank thus established shall not be less than one hundred thousand nor more than one million dollars, divided into shares of one hundred dollars each, transferable only at the banking house and on the books of the bank. The stock shall be paid in gold or silver money, one-half before the bank goes into operation and the remainder within one year thereafter; subject to which provisions it shall be paid in such instalments and at such times as the stockholders direct.

Amount of capital stock. How paid in. 1851, 267, §§ 1, 2.

SECT. 112. Before a corporation commences business, the president and directors shall under their hands and seals make a certificate, which shall specify:—

Certificate to be made, &c. 1851, 267, § 3.

First, the corporate name, which shall be different from that of any bank previously organized or incorporated in this state;

Second, the name of the city or town in which it is to be located;

Third, the amount and number of shares of its capital stock;

Fourth, the name, place of residence, and number of shares, of each stockholder;

Fifth, the time when it is to go into operation.

The certificate shall be acknowledged before a justice of the peace and recorded in the registry of deeds of the county or district in which the bank is to be located, and a copy shall be filed in the office of the secretary of the commonwealth. Copies of such certificate duly attested by the register or secretary shall be admitted as sufficient evidence in all cases.

May increase capital.  
1851, 267, § 4.

SECT. 113. A bank so organized may by a vote of three-fourths of its stockholders increase its capital stock upon proceedings similar to those prescribed in the preceding section.

Shall carry on business only at banking house. Forfeiture of privilege.  
1851, 267, § 5.

SECT. 114. Such bank shall carry on, at its banking house only, the usual business of banking. If after receiving circulating notes as hereinafter provided it neglects or omits to carry on such business, the neglect or omission shall work a forfeiture of its privilege, and it may be proceeded against as provided in section one hundred and thirty-one.

1860 Ch. 51. Auditor to obtain engraved bank notes; to countersign, number, and register.  
1851, 267, § 6.  
1859, 221, § 6.  
1861 Ch. 72.

SECT. 115. The auditor of accounts shall cause to be engraved and printed in the best manner to guard against counterfeiting, circulating notes in the similitude of bank-notes, in blank, of such denominations as are allowed by law and in such quantities as he may from time to time deem necessary. Before such notes are delivered to a bank they shall be numbered and registered in proper books kept for the purpose in the office of the auditor, and countersigned by him, or under his direction by some person by him appointed, with the approval of the governor and subject to removal, of which appointment such public notice shall be given as the governor requires.

to destroy bank-notes returned.  
1860 Ch. 2  
1861 Ch. 162

SECT. 116. Any such bank may, at any time, return any portion of its circulating notes to the auditor, who shall, forthwith, on receiving the same, cause them to be destroyed in his presence, and in the presence of the president and cashier of the bank; and a certificate thereof shall be entered upon the books of the auditor, and signed by said auditor and said president and cashier.

1860 Ch. 170 to give notes to bank upon receipt of public stock, &c. Part to be exempt from taxation.  
1851, 267, § 7.  
1852, 236, § 2.

SECT. 117. When such bank transfers to the auditor, at a rate not above its par value nor above its current market value, any public stock issued by a city or town in this state, or by either of the New England states, New York, or the United States, amounting, upon an equality to a stock of this state producing six per cent. a year, to not less than fifty thousand dollars, and not exceeding twenty-five per cent. above its capital stock, such bank shall be entitled to receive from the auditor an equal amount of circulating notes so countersigned and registered, and stamped on their face, "secured by the pledge of public stocks;" and such bank shall be exempt from taxation upon such portion of its capital stock not exceeding three-fourths thereof so invested and transferred.

Stocks may be exchanged or surrendered.  
1851, 267, § 8.

SECT. 118. The circulating notes held by such bank shall at all times be secured in full by public stocks as provided in the preceding section, and shall never be less in amount than fifty thousand dollars; subject to which provisions the auditor may upon application of a bank surrender and transfer to it its deposited stock or any part thereof in exchange for other stocks of the kind specified in said section, or for an equal amount of circulating notes originally delivered to said bank, to be by the auditor immediately cancelled.

Securities to be stamped.

SECT. 119. All securities held by the auditor under the provisions of this chapter shall as soon as received, and in presence of the president or cashier of such bank, be stamped or branded with the following words, to wit:—

COMMONWEALTH OF MASSACHUSETTS.

Deposited in the auditor's office by (fill this space with the name of the bank depositing the security) as security for its circulating notes. Not to be withdrawn without the consent of the auditor indorsed hereon, and countersigned by the treasurer.



And such securities, when withdrawn in conformity with the provisions of this chapter, shall be indorsed with the words, "Withdrawn by consent of the auditor;" which consent shall be signed by the auditor and countersigned by the treasurer.

SECT. 120. Such bank, after having executed and signed such circulating notes so as to make them notes payable on demand at its banking house, may loan and circulate them as money subject to the laws and usages of this state in regard to banking, and shall issue no other circulating notes.

Banks may circulate notes. 1851, 267, § 10.

SECT. 121. If such bank after receiving such circulating notes refuses or delays payment in gold and silver money of any such note issued by it and presented for payment in its usual hours of business, it shall be liable to the penalty prescribed in section fifty-nine, and the holder making such demand may cause the same to be protested. The auditor on receiving and filing in his office such protest shall forthwith give notice in writing to the bank that issued such note; and if the bank neglects or refuses to redeem it in gold or silver money for ten days after such notice, he shall immediately, unless he is satisfied that there is a good and legal defence against the payment thereof, give notice by publication in two or more newspapers that all the circulating notes issued by such bank will be redeemed out of the trust funds in his hands for the purpose. He shall thereupon apply such trust funds to the payment, *pro rata*, of all the circulating notes issued by such bank, whether protested or not, and adopt such measures for the payment thereof as will in his opinion most effectually prevent loss to the holders.

Proceedings when payment of bills refused. 1851, 267, § 11.

SECT. 122. The auditor shall not countersign circulating notes for any bank to an amount in the aggregate exceeding the public stocks deposited with him by such bank. If the auditor wilfully violates the provisions of this section he shall be punished by fine not less than five thousand dollars, or imprisonment not less than five years, or by both.

Penalty for countersigning excess of notes. 1851, 267, § 14.

SECT. 123. The plates, dies, and materials, to be procured by the auditor for making such notes, shall remain in his custody and under his direction; and each bank shall pay such portion of the expense thereof as may seem to the auditor just and reasonable.

Plates, dies, &c., to be kept by auditor. Expense of, by whom paid. 1851, 267, § 13.

SECT. 124. No such bank shall pay from its counter any bills except its own and those of other banks of this state.

What bills bank to pay out. 1851, 267, § 12.

SECT. 125. The auditor shall make and deliver to every such bank powers of attorney to receive the interest and dividends at any time due on the public stock deposited by it; but he may revoke such powers of attorney when in his judgment the public safety requires it; and all money received by him as interest or dividends shall be held in trust for and on account of such bank.

Banks to receive the interest, &c., on public stock pledged. 1851, 267, § 9.

SECT. 126. Every such bank shall, in addition to the returns required of other banks, specify and describe the stocks which it has deposited with the auditor.

to make returns of stocks deposited. 1851, 267, § 15.

SECT. 127. The secretary shall prepare a separate abstract of the returns of such banks. The annual meetings of the stockholders for the choice of directors shall be held in conformity thereto, agreeably to the provisions of section forty-three.

Abstracts of such returns. Time of annual meeting. 1851, 267, § 16.

SECT. 128. The bank commissioners shall examine the certificates of stocks held by the auditor and the amount of circulating notes issued to any bank on account thereof, and if in their opinion such stocks have so depreciated in value as to make them unsafe for the security deposited, they shall require the bank to exchange such security or give additional security to their satisfaction.

Bank commissioners to examine stocks, &c. 1851, 267, § 17.

SECT. 129. When a bank has redeemed and returned to the auditor at least ninety per cent. of the bank notes which it has received, and shall deposit in his name in such bank as he approves an amount of

When stock may be returned to bank. 1851, 267, § 18.



money equal to its unredeemed circulating notes, he may receive the same and give up all the securities theretofore deposited by it.

Bank may thereafter be discharged upon six years' notice.  
1851, 267, § 19.

SECT. 130. A bank which has complied with the provisions of the preceding section may give notice for six years in any newspaper authorized to publish the laws of the state, and also in at least one newspaper published in the county where the bank is located, that all circulating notes issued by such bank must be presented at the auditor's office within six years from the first publication of such notice, and that at the termination of said six years the notes will not be redeemed. On proof that such notice has been given the auditor shall pay over to the bank any money in his hands; and the bank shall not be longer held for the redemption of its bills.

Injunction may be had in certain cases.  
1851, 267, § 20.

SECT. 131. When any justice of the supreme judicial court is satisfied, from the certificate of the auditor or otherwise, that any such bank is insolvent, or that its condition is such as to render its further continuance hazardous to the public or to those having funds in its custody, or that it has exceeded its powers, or has failed to comply with all the rules, restrictions, and conditions, provided by law, the same proceedings shall be had in relation thereto as are provided in section one hundred and four.

When in hands of receivers, auditor to transfer stocks, &c.  
1851, 267, § 21.

SECT. 132. When a bank is placed in the charge of one or more receivers or trustees by a justice of the supreme judicial court, the auditor shall transfer and pay over to them all stocks or moneys held by him as the property of such bank, to be by them applied to the redemption of its circulating notes.

Legislature may alter or repeal, &c. Remedies not impaired.  
1851, 267, § 22.

SECT. 133. The legislature may at any time alter or repeal the twenty-three preceding sections, and may by special act annul or dissolve any corporation existing under the same; but the dissolution of such corporation shall not impair any remedy given against the same, its stockholders, or officers, for any liability previously incurred.

Banks heretofore organized.

SECT. 134. The preceding sections shall apply to such banks as have availed themselves of the provisions of chapter two hundred and sixty-seven of the statutes of eighteen hundred and fifty-one.

#### SAVINGS BANKS.

Savings banks to be governed by following sections.  
R. S. 36, § 71.

SECT. 135. All savings banks or institutions for savings incorporated under the authority of this state, may exercise the powers and shall be governed by the rules and be subject to the duties, liabilities, and provisions, contained in the following sections, so far as the same are consistent with the provisions of their respective charters.

officers of.  
R. S. 36, § 72.

SECT. 136. The officers of every such corporation shall consist of a president, treasurer, and such number of trustees or managers and other officers as may be found necessary for the ordinary management of its affairs.

to be sworn.  
Tenure of office.  
Treasurer to give bond.  
R. S. 36, § 73.

SECT. 137. Such officers shall be sworn and shall hold their several offices until others are chosen and qualified in their stead; and the treasurer shall give bond to the satisfaction of the managers or trustees for the faithful discharge of the duties of his office.

Choice and appointment of officers.  
R. S. 36, § 74.

SECT. 138. The officers except the treasurer shall be chosen at the annual meetings of such corporations, to be holden at such time as the by-laws direct. The treasurer shall be appointed by the managers or trustees, and shall hold his office during their pleasure. If any office becomes vacant during the year, the managers or trustees may appoint a person to fill the same until it is filled at the next annual meeting. It shall be the duty of the person acting as clerk at such meeting, to notify all persons elected to any office, and to ascertain whether they accept the same; and within ten days after to publish in some newspaper published within the county, a list of all such persons as accept the offices to which they are chosen. Any clerk neglecting to make such notification or such publication, or making a false publication, shall be liable to a penalty of fifty dollars.

SECT. 139. Such corporations may at any time hold special meetings by order of the trustees or managers; and the treasurer shall also notify special meetings upon the requisition in writing of any ten members of the corporation. Notice of all meetings shall be given by public advertisement in some newspaper of the county where the corporation is established, or if there is no such paper, then in some newspaper of the city of Boston.

Special meetings, how called.  
R. S. 36, § 75.

SECT. 140. Every such corporation may at a legal meeting elect by ballot any citizen of this state to be a member thereof; and any person may at any annual meeting cease to be a member by filing a written notice of his intention so to do with the treasurer three months at least before such meeting. No person shall continue to be a member after removing from the state.

Members, how elected, and how they may withdraw.  
R. S. 36, § 76.

SECT. 141. Every such corporation may receive on deposit for the use and benefit of the depositors all sums of money offered for that purpose; but it shall not hold at the same time more than one thousand dollars of one depositor other than a religious or charitable corporation.

Deposits may be received not exceeding, &c.  
R. S. 36, § 77.

SECT. 142. Such sums may be invested on first mortgages of real estate situated in this state, or in the stock of any bank incorporated under the authority of this state, or in the public funds of this state, or in the public funds of any of the New England states or the United States, or may be loaned to any city, county, or town, in this state, or on notes with a pledge of any of the aforesaid securities as collateral.

how to be invested.  
R. S. 36, § 78.  
1841, 44.

SECT. 143. No such corporation shall hold, both by way of investment and as security for loans, more than one-half the capital stock of any bank, nor have more than seventy-five per cent. of its deposits invested in mortgages of real estate, nor invest more than ten per cent. thereof, and not to exceed one hundred thousand dollars, in the capital stock of any corporation.

Investments restricted.  
R. S. 36, § 78.  
1841, 44.  
1855, 294, § 1.

SECT. 144. Savings banks may deposit on call in banks incorporated under the authority of this state, and receive interest for the same, sums not to exceed seven per cent. of the amount deposited in said savings banks.

Same subject.

SECT. 145. If the money held by any such corporation cannot be conveniently invested in any or all of the modes herein before prescribed, it may loan not exceeding one-half part of the amount thereof on bonds or other personal securities, with at least two sureties: *provided*, that the principal and sureties shall all be citizens of this state and resident therein.

Same subject.  
R. S. 36, § 79.

SECT. 146. No member of a committee or officer of such corporation charged with the duty of investing its funds, shall borrow or use any portion thereof, be surety for loans to others, or in any manner, directly or indirectly, be an obligor for money borrowed of or loaned by the corporation.

Investing officers, &c., not to borrow, &c.  
R. S. 36, § 80.  
1858, 48.

SECT. 147. The income or profit of all deposits, after a deduction of all reasonable expenses incurred in the management thereof, shall be divided among the depositors or their legal representatives, in just proportion; ordinary dividends shall be made every six months, and extra dividends at times fixed by the by-laws; but no dividend shall be declared until the managers or trustees cause an examination to be made, and find that the amount thereof has actually accrued, and no dividend or interest shall be paid to a depositor unless authorized by a vote of the trustees or managers; and the principal deposits may be withdrawn at such time or in such manner as the corporation in its by-laws directs.

Dividends, how made, and deposits, how withdrawn.  
R. S. 36, § 81.  
1859, 189, §§ 1-3.

SECT. 148. The treasurer of every such corporation shall annually make return of the condition thereof as it was at the close of business on the last Saturday of some preceding month, to be designated by the governor; which return shall be made to the secretary of the common-

Savings banks, &c., to make annual returns. Contents of.  
1846, 86, § 1.



Form of return.

wealth within fifteen days after an order to that effect; and said return shall specify the following particulars, namely: place where located; name of corporation; number of depositors; amount of deposits; public funds, stating amount of each; loans on public funds, stating amount on each; invested in bank stock, stating amount in each; loans on bank stock, stating amount on each; deposits in banks bearing interest, stating amount in each; loans on railroad stock, stating amount on each; invested in real estate; loans on mortgage of real estate; loans to county or town; loans on personal security; cash on hand; rate and amount of ordinary dividend for last year; average annual per cent. of dividends for the \_\_\_\_\_ years since the last extra dividend was declared; annual expenses of the institution; all of which shall be certified and sworn to by the treasurer. And five or more of the trustees or managers of the corporation shall also certify and make oath that the said return is correct according to their best knowledge and belief.

Secretary to furnish forms, &c.  
1846, 86, § 2.

Returns by savings institutions to assessors.  
1849, 110.  
1851, 258, §§ 1, 2.  
1852, 312.

SECT. 149. Blank forms of such returns shall be furnished to every such corporation by the secretary; and he shall prepare suitable yearly abstracts of such returns, and lay the same before the legislature.

SECT. 150. The treasurer of every such corporation shall annually between the first and tenth days of May make return in person or by mail to the assessors of each city and town in this state in which he has reason to suppose such a depositor or borrower was resident on the first day of said month, of the names of all depositors so resident having deposits amounting on said day to five hundred dollars and upwards, with the amounts standing to the credit of each; and the names of all borrowers upon collateral security of shares of corporate stock so resident, the number of shares, denomination, and par value, of such stock on said day pledged by each. If he refuses or neglects to make such return, or wilfully falsifies a return, he shall forfeit fifty dollars for each offence, to the use of the city or town in which a depositor or borrower resided whose name and amount was not truly returned, to be recovered in an action of tort.

to overseers of poor on request.  
1852, 132, § 1.

SECT. 151. He shall, upon the written request of any overseer of the poor of a city or town in this state signed by him, inform such overseer of the amount, if any, deposited in the institution of which he is treasurer, to the credit of any person named in such request who may be at the time a charge upon the state or any city or town therein as a pauper.

to assessors on request.  
1852, 132, § 2.

SECT. 152. He shall upon the written request of an assessor founded upon the vote of his city or town, inform such assessor of the amount if any exceeding two hundred dollars, deposited in the institution of which he is treasurer, to the credit of any person who may be at the time of such request a resident of such city or town.

Penalty.  
1852, 132, § 3.

SECT. 153. If he unreasonably refuses to give the information required by either of the two preceding sections, or wilfully renders false information, he shall forfeit fifty dollars for every such offence, to the use of the city or town upon which such pauper is a charge, or to the state, if the pauper is a charge upon the state, or to the city or town of such assessor.

Money deposited in name of minors.  
1855, 361.

SECT. 154. Money deposited in such a corporation in the name of a minor, may at the discretion of the trustees or committee of investment be paid to such minor or to the person making such deposit; and the same shall be a valid payment.

The legislature may make further regulations, &c.  
R. S. 36, § 84.

SECT. 155. The legislature may make other or further regulations for the government of such corporations, or take away their corporate powers; and such corporations and their officers shall be subject to examination by a committee of the legislature in like manner and under all the liabilities and penalties provided in this chapter with respect to the examination of banking corporations.



BANKS AND SAVINGS BANKS.

SECT. 156. The directors of every bank authorized to settle and close its concerns, the trustees of every savings bank and institution for savings so authorized, and all receivers or trustees appointed to take possession of the property and effects of any bank, shall annually on the second Wednesday of January make a report to the legislature, stating under specific heads the liabilities and property of each corporation, and rendering a full account of their receipts, payments, and doings, in the execution of their trusts.

Banks, &c., closing concerns, to make annual reports. 1847, 32, § 1.

SECT. 157. Directors, trustees, and receivers, neglecting to comply with the provisions of the preceding section, shall for each and every day's neglect severally forfeit twenty dollars, to be recovered by the treasurer of the commonwealth who shall sue for the same; but no payment of a forfeiture so incurred, or of expenses resulting from such forfeiture, shall be allowed as a charge against such bank or institution.

Penalty. 1847, 32, § 2.

1860. ch. 129 ch. 136  
1861. ch. 132

CHAPTER 58.

OF INSURANCE COMPANIES.

INSURANCE COMMISSIONERS.

SECTION

1. Insurance commissioners, appointment and tenure of office.
2. to visit and examine insurance companies on request, &c.
3. may examine books and agents of foreign companies.
4. to calculate value of life policies.
5. may examine officers and other persons. Penalty for refusing to testify.
6. shall apply for injunction in case of insolvency, &c. Injunction to issue; proceedings thereon.
7. to furnish forms for returns.
8. to report violations of law to secretary. Attorney-general to prosecute, &c.
9. to keep record of their proceedings, &c.
10. to make annual report to legislature. Contents of.
11. Salary.

GENERAL PROVISIONS.

12. General powers, &c., of insurance companies.
13. First meeting, how called.
14. Companies to give notice of organization, &c.
15. Call of meetings to specify, &c.
16. Companies may adopt by-laws. Not to limit venue of actions or suit to less than two years.
17. Secretary and treasurer to give bond.
18. Office in place specified in charter. In case of agencies, cards, &c., to specify place.
19. liable to taxation. To submit sworn statement of affairs to legislature.
20. funds of, to be invested in corporate name and separate classes.
21. Investing officers not to borrow.
22. Mortgages held by companies, liable to be taken on execution.

SECTION

23. Companies not to trade, except.
24. to conduct business in corporate name only. Term of policies.
25. to transmit to commissioners annual statement of affairs.
26. penalty on, for neglect or making false returns.

COMPANIES HAVING SPECIFIC CAPITALS.

27. Companies with specific capitals to choose directors. Directors to accept in writing. Quorum. Vacancies. Proxies. Record evidence of elections.
28. to choose president and secretary, who shall be sworn. Duties of secretary.
29. Special meetings, how called.
30. Capital stock, how and when paid in. Policies not to issue, until, &c.
31. how invested and loaned. Liability of directors upon loans.
32. Risks to be taken. Policies, how executed. Limitation of risks.
33. On reduction of capital, risks to be reduced. Liability of president and directors. Of stockholders.
34. Directors to make annual statement to stockholders. Basis of dividends.

MUTUAL MARINE AND MUTUAL FIRE AND MARINE COMPANIES.

35. Election of officers, &c. Form of agreement. When may issue policies.
36. Membership.
37. Subscriptions, how held, used, invested, and cancelled.
38. Limitation of single risks. Reinsurance. Liability of president and directors for over-insurance.
39. Monthly statement.
40. Mutual marine companies having been in operation at least one year, shall make

## SECTION

annual statement. Directors may declare dividend of certain per cent. on premiums and subscriptions to safety fund, and issue certificates.

41. Six per cent. interest may be paid on certificates, and excess of profits applied to redemption.
42. Debt due from persons entitled to certificate may be deducted.

## MUTUAL AND STOCK AND MUTUAL FIRE COMPANIES.

43. Election of directors. Proxies.
44. President, secretary, and treasurer, chosen and sworn. Secretary to keep record.
45. Quorum of directors. Vacancies. Special meetings.
46. Choice of directors. Secretary to keep list of stockholders of guarantee capital. Special meetings.
47. Corporations may be represented in mutual companies.
48. Assessments. Liability of directors.
49. Liability of treasurer.
50. When directors liable, creditors may sue. Remedy against corporation. Liability of members.
51. Members to share profits or losses at expiration of policy.
52. Policies limited in amount, and to create lien. Limitation, &c., to be set forth. Enforcement of lien.
53. Directors to classify property insured. Classes to be observed in policies; expenses, assessments, and dividends.
54. Assessments and statements to be recorded. Statements subject to inspection. Separate statements. Limitation on assessments.
55. Single risks limited.
56. Policies in mutual and stock and mutual companies. Guarantee capital. Business to be kept separate.
57. Where may insure.
58. \$250,000 to be subscribed before policy to issue.

## SECTION

59. Trustees may assume liabilities, and create liens, but not answerable as individuals.

## LIFE INSURANCE COMPANIES.

60. When may go into operation. Choice of directors. Dividends. Redemption of guarantee stock.
61. To pay portion to Massachusetts General Hospital.
62. Policy for benefit of married woman to whom to inure. By one person for benefit of another. To defraud creditors.
63. Treasurer to receive securities on deposit. Income of such deposits.
64. Tax for valuation of policies.
65. Not to insure fire risks, &c.

## FOREIGN COMPANIES.

66. No insurance by foreign stock companies unless \$100,000 paid in, &c.
67. by foreign mutual without \$100,000 cash and \$100,000 deposit notes.
68. Foreign companies to appoint agent by writing filed. Service upon agent to be sufficient.
69. Agent to give bond.
70. Taxes, &c., upon companies, &c., imposed in other states, to be imposed here.
71. Foreign agents to deposit statement and copy of charter of their companies, and publish statement.
72. Contracts of agents not complying, valid, but agent liable. Company not appointing agent not to recover assessments.
73. Foreign agents to exhibit name of state on sign, and print same and character of office on policies, &c.
74. Persons not complying not to act as agents. Penalty.
75. Companies chartered out of United States to make returns.
76. Penalty on foreign agent neglecting to make returns. Exception.
77. Penalty on agents insuring contrary to law.
78. "Foreign" construed. Forms for returns.

## INSURANCE COMMISSIONERS.

Insurance commissioners. Appointment, &c. 1855, 124, § 1. 1858, 177, § 1.

to visit and examine insurance companies on request, &c. 1855, 124, § 5. 1858, 177, § 2. See Ch. 59, §§ 10, 11.

may examine books and agents of foreign companies. 1856, 252, § 53.

SECTION 1. There shall be a board of insurance commissioners consisting of two persons appointed by the governor with the advice and consent of the council for the term of three years, subject to removal at their pleasure. The present members of the board shall hold their offices according to the tenor of their respective commissions unless sooner removed.

SECT. 2. The commissioners shall visit and examine any insurance company incorporated in this state when requested in writing by five or more persons, each of whom is a stockholder or creditor, or pecuniarily interested in such company; and also whenever they deem an examination necessary. At such times they shall have free access to its books and papers, and shall thoroughly inspect and examine all its affairs, and make inquiries such as are necessary to ascertain its condition and ability to fulfil its engagements, and whether it has complied with all the provisions of law applicable to its transactions.

SECT. 3. They may at any time require the agents of any foreign insurance company to exhibit the books kept by them relating to such agencies, and to make answer in writing and under oath to all reasonable questions proposed by them, in order to elicit a full statement of the business done for the company represented by such agent; and any

agent refusing or neglecting for thirty days to answer such interrogatories shall be deemed not to have complied with the provisions of the laws of this state; and if he continues to act as such agent, shall be liable to the penalty prescribed in section seventy-four.

SECT. 4. Upon some day in each year, designated by them, they shall calculate the existing value of all outstanding policies of life insurance in companies authorized to make insurance on lives in this state.

Commissioners to calculate value of life policies. 1858, 177, § 2.

SECT. 5. They and each of them may summon and examine under oath, which they may administer, the directors, officers, and agents, of any insurance company, and such other persons as they think proper, in relation to the affairs, transactions, and condition, of such company; and whoever without justifiable cause refuses to appear and testify when so required, or who obstructs a commissioner in the discharge of his duty, shall for each offence be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year.

may examine officers, &c. Penalty for refusing to testify. 1855, 124, § 6.

SECT. 6. If upon examination the commissioners are of opinion that a company is insolvent, or that its condition is such as to render its further proceedings hazardous to the public or to those holding its policies, they shall apply to a justice of the supreme judicial court to issue an injunction restraining such company, in whole or in part, from further proceeding with its business until after a full hearing can be had. Such justice shall forthwith issue the injunction, and after a full hearing of all parties interested may dissolve or modify the same or make it perpetual. And he may make such orders and decrees as may be needful to suspend, restrain, or prohibit, the further continuance of the business of the company; and may appoint agents or receivers to take possession of the property and effects of the company, subject to such rules and orders as are from time to time according to the course of proceedings in equity prescribed by the court or a justice thereof in vacation.

shall apply for injunction in case of insolvency, &c. Proceedings. 1855, 124, § 8

SECT. 7. They shall annually in September furnish to the insurance companies in this state, and to the agents known to them of foreign insurance companies doing business in this state, two or more printed copies of the forms of returns to be made by them.

to furnish forms. 1855, 124, § 10. 1856, 252, § 8. 1858, 170, § 2.

SECT. 8. When in their opinion an insurance company, its officers or agents, have violated any law of the state relative to such company, they shall forthwith report the facts with such statements and remarks as they deem expedient to the secretary of the commonwealth, and he shall give notice of the same to the attorney-general, who shall at once prosecute said company, officer, or agent, therefor.

to report violations of law. Attorney-general to prosecute, &c. 1855, 124, §§ 9, 1

SECT. 9. They shall keep and preserve in a permanent form a full record of their proceedings, including a concise statement of the condition of each company visited or examined by them.

to keep record of proceedings, &c. 1855, 124, § 3.

SECT. 10. They shall annually at the earliest practicable date after the returns are received from the several insurance companies, make a report to the legislature of the general conduct and condition of the corporations visited by them since their last annual report, with such suggestions as they deem expedient, and shall include therein an aggregate of the calculated values of all outstanding policies of life insurance; and in connection therewith shall prepare an abstract of all the returns and statements made to them by insurance companies and agents. Such report shall be printed on or before the first Wednesday of January.

to make annual report, &c. Contents of. 1855, 124, § 9. 1856, 252, §§ 8, 56. 1857, 40, § 8. 1858, 177, § 2.

SECT. 11. They shall receive an annual salary of fifteen hundred dollars each.

Salary. 1858, 177, § 1. See Ch. 15 § 36.

1850 Ch. 170.

GENERAL PROVISIONS.

SECT. 12. Insurance companies incorporated in this state may exercise the powers and shall be subject to the duties and liabilities provided in this chapter so far as consistent with their respective charters.

Insurance companies, general powers, &c. 1856, 252, § 1.



Companies, first meeting of, how called.  
1856, 252, § 2.

SECT. 13. The first meeting of such companies hereafter organized shall be called by a notice signed by one or more of the persons named in the act of incorporation, setting forth the time, place, and purposes, of the meeting, which shall seven days at least before the meeting be delivered to each member, or published in some newspaper of the county in which the company is established, or if there is no such paper, in some newspaper of an adjoining county.

to give notice of organization, &c.  
1856, 252, § 3.

SECT. 14. Every such company shall give notice in writing to the secretary of the commonwealth, of the acceptance of its charter and organization under the same, within one year from the date thereof, or the same shall be void.

call for meetings.  
1856, 252, § 9.

SECT. 15. All matters proposed to be acted upon at any meeting of such companies shall be specified in the call for the same.

by-laws; venue of actions; limitation of suits.  
1856, 252, § 9.

SECT. 16. Such companies may adopt by-laws for conducting their business, not repugnant to their respective charters or the laws of the state, but no such company shall by any condition, restriction, or stipulation, in its by-laws or policies, designate the county in which any suit shall be brought against the company, or limit the term of commencing such suit to a less period than two years from the time when the right thereto accrues.

secretary and treasurer to give bond.  
1856, 252, § 9.

SECT. 17. The secretary and treasurer of such companies shall give bond in such sum as may be required by the directors, for the faithful discharge of their respective duties.

office for business; cards, &c., to specify location.  
1856, 252, § 5.

SECT. 18. Such companies shall have their office in the city or town specified in their charter; and when they establish agencies in other cities or towns, all signs, cards, pamphlets, and advertisements, exhibited or issued by them, shall specify the city or town where the company they represent is located.

liable to taxation; to furnish statements of their affairs.  
1856, 252, § 7.

SECT. 19. Such companies shall be liable to be taxed by any general law taxing insurance companies; and the directors shall when required furnish to the legislature, or to a committee thereof, or to the insurance commissioners, a statement of their affairs signed by the president and secretary and sworn by them to be correct according to their best knowledge and belief, and shall submit to an examination on oath concerning the same.

funds of, how to be invested.  
1856, 252, § 35.

SECT. 20. Investments of the funds of an insurance company shall be made in its corporate name; and funds of such companies as classify their risks, shall be kept and invested separately, so as to designate the assets belonging to each class.

investing officers not to borrow.  
1853, 48.

SECT. 21. No member of a committee or officer of a mutual marine, mutual fire, or mutual life, insurance company, charged with the duty of investing its funds, shall borrow the same, or be surety for such loans to others, or directly or indirectly be liable for money borrowed of the company.

mortgages held by, may be taken on execution.  
1856, 252, § 6.

SECT. 22. Mortgages on real estate, held by an insurance company, shall be liable to be attached and taken and sold on execution, in the manner provided in sections seventy-five, seventy-six, and seventy-seven, of chapter fifty-seven, in respect to mortgages held by banks. And the secretary shall perform the duties therein required of cashiers and clerks.

not to trade, except.  
1856, 252, § 4.

SECT. 23. No company shall deal or trade in buying or selling goods, wares, merchandise, or other like property, excepting such articles as have been insured by such company, on which losses are claimed by the insured.

to conduct business in corporate name only; term of policies.  
1856, 252, §§ 5, 31.

SECT. 24. Every insurance company doing business in this state shall conduct the same in the proper and corporate name of said company, and not by various and different names; and the policies and contracts of insurance issued by any company shall be headed or entitled only by the corporate name or title of said company. No policy shall be issued for a term exceeding seven years.

SECT. 25. Every such company doing business in this state shall annually before the fifteenth day of November transmit to the insurance commissioners a statement of its affairs on the first day of said month, in the form appended to this chapter, adapted to the business done by such company, which shall be signed and sworn to by the president and secretary.

Companies to transmit to commissioners annual statement. 1856, 252, § 8.

SECT. 26. Any company doing business in this state, neglecting to make the returns required under this chapter, shall forfeit one hundred dollars for each day's neglect, and every company that wilfully makes false statements shall be liable to a fine of not less than five hundred nor more than five thousand dollars.

penalty for neglect and making false returns. 1856, 252, § 8.

COMPANIES HAVING SPECIFIC CAPITALS.

SECT. 27. Every insurance company with a specific capital shall annually choose by ballot from the stockholders of the company residing within this state, not less than five directors, who shall hold office for one year and until others are chosen and qualified in their stead. Such directors when elected and notified shall before they are qualified to act declare their acceptance in writing to the secretary of the company. Not less than four directors shall constitute a quorum; and all questions shall be decided by a majority of those present. Vacancies in any office may be filled by the directors or by a meeting of stockholders called for the purpose. Each share shall be entitled to one vote. Proxies may be authorized in writing. No officer shall vote as proxy, and no stockholder shall either in person or by proxy cast more than thirty votes. The record of the votes, whether cast in person or by proxy, made by the secretary or clerk of the company, shall be evidence of all such elections.

with specific capital to choose directors; directors to accept in writing; quorum; vacancies; proxies; and record evidence of elections. 1856, 252, § 11.

SECT. 28. The directors shall annually by ballot choose a president, secretary, and such other officers as the rules direct. The president shall be chosen from the board of directors. The president and secretary shall annually be sworn. The president shall preside at all meetings of the stockholders and directors, but when absent a president *pro tem.* may be chosen as the meeting determines. The secretary shall keep a record of the votes of the stockholders and of the directors; a list of the stockholders and number of shares standing in the name of each; a record of all transfers of shares; of all policies issued by the company, and of all assignments and transfers thereof; and such additional books as the president and directors require.

to choose president and secretary, who shall be sworn; duties of secretary. 1856, 252, § 12.

SECT. 29. Special meetings of the stockholders may be called by the directors when they think proper; and they shall call such meetings on the written application of the owners of one-fifth part of the capital, or of twenty stockholders, setting forth the purposes of the meeting.

Special meetings, how called. 1856, 252, § 13.

SECT. 30. The capital stock, unless otherwise specially provided, shall be paid in cash within twelve months from the date of the charter. No certificates of full shares or policies shall be issued until the whole capital is paid in; nor shall any policy be issued until a certificate from the insurance commissioners has been obtained authorizing such company to issue policies. The insurance commissioners shall examine the capital, and a majority of the directors shall make oath that the money has been paid in by the stockholders towards payment of their respective shares, and not for any other purpose, and that it is intended that the same shall remain as the capital of the company, to be invested as required by the provisions of this chapter.

Capital stock, how and when paid in; policies not to issue, until, &c. 1856, 262, § 14. See §§ 37, 56, 60.

SECT. 31. The capital stock shall be invested in the stocks of the United States, or of this state, or of any city or town in this state, or in any of the banks thereof, or in any railroads thereof which are completed and paid for and the franchises of which are not pledged or

how invested and loaned; liability of directors upon loans.



1856, 252, § 14.  
See §§ 56, 60, 66.

mortgaged, or in bonds of railroad corporations in this state; or it may be loaned on mortgages of real estate therein, or on pledges of any of the stocks or bonds named in this section: *provided*, that no insurance company shall own more than one-fourth of the capital of any one bank, nor invest in nor loan on the stocks and bonds both included of any one railroad company, more than one-tenth of its own capital, nor in the aggregate shall the investment in and loan on all railroad property exceed one-fifth of its capital. Not more than half of its capital shall be loaned on mortgage of real estate, and not more than one-tenth part of the capital actually existing of any company shall be invested in a single mortgage. If any investment or loan is made in a manner not authorized by this chapter, the directors making or authorizing the same shall be personally liable to the stockholders for any loss occasioned thereby; but insurance companies chartered by this state now doing business, shall not be compelled to change any investment that was originally legally made.

Risks to be taken.  
Policies, how executed.  
Limitation of risks.  
1856, 252, § 15.  
See § 56.

SECT. 32. Companies thus organized may insure vessels, freights, goods, money, effects, and money lent on bottomry or respondentia, against the perils of the sea and other perils usually insured against by marine insurance; and dwelling-houses and other buildings, merchandise and other personal property, against loss by fire, according to their respective charters. But no stock company shall hold, on any one risk, a sum exceeding one-tenth part of the capital existing, and surplus, after deducting all losses, claims, liabilities, and debts due from the company. All policies shall be signed by the president and secretary; or in the absence of the president by two directors, and in the absence of the secretary by a secretary *pro tem*.

Risks to be reduced on reduction of capital.  
Liability of president and directors.  
of stockholders.  
1856, 252, § 16.

SECT. 33. When the capital shall have been reduced by losses or from any other cause, the amount thereafter to be taken on any one risk shall correspondingly be reduced to the limitation in the preceding section. If the directors allow more to be insured on any one risk, they shall be liable for a loss on any amount exceeding one-tenth the existing capital. If any company is under liability for losses actually sustained equal to the capital, and the president and directors knowing it make insurance or assent thereto, they shall be personally liable for the loss if any under such insurance. When the charter permits the capital stock to be paid by instalments, if the capital is lessened by losses before all instalments are paid in, each stockholder shall be liable for the instalments unpaid on his shares at the time of such loss; and no dividend shall be made until the capital is restored to its original amount.

Directors to make annual statement to stockholders.  
Basis of dividends.  
1856, 252, § 16.

SECT. 34. At each annual meeting the directors shall cause to be furnished to the stockholders a statement of the condition of the company, and in making dividends shall not consider any part of the premium money divisible until the risks for which the same was paid have absolutely been terminated. But in making up their annual statement they shall be required to charge the company only such portions of the cash or notes received on policies which are unexpired, as would be required to reinsure all outstanding risks.

#### MUTUAL MARINE AND MUTUAL FIRE AND MARINE COMPANIES.

Election of officers, &c.  
Form of agreement.  
1856, 252, § 18.  
See §§ 37, 40.

SECT. 35. Mutual marine and mutual fire and marine insurance companies established by the laws of this state shall be subject to the provisions of sections forty-three, forty-four, and forty-five, relating to mutual fire insurance companies, and shall before commencing business have an agreement substantially as follows, viz.:—

“The subscribers, members of the insurance company, severally agree to pay said company on demand the sums set against our names, or such part thereof as may be called in for the use of the company, in money or promissory notes.”



Policies of insurance may be issued by such company when two hundred thousand dollars, if the company is in Boston, or one hundred thousand dollars, if the company is in any other city or town in the state, has been subscribed and paid in cash or notes payable on time not exceeding twelve months; and the president and a majority of the directors have certified that the subscribers are known to them, and they believe them solvent and able to pay their subscriptions; and a copy of the certificate has been deposited with the insurance commissioners and approved by them. Subsequent subscriptions shall be made and certified in like manner; and a like copy shall annually on or before the first day of November be filed with the commissioners.

When policies may be issued.

SECT. 36. Each subscriber during the term of his subscription, and each person insured, shall be a member of the company; but persons insured shall not remain members after the termination of the risk and the payment of the loss, if any thereon.

Membership. 1856, 252, § 19.

SECT. 37. The subscriptions provided for in section thirty-five shall constitute a permanent fund, to be used when necessary for payment of the losses and expenses of the company; but shall not be applied to pay the premiums for insurance effected by the subscribers. The subscription notes as they mature shall be paid in or other notes substituted therefor, so that the amount of the original fund shall not be reduced. The subscription notes or any *pro rata* portion thereof may be cancelled whenever the net profits of the business are sufficient to replace the same; and such profits shall then be invested as prescribed in section thirty, thereafter to be held as the permanent fund in place of said notes. All payments made on subscription notes and all cash funds not required for the current uses of the company shall be invested in the same manner. If any subscriber fails to pay his subscription, and it is proved that the president or a director knowingly certified falsely in regard to such subscriber, the person certifying shall be liable to the company for such sum as the subscriber fails to pay.

Subscriptions, how held, used, invested, and cancelled. 1856, 252, § 20.

SECT. 38. No company shall hold on one risk more than ten per cent. of its subscriptions and invested funds, not pledged, and premium notes on risks absolutely terminated, after deducting therefrom all losses and claims for losses, or cash received for risks not terminated, and all debts. Whenever by means of open policies or indorsements thereon more than ten per cent. is so at risk, the directors shall as soon as may be obtain reinsurance for the amount of such excess. If a company is at any time liable for losses beyond the amount of its cash fund, legal investments, premium notes received from risks terminated, and subscription notes, the president and directors, knowing the condition of the company, shall be personally liable for all losses occurring on insurance effected during such state of the company.

Limitation of single risks. Reinsurance. Liability of president and directors for over-insurance. 1856, 252, § 21.

SECT. 39. The directors shall require the president to make a monthly statement to them of the assets and liabilities of the company; which statement shall be entered upon their records or in a book kept for that purpose.

Monthly statement. 1856, 252, § 22.

SECT. 40. Mutual marine insurance companies incorporated in this state which have been in operation not less than twelve months shall cause an annual dividend statement to be made up in each year, containing a fair estimate of the net profits of the company not before divided, taking into view the probable amount to be paid on all claims, outstanding risks, and demands, against the company, and including expenses, interest, and allowances for previous deficiencies. After ascertaining in this mode the net profits of the year on the risks terminated, the directors may declare a dividend of such profits of a certain per cent. on the premiums received for such terminated risks and the subscriptions made to the safety fund in that year, and may issue certificates representing said dividend to the persons in whose names the

Mutual marine companies in operation one year, to make annual statement. Directors may declare dividend on premiums, and subscriptions to safety fund, and issue certificates. 1852, 137, § 1.

policies of insurance and subscriptions for the year in conformity to the provisions of section thirty-five were originally made, or to their legal representatives. The certificates shall be transferable only on the books of the company under regulations to be prescribed by the by-laws, shall contain a provision declaring the same to be subject to future losses and expenses of the company until they are redeemed as hereinafter provided, and subject to be reduced by the directors in case of losses and expenses in any subsequent year exceeding the estimated profits of such year. But such original certificate need not be issued for a less sum than ten dollars. All such sums may be passed to the contingent accounts of the company.

Six per cent. interest may be paid on certificates, and excess of profits applied to redemption. 1852, 137, § 2.

SECT. 41. Such companies may pay on the certificates issued in conformity with the preceding section, from the accrued income of their invested funds, interest not exceeding six per cent. per annum; and whenever the net profits of any such company exceed the sum of two hundred and fifty thousand dollars, the excess may be applied from year to year thereafter to the redemption of the certificates of the previous years in such manner as the directors determine; but no certificates of any year shall be redeemed while certificates of previous years remain unredeemed. When the accumulations of net profits of such company exceed the sum of five hundred thousand dollars, such excess shall be so applied.

Debt due from persons entitled to certificate may be deducted. 1852, 137, § 3.

SECT. 42. When a person entitled to a certificate of profits is indebted to such company for any sum past due, the company may withhold the certificate and deduct such sum from the amount thereof, and reduce or cancel the same; but persons holding policies of the company or entitled to certificates shall not be answerable by reason thereof, or for any thing contained therein, except for the payment of their premium or other notes in advance for premiums.

#### MUTUAL AND STOCK AND MUTUAL FIRE COMPANIES.

Election of directors. Proxies. 1856, 252, § 23. See § 35.

SECT. 43. Every mutual fire insurance company shall annually elect by ballot not less than seven directors, citizens of this state, and, after the first election, members of the company, who shall manage and conduct the business thereof. Every person insured by the company shall be a member, and no one member shall be allowed more than five votes in person. Members may vote by proxies dated and executed within six months and returned and recorded on the books of the company three days previously to the meeting of the company at which the same are used; but no person shall be allowed by proxy or otherwise to cast more than twenty votes; and no paid officer shall vote as proxy for any absent member.

President, secretary, and treasurer, elected and sworn. Secretary to keep record. 1856, 252, § 24. See § 35.

SECT. 44. The directors of every such company shall annually choose by ballot one of their number as president, a secretary and treasurer, who shall annually be sworn, and a record of the oath shall be entered upon the books of the company. The secretary shall keep true records of the meetings of the corporation and of the directors, and of all votes passed by them; and record a copy of all policies issued by such company, and all assignments or transfers of the same, when properly assented to, which record shall be open to the inspection of any persons interested therein.

Quorum of directors. Vacancies. Special meetings. 1856, 252, § 25. See § 35.

SECT. 45. Not less than five directors shall constitute a quorum, and all questions shall be decided by a majority of those present. Vacancies in any office may be filled by the directors until the next annual election, or by a new election at a meeting called for that purpose. Special meetings of the members may be called when ordered by the directors, and the directors shall call such meetings when requested in writing so to do by any twenty members.



SECT. 46. One-half of the directors of every mutual fire insurance company with a guarantee capital shall be chosen from the holders of the guarantee stock, and the other half from the members of the mutual department. The secretary shall keep a true list of stockholders of the guarantee capital, and of the number of shares held by each, and a record of the transfer of shares. Special meetings may be called by the directors when they think proper, and shall be called by them upon the written application of the owners of one-fifth of the guarantee stock, or of twenty members of the mutual department, setting forth the purposes of the meeting.

Choice of directors.  
List of stockholders of guarantee capital to be kept.  
Special meetings.  
1856, 252, § 37.

SECT. 47. The directors of every corporation which becomes a member of any mutual company may authorize one or more of the stockholders of such corporation to represent the same in all meetings of such company; and such representatives shall vote and be eligible to the office of director in the company.

Corporations may be represented in mutual companies.  
1856, 252, § 26.

SECT. 48. When the just claims against a mutual fire insurance company exceed the funds, its directors shall assess such sums as may be necessary upon the members in proportion to their premium and deposit, no member being liable to pay in addition to his premium and deposit more than a sum equal to his said premium and deposit; and in case of classification of risks, said assessment shall be made upon such premium and deposit as were given upon hazards associated with the property upon which losses have occurred. When sufficient property of the company cannot be found to satisfy an execution issued against it, and it has property belonging to the period assessed, the proceeds of which can be applied to satisfy such execution, if the directors neglect to pay the same, or neglect for thirty days after the rendition of judgment to make an assessment and deliver the same to the treasurer for collection, or to apply such assessment when collected to the payment of the execution, they shall be personally liable for the amount of the execution.

Assessments.  
Liability of directors.  
1856, 252, § 27.  
3 Gray, 208, 210.

SECT. 49. If the treasurer of a mutual company unreasonably neglects to collect an assessment made by order of the directors and to apply the same to the payment of the claims for which it was made, he shall be liable in his private capacity to the party having such claims for the amount of the assessment; and he may repay himself out of any money afterwards received for the company on account of said assessment.

Liability of treasurer.  
1856, 252, § 28.

SECT. 50. When the directors of a mutual company are liable to pay an execution against the company, the creditor may recover the same by a suit in equity or by an action at law against the directors; and any director who pays an execution against the company for which he is personally liable, may have a suit at law with equitable remedies for contribution against any of the directors for their proportion, and also a suit at law with equitable remedies against the company or the individual members thereof who are liable therefor, for money so paid for them: *provided*, that no member shall be liable to pay in addition to his premium and deposit more than a sum equal thereto.

When directors liable, &c.  
Remedy against corporation.  
Liability of members.  
1856, 252, § 29.

SECT. 51. Every member of a mutual company shall at the expiration of his policy have a share in the profits of the company during the time his policy was in force in proportion to the sums by him paid on account of said policy according to the contract or policy, after all expenses, liabilities, and losses then incurred have been deducted. And he shall in like manner be subject to pay any assessments which may be laid by such company for the payment of losses and expenses in accordance with its charter and the laws regulating such companies.

Members to share profits or losses at expiration of policy.  
1856, 252, § 30.

SECT. 52. No policy shall be issued on the mutual plan for a greater amount than three-fourths of the value of the property insured; and every policy made by such company shall create a lien on the personal property, and on any building insured and the land under the same, for

Policies limited in amount, and to create lien.  
Limitation, &c., to be set forth.



Enforcement of  
Lien.  
1856, 252, § 31.  
4 Met. 206.  
10 Met. 211.  
6 Cush. 450.

securing the payment of the deposit note, or other liabilities, or any sums assessed upon the same: *provided*, that the extent of the liability and the intention of the company to rely upon the lien are set forth on the face of the policy. Upon the alienation of the property to a *bona fide* purchaser, the lien shall cease as to all losses which thereafter occur, unless the policy is continued by consent of the purchaser and the company. If it becomes necessary to resort to such lien for the payment of the liabilities secured thereby, the treasurer shall demand payment from the insured and also from the tenant in possession, or the person having possession of the personal property, setting forth in writing the sum due; and in case of non-payment the company may sue and levy the execution upon the property or estate. The officer making the levy may sell the whole or any part thereof by auction, and apply the proceeds in the same manner, and the owner shall have the same right to redeem as in the sale of an equity of redemption of real estate.

Directors to  
classify prop-  
erty insured.  
Classes to be  
observed in pol-  
icies; expenses,  
assessments,  
and dividends.  
1856, 252, § 32.

SECT. 53. The directors of mutual fire insurance companies may divide the property insured into not exceeding four classes. The policy shall designate the class, and the assessments shall be made upon premiums and deposits belonging to the class in which the loss occurs; but no policy shall be issued in a separate class, until five hundred thousand dollars are subscribed to be insured in that class on one date, and the same is entered on the books of the company. The expenses of the company not strictly applicable to either class, shall be apportioned to each class according to the amount of premiums paid by that class for the same period; and in a division of the funds and returns of premiums and deposits, each member shall be entitled to receive his proportion of the profits belonging to the class in which he was insured. No money belonging to one class, received either as premium or assessment in said class, shall be used to pay losses or expenses or other liability of any other class.

Assessments  
and statements  
to be recorded.  
Statements sub-  
ject to inspec-  
tion.  
Separate state-  
ments.  
Limitation on  
assessments.  
1856, 252, §§ 32,  
33.

SECT. 54. Mutual fire insurance companies, upon making an assessment, shall keep a record of the vote passed by the directors for making the same, with a statement of the condition of the company at the time such assessment is made. When an assessment is ordered, the whole amount to be raised and the particular losses or other liabilities of which said amount consists shall be stated. The statement shall separately show the amount of cash on hand, of deposit notes, and of liabilities subject to such assessment, and it shall be recorded in a book kept for that purpose, and signed by the directors voting for such assessment. Companies dividing their risks and insuring in separate classes shall make such statement for each class in which an assessment is ordered. Any member of the company may inspect such statement and take a copy of the same; and a person who is liable to assessment shall be considered a member. No assessment shall be collected until such statement and record are made, nor shall an assessment be laid on any member whose policy has expired or been cancelled for the period of two years.

Single risks  
limited.  
1856, 252, § 34.

SECT. 55. No mutual fire insurance company shall contract for insurance on any one risk for a greater amount than they intend to retain; nor with the view or intention of reinsuring any part thereof.

Policies in mu-  
tual and stock  
and mutual  
companies.  
Guarantee capi-  
tal.  
Business to be  
kept separate.  
1856, 252, § 36.

SECT. 56. No mutual fire insurance company shall issue policies on any other than the mutual plan of insurance, excepting such companies as have been chartered as stock and mutual companies; and such companies, if doing business in Boston, either directly or through agencies, before issuing policies or transacting any business in the stock department, shall have a guarantee capital of at least one hundred thousand dollars paid in and invested as required by sections thirty and thirty-one exclusive of stockholders' notes, (unless such notes are secured by mortgage or by pledges of stock or bonds, as provided in section thirty-one,) and of all debts due from the company, and such proportion of all pre-

miums received in cash for risks not terminated, as would be requisite to reinsure the same. If doing business in any other city or town, the sum of at least fifty thousand dollars shall be paid in and invested in like manner, and be subject to like conditions and restrictions. All business and investments on account of the stock department of such companies shall be separately kept, and the returns to the insurance commissioners respecting the same shall be according to the form marked A. The business done on the mutual principle shall also be kept separate, and returns made agreeably to the form marked C. Such combined companies shall not take on any one risk in their stock department a sum exceeding one-tenth of their capital stock; and when the capital stock is reduced in any way, the amount thereafter to be taken on any one risk shall forthwith be correspondingly reduced to the limitation in section thirty-two, until the capital is restored to its original amount.

SECT. 57. Mutual fire insurance companies incorporated in this state previously to the third day of July in the year eighteen hundred and fifty-six, may issue policies on any property included in the terms of their charters, situated in the New England states and New York; but such companies incorporated after that date shall not insure property situated without the limits of this state.

Where may insure.  
1856, 252, § 38.

SECT. 58. No policy shall be issued by a mutual fire insurance company incorporated subsequently to the twenty-seventh day of March in the year eighteen hundred and fifty-eight, until the sum of two hundred and fifty thousand dollars has been subscribed to be insured and entered on the books of the company. The policies issued and the deposit notes given for said insurance, which notes shall not exceed double the amount paid as cash premium, shall be of the same date.

\$250,000 to be subscribed before policy to issue.  
1856, 252, § 39.  
1858, 150, § 1.

SECT. 59. A person holding property in trust may effect insurance on such property in any mutual fire insurance company incorporated in this state, and for that purpose may as such trustee assume the liabilities and create all the liens upon the property so insured which other persons on becoming members of such insurance companies assume and create. He shall not be liable in his individual capacity upon such contract of insurance.

Trustees may assume liabilities, and create liens.  
1843, 82, §§ 1, 2.

LIFE INSURANCE COMPANIES.

SECT. 60. Before any mutual life insurance company goes into operation, a guarantee capital of one hundred thousand dollars shall be paid in money and invested as required by sections thirty and thirty-one. The subscribers or holders of guarantee stock in a mutual life insurance company shall choose the first board of directors; at all subsequent elections they shall choose one-half of the directors until the redemption of the guarantee stock, when the insured shall choose the directors. The stockholders shall be entitled to such annual dividends not exceeding seven per cent., as may be agreed upon at the time of subscribing the capital, if the net surplus over a requisite reservation for liabilities and contingencies is sufficient to pay the same; and if less than the sum originally agreed on, it shall be made equal to it when the profits of the company are sufficient. One-quarter of the estimated surplus fund above a sufficient fund to provide for risks, losses, expenses, and dividends, shall be reserved to be appropriated to the redemption of the guarantee stock; and after the expiration of ten years from the organization, when the amount reserved is sufficient and the insured so vote, the guarantee stock may be redeemed. At the expiration of every five years the residue of the estimated surplus fund may be divided among the assured in proportion to the amount of premiums paid by them respectively on account of the risk on their policies for any part or the whole of the preceding five years: *provided*, that any policy on which the premium is

When may go into operation.  
Directors.  
Dividends.  
Redemption of guarantee stock.  
1856, 252, § 40.



payable otherwise than by equal annual payments, shall not be entitled to a larger distribution than if the premium had been so paid.

To pay to Mass. Gen. Hospital. 1823, 51, § 2. 1856, 252, § 41.

SECT. 61. Every company empowered to make insurance on lives upon land shall be subject to the same obligations for the payment of a certain share of the profits to the Massachusetts General Hospital as are imposed on the Massachusetts Hospital Life Insurance Company.

Policy for benefit of married woman to whom to inure. By one person for benefit of another. To defraud creditors. 1856, 252, § 42.

SECT. 62. A policy of insurance on the life of any person, expressed to be for the benefit of any married woman, whether procured by herself, her husband, or any other person, shall inure to her separate use and benefit and that of her children, independently of her husband or his creditors, or the person effecting the same or his creditors. A trustee may be appointed by the party obtaining the policy, or if no such appointment is made, then by the judge of the probate court for the county in which the party for whose benefit said policy is made resides, to hold the interest of the married woman in such policy or the proceeds thereof. When a policy is effected by any person on his own life or on the life of another, expressed to be for the benefit of such other or his representatives, or a third person, the person for whose benefit it was made shall be entitled thereto against the creditors and the representatives of the person effecting the same. If the premium is paid by any person with intent to defraud his creditors, an amount equal to the premium so paid with interest thereon shall inure to the benefit of his creditors.

Treasurer to receive securities on deposit. In come of such deposits. 1856, 252, § 43.

SECT. 63. The treasurer of the commonwealth in his official capacity shall take and hold on deposit the securities of any insurance company incorporated under the laws of this state which are deposited by any such company for the purpose of complying with the laws of any other state in order to enable such company to commence business in such state. The company depositing such securities shall have the right to receive the income thereof, and at any time to exchange the same according to the laws of the states in which they may be doing business.

1860 Ch. 178. Tax for valuation of policies.

SECT. 64. Every insurance company doing business in this commonwealth shall annually pay into the treasury of the same, by the way of compensation for the valuation of the policies, one cent on every thousand dollars insured by them on lives.

To take no fire risks, &c. 1856, 252, § 9.

SECT. 65. No life insurance company shall issue policies insuring fire or marine risks.

#### FOREIGN COMPANIES.

No insurance by foreign stock companies unless \$100,000 paid in, &c. 1856, 252, § 44.

SECT. 66. No foreign insurance company with a specific capital shall by its agent in this state insure property therein or contract for insurance with any residents in this state, unless its capital stock amounts to one hundred thousand dollars, all of which sum has been paid in cash and invested, exclusive of stockholders' obligations of any description not secured as required in section thirty-one and the debts of the company; nor unless the company is restricted by its charter or otherwise from incurring any greater hazard in one risk than one-tenth of its unimpaired capital, nor unless the company has complied with the provisions of this chapter.

by foreign mutual without \$100,000 cash and \$100,000 deposit notes. 1856, 252, § 45. 5 Gray, 501.

SECT. 67. No foreign insurance company doing business upon the mutual plan by their agent in this state shall insure property therein or contract for insurance with any resident thereof, unless said company has one hundred thousand dollars in cash or available cash funds securely invested, and at least one hundred thousand dollars in deposit notes. And before foreign companies, whether doing business on the stock or mutual plan, shall by their agents transact any business in this state, they shall satisfy the board of insurance commissioners that they have the amount of funds required by this chapter, and have complied with all other provisions of the same.



SECT. 68. Every foreign insurance company before doing business in this state shall in writing appoint a citizen thereof, resident therein, a general agent upon whom all lawful processes against the company may be served with like effect as if the company existed in this state; and said writing or power of attorney shall stipulate and agree on the part of the company making the same, that any lawful process against said company which is served on said general agent, shall be of the same legal force and validity as if served on said company. A copy of the writing duly certified and authenticated shall be filed in the office of the insurance commissioners, and copies certified by them shall be sufficient evidence. This agency shall be continued while any liability remains outstanding against the company in this state, and the power shall not be revoked until the same power is given to another and a like copy filed as aforesaid. Service upon said agent shall be deemed sufficient service upon the principal.

Foreign companies to appoint agent by writing filed. Service upon agent to be sufficient. 1856, 252, § 46.

SECT. 69. The general agent shall before any insurance is made by said company give a bond to the treasurer of the commonwealth with one or more sureties to be approved by him in the sum of two thousand dollars, with condition that he will accept service of all lawful processes against the company in the manner provided in this chapter. Every agent of a foreign insurance company doing business in this state shall before any business is done by him for said company give a bond to the treasurer with one or more sureties to be approved by him in the sum of one thousand dollars, with conditions that he will on or before the fifteenth day of November in each year make return on oath to the treasurer of the amounts insured by him, the premiums received, and assessments collected, during the year ending on the thirty-first day of the October preceding, and at the same time pay to the treasurer the taxes provided in the following section.

Agent to give bond. 1856, 252, § 46.

SECT. 70. When, by the laws of any other state, any taxes, fines, penalties, deposits of money, or of securities, or other obligations or prohibitions, are imposed upon insurance companies incorporated or organized under the laws of this state and transacting business in such other state, or upon the agents of such insurance companies, so long as such laws continue in force, the same taxes, fines, penalties, deposits, and obligations, shall be imposed upon all insurance companies doing business in this state which are incorporated or organized under the laws of such other state, and upon their agents. And insurance companies transacting business in this state whose charters or other powers are derived from governments or authorities out of the United States, shall through their agents in this state, in lieu of the relative taxes herein before indicated, be subject to the payment annually of a tax of one per cent. on all premiums and assessments collected by the agents of such companies.

Taxes, &c., upon companies, &c., imposed in other states, to be imposed here. 1856, 252, § 47.

SECT. 71. The general agent of every foreign insurance company shall before any insurance is made deposit with the insurance commissioners a copy of the charter of the company, and a statement in the form appended to this chapter adapted to the business done by such company, signed and sworn to by the president and secretary, and shall before the fifteenth day of November annually transmit to the insurance commissioners a statement in the form appended to this chapter, signed and sworn to by the president and secretary, made up to the thirty-first day of October preceding, and shall publish a copy thereof twice in two different newspapers in each county in which the company has established an agency, and three successive weeks in counties in which but one newspaper is published.

Foreign agents to deposit statement and copy of charter of their companies, and publish statement. 1856, 252, § 48.

SECT. 72. If insurance is made by a foreign insurance company without complying with the requisitions of this chapter, the contract shall be valid, but the agent making the insurance shall be liable to the penalty provided in section seventy-four. And any such company which

When contracts valid, but agents liable. Company without agent not to

recover assessments.  
1856, 252, § 49.

neglects to appoint a general agent agreeably to the provisions of this chapter, shall not recover any premium or assessment made by it on any contract of insurance with a citizen of this state until the provisions of this chapter are complied with.

Foreign agents to exhibit name of state on sign, and print same, &c., on policies, &c.  
1856, 252, § 50.

SECT. 73. Every person acting for an insurance company not incorporated in this state shall exhibit in conspicuous letters on the sign designating his place of business, the name of the state under whose authority the company he represents has been incorporated. And said company and agent shall also have printed in large type the name of such state and the kind of office, whether chartered as a mutual or stock company, upon all policies issued to citizens of this state, on all cards, placards, and pamphlets, and in all advertisements published, issued, or circulated, in this state, by them or him, relating to the business of such company.

Persons not complying not to act as agents. Penalty.  
1856, 252, § 51.  
See §§ 3, 72.

SECT. 74. No person shall act as agent of an insurance company not incorporated in this state until he has complied with all the requirements of the laws of this state relating to such companies and their agents; and every person so acting without such compliance, or who knowingly procures payment or any obligation for the payment of any premium for insurance, by fraudulent representations, shall be punished by fine not exceeding one thousand dollars for each offence.

Companies chartered out of U. S. to make returns.  
1856, 252, § 8.

SECT. 75. Insurance companies chartered beyond the limits of the United States and doing business in this state, shall make return of their standing on the first day of June in each year agreeably to the form required of companies doing a similar business in this state, said returns to be made to the insurance commissioners on or before the fifteenth day of November annually, and verified and sworn to before some consul or vice-consul of the United States, by two or more of the principal officers of such insurance company.

Penalty on foreign agent neglecting to make returns. Exception.  
1858, 49, § 1.

SECT. 76. Every agent of a foreign insurance company neglecting to make the returns required by this chapter, shall forfeit twenty-five dollars for each neglect, to be recovered by the treasurer of the commonwealth. Every agent so neglecting shall be immediately notified thereof by the treasurer; and if he continues said neglect for ten days after such notice is deposited in the post-office, he shall forfeit five hundred dollars for every such neglect, to be recovered by the treasurer: *provided*, that no agent shall be held liable if it is made to appear to the satisfaction of the treasurer that the returns were duly made and deposited by said agent in the post-office, properly directed to the insurance commissioners, and that there was no neglect on his part.

Penalty on agents insuring contrary to law.  
1857, 259, § 1.  
1861 Ch. 30

SECT. 77. An agent making insurance in violation of any law of this state regulating insurance companies, shall forfeit for each offence a sum not exceeding one thousand dollars; and the governor and council may allow such reasonable compensation for services rendered and expenses incurred in enforcing the laws relating to insurance companies as they deem proper.

"Foreign" construed.  
1856, 252, § 55.

SECT. 78. The word *foreign* used in this chapter applies to all companies not incorporated by the legislature of this commonwealth.

## FORMS.

### A.

#### *Form of Return for Insurance Companies with Specific Capitals.*

Forms for returns.  
1856, 252.  
1859, 146.

1. State the name of the company. 2. Where located. 3. When incorporated. 4. Amount of capital. 5. Amount of capital actually paid in. 6. Number of shares and par value of each. 7. Amount of fire risks outstanding. 8. Amount of marine risks outstanding. 9. Total amount of outstanding risks. 10. Amount of United States stock or treasury notes owned by the company; state amount of each kind, and par value and market value of each. 11. Amount of state stocks; state amount of each kind, and par value and market value of each. 12. Amount of bank stocks;



state amount of each kind, and par value and market value of each. 13. Amount of railroad stocks; state amount of each kind, and par value and market value of each. 14. Amount of railroad bonds; state amount of each kind, and par value and market value of each. 15. Cash value of real estate owned by the company. 16. Amount of cash on hand. 17. Amount of cash in hands of agents. 18. Amount loaned on mortgage of real estate. 19. Amount loaned on collateral. 20. Amount loaned without collateral. 21. Amount of all other investments. 22. Amount of premium notes on risks terminated. 23. Amount of borrowed money, specifying collaterals given for the same. 24. Amount of losses due and unpaid. 25. Amount of losses claimed and unpaid. 26. Amount of losses reported, upon which the liability of the company is not determined. 27. Amount of all other claims against the company. 28. Amount of cash received for premiums on fire risks. 29. Amount of cash received for premiums on marine risks. 30. Amount of notes received for premiums on fire risks. 31. Amount of notes received for premiums on marine risks. 32. Amount of cash received for interest. 33. Amount of income received from all other sources. 34. Amount of fire losses paid last year. 35. Amount of marine losses paid last year. 36. Amount of dividends paid the last year. 37. Amount paid for expenses of office. 38. Amount of other expenditures. 39. Amount received in cash for fire risks not terminated. 40. Amount required to reinsure all outstanding risks. 41. Amount of premium notes on risks not terminated. 42. Amount of delinquent notes not charged to profit and loss. 43. Highest rate of interest received. 44. Highest rate of interest paid on money borrowed. 45. How many shares of the capital stock are pledged to the company. 46. Balance to credit of profit and loss account. 47. Balance to debit of profit and loss account. 48. How many shares of the capital stock are owned by the company, or not subscribed for. 49. What amount of the capital consists of the stockholders' notes.

Forms for re-  
turns.

#### B.

##### *Form of Return for Mutual Marine, and Mutual Fire and Marine Insurance Companies.*

1. Name or title of the company. 2. Where located. 3. When incorporated. 4. For what period. 5. Amount invested in United States funded debt, with the amount of each kind owned; state par value and market value, per share. 6. Amount of United States treasury notes owned; state par value and market value, per share. 7. Amount invested in state stocks, with the amount of each kind owned; state par value and market value, per share. 8. Number of shares owned in each bank which are not pledged; state par value and market value, per share. 9. Number of shares owned in each railroad; amount invested in each, at cost on books; state par value and market value, per share. 10. Amount received in railroad bonds, and amount of each kind at cost on books; state par value and market value, per share. 11. Amount invested in real estate, as it stands on the books of the company. 12. State specifically all other investments or property. 13. Cash on hand and in bank. 14. Cash in hands of agents. 15. Amount loaned on mortgage of real estate. 16. Amount loaned on notes secured by collaterals of personal property. 17. Amount loaned on notes without collateral security. 18. Amount of stock notes on hand not overdue. 19. Amount of stock notes on hand that are past due. 20. Amount of premium notes on risks terminated. 21. Amount of premium notes on risks not terminated. 22. Amount of delinquent premium notes not charged to profit and loss. 23. Amount of scrip issued for profits which remains outstanding. 24. Amount of debts due the company other than those before enumerated; state particularly their respective amounts and origin. 25. Amount of marine risks not terminated. 26. Amount of fire risks not terminated. 27. Amount received in cash for fire risks not terminated. 28. State the highest rate of interest received. 29. Amount received for interest. 30. State the highest rate of interest paid for money borrowed. 31. Amount paid for interest. 32. State the amount borrowed which remains unpaid, and state particularly the collateral given for each loan. 33. Amount of fire losses paid the past year. 34. Amount of marine losses paid the past year. 35. Amount of losses ascertained and unpaid. 36. Amount of losses claimed other than those ascertained and unpaid. 37. Amount of expenses, taxes, and commissions, paid the past year.

#### C.

##### *Form of Return for Mutual Fire Insurance Companies.*

1. Name of the company. 2. Where located. 3. When incorporated. 4. Date of commencement of business. 5. Amount insured by existing policies, in each class. 6. Amount of premiums and deposits on the same, in each class. 7. Amount of premiums and deposits received in cash, in each class. 8. Number of shares in each bank; state par value and market value, per share. 9. Number of shares in each railroad; state par value and market value, per share. 10. Amount of bonds of each railroad; state par value and market value, per share. 11. Amount invested in real estate, at cost, on the books of the company. 12. State in full all other investments. 13. Are any of the assets or securities of the company pledged for liabilities of the company? if yea, state particularly what. 14. Cash on hand and in



Forms for re-  
turns.

bank. 15. Cash in hands of agents. 16. Amount of losses paid in each class the last year. 17. Amount assessed on notes in each class the past year. 18. Amount assessed beyond the amount of notes in each class. 19. Amount of liabilities of the assured to further assessments in addition to the amount already assessed in each class. 20. Amount of assessments past due and not paid in each class. 21. Amount of policies terminated in each class the past year. 22. Amount of policies issued in each class the last year. 23. Amount of cash received for such policies in each class the last year. 24. Amount of premiums received in notes for the same in each class the last year. 25. Amount of losses ascertained and unpaid in each class. 26. Amount of losses claimed, other than those ascertained and unpaid. 27. Amount of cash dividends paid to policy holders in each class the last year. 28. Amount of assessments beyond the notes received in each class the last year. 29. Amount owed for money borrowed, and on what securities. 30. Highest rate of interest paid. 31. Highest rate of interest received. 32. Amount received for interest. 33. Amount insured on real estate. 34. Amount insured on personal property. 35. Amount of delinquent notes not charged to profit and loss account. 36. Amount paid for expenses, taxes, and commissions, the last year. 37. What proportion of the property insured is in Massachusetts. 38. What proportion of the losses occurred on property situated in Massachusetts.

#### D.

##### *Form of Return for Life Insurance Companies.*

1. Name of the company. 2. When chartered. 3. For what period. 4. Where located. 5. State in full the assets of the company. 6. Number of shares owned in each bank; state par value and market value, per share. 7. Number of shares owned in each railroad, stating the corporate name of each, and amount invested in each, at cost, on books; state par value and market value, per share. 8. Amount owned in railroad bonds; state par value and market value, per share. 9. Amount invested in real estate, at cost, on the books of the company. 10. Amount loaned on mortgages of real estate. 11. Amount loaned on notes secured by collaterals of personal property. 12. Amount loaned on notes without collaterals. 13. State in full all other investments. 14. Amount due to the company which is overdue and in arrears; are any such included in the above statements of assets and investments, and if so, to what amount? what part, if any, is due on account of risks actually terminated by the company? 15. Number, date, and amount, of each outstanding policy not heretofore returned, and age of the insured. 16. Number, date, and amount, of each policy which has within the year ceased to be in force, how terminated, what has been paid to the legal holder of the policy, and age of the insured. 17. Amount of losses ascertained and unpaid. 18. Amount of losses claimed against the company, whether acknowledged as due or not by the company. 19. Amount due from the company on its declared, promised, or acknowledged indebtedness or other claims, including dividends, bonuses on distribution of surplus, or as profits. 20. Amount received for premiums the past year. 21. Amount received for premiums in cash. 22. Amount received for premiums in promissory notes or securities. 23. Amount received for interest the past year. 24. Amount paid for interest the past year. 25. Amount of guarantee funds; and state particularly whether the same are in cash or subscription notes. 26. How are dividends, distributions of surplus funds, bonuses or estimated profits paid, whether in cash, scrip, or otherwise on credit, and whether on demand, or if on credit, for what length of time, and whether payable at a specific time or indefinitely at the discretion of the company. 27. Amount paid for expenses, taxes, and commissions, the past year.

## CHAPTER 59.

### OF LOAN AND FUND ASSOCIATIONS.

#### SECTION

1. Associations incorporated, to continue
2. title of; shares. By-laws to be filed with secretary, &c.
3. to make loans on real estate, &c.
4. Payments of principal. Charge for membership, &c.
5. Statement of condition to be published and filed in secretary's office.

#### SECTION

6. Member interested not to vote.
7. Bond, when cancelled.
8. Termination of corporation.
9. Equity jurisdiction of S. J. C.
10. Insurance commissioners to visit, &c.
11. to report condition of corporation to legislature; violation, &c., to attorney-general.

SECTION 1. Loan and fund associations heretofore incorporated may be and remain bodies corporate with the powers and privileges, and subject to the duties and liabilities, set forth in this and chapter sixty-eight so far as the same are applicable.

Associations incorporated, to continue. 1854, 454.

SECT. 2. Every such association shall have as part of its title the words "Loan and Fund Association," shall have not less than three hundred shares, and shall file a copy of its by-laws in the office of the secretary of the commonwealth. Copies of certificates filed under section two of chapter four hundred and fifty-four of the statutes of eighteen hundred and fifty-four, attested by the register of deeds or secretary of the commonwealth, shall be sufficient evidence.

title of; shares; by-laws to be filed with secretary, &c. 1859, 245, § 1.

SECT. 3. Such associations shall make loans in accordance with their by-laws, but only on real estate or such other securities as savings banks may loan upon. They shall contract no debts other than those connected with the expenses of their business. In all loans, members who can give satisfactory security shall be preferred.

to make loans on real estate, &c. See Ch. 57, §§ 142-145. 13 Gray, 157, 168.

SECT. 4. All payments of principal shall be deducted therefrom as often as once in two years, and the interest correspondingly reduced. The charge for membership shall not exceed two dollars on a share. No fine shall exceed ten per cent. on the amount for which default is made, nor five per cent. if paid within six months from the time of default.

Payments of principal. Charge for membership, &c.

SECT. 5. Each corporation shall annually in January publish in one or more newspapers in the county where it has its place of business, a statement verified by the oaths of its president and secretary setting forth its actual financial condition and the amount of its property and liabilities; and shall deposit a copy thereof so verified in the office of the secretary of the commonwealth.

Statement of condition to be published, &c. 1854, 454, § 3.

SECT. 6. No member who has borrowed money shall vote on any question affecting a claim against himself.

Members, when not to vote. 1854, 454, § 9.

SECT. 7. Every borrower shall be entitled to have his bond and mortgage or other evidence of indebtedness cancelled and discharged, when he has repaid an amount equal to the principal sum borrowed with the monthly interest and his fines for defaults.

Bond, when cancelled. 1854, 454, § 7.

SECT. 8. When all the shares of the corporation have been redeemed by loans or advances thereon, or when its funds and property are sufficient to pay upon the unredeemed shares their value as fixed by the by-laws filed in the secretary's office, it shall cease to exist except to settle its affairs.

Termination of corporation. 1854, 454, § 7.

SECT. 9. The supreme judicial court shall have full jurisdiction in equity of all controversies arising between such corporation and its members.

Equity jurisdiction of S. J. C. 1854, 454, § 8.

SECT. 10. The insurance commissioners shall visit and examine every such corporation whenever requested in writing by five or more persons, each of whom is a stockholder or creditor, or pecuniarily interested in said association, and also whenever they deem it necessary; at which times they shall have free access to its books and papers, and shall thoroughly inspect and examine all its affairs, and make all inquiries necessary to ascertain its condition, its ability to fulfil all its engagements, and whether it has complied with all provisions of law applicable to its transactions. Upon such examinations the commissioners shall have the powers and perform the duties they have and perform in the examination of insurance companies.

Insurance commissioners, duties of. 1855, 236, §§ 1, 2. 1858, 177, §§ 1, 2.

SECT. 11. The commissioners shall annually on or before the first Wednesday of January submit to the legislature a report in print of the general conduct and condition of the several loan fund corporations, with such suggestions as they deem expedient; and if in their opinion any such corporation has violated any law relative to such associations, they shall forthwith present the facts to the attorney-general, who may prosecute the association or its officers as the case may be for such violation.

to report condition of corporation to legislature; violation, &c., to attorney-general. 1855, 236, § 2. 1857, 50.

## CHAPTER 60.

## OF MANUFACTURING AND OTHER CORPORATIONS ORGANIZED UNDER SPECIAL CHARTERS.

SECTION	SECTION
1. Manufacturing corporations, powers of, &c.	23. Notice to be given annually of the state of corporate affairs, or stockholders to be liable.
2. By-laws.	24. Publications, &c., required of certain corporations.
3. Officers.	25. Dividends made when corporation insolvent; each director consenting thereto, liable.
4. choice of.	26. Officer consenting to loan to stockholders, liable.
5. Directors. President.	27. Debts of corporation not to exceed, &c., liability of directors, &c.
6. Clerk and treasurer.	28. Rights of companies incorporated before Feb. 23, 1830, &c.
7. Stockholders' meetings. Votes, quorum, proxies, &c.	29. if such corporations adopt the provisions of this chapter.
8. Capital, to remain as under existing laws, &c.	30. If false certificates are made knowingly, officers liable.
9. Stock of future companies to be in shares.	31. Suits against officers so liable.
10. Shares to be numbered, &c.	32. When stockholders' persons, &c., may be taken on writs, &c.
11. Capital stock may be increased.	33. Party summoned may defend. Separate judgment. Supersedeas.
12. special and general. Rights, &c., of holders of.	34. How executions may be satisfied in such case. Proviso.
13. Shares, how transferred.	35. Remedy of officers who pay company debts.
14. Assessments may be made on shares not exceeding, &c. Notes of stockholders not receivable for.	36. What charters revocable by legislature.
15. Shares may be sold to pay assessments.	37. Cotton factories, &c., may manufacture silk, &c.
16. Notice of sales, and manner of transfer.	38. Provisions may be repealed; saving rights.
17. Stockholders liable, &c.	
18. Certificate of capital to be filed and recorded.	
19. Same provision as to increase of capital.	
20. Officers individually liable for neglect.	
21. Mode of reducing capital stock; liability of directors.	
22. If capital is withdrawn before payment of debts, stockholders liable.	

Manufacturing corporations, powers of, &c.  
R. S. 38, § 1.  
8 Pick. 455.

SECTION 1. Corporations established within this state by special charters subsequently to the twenty-third day of February in the year one thousand eight hundred and thirty, for the purpose of carrying on any kind of manufacture, and corporations which have been chartered subject to the provisions of chapter thirty-eight of the Revised Statutes, and their respective officers and stockholders, may exercise the powers, and shall be governed by the provisions and be subject to the liabilities prescribed in this chapter.

By-laws.  
R. S. 38, § 6.

SECT. 2. Every company may make by-laws not repugnant to the laws of the state, with penalties for the breach thereof not exceeding twenty dollars for each offence.

Officers.  
R. S. 38, § 2.

SECT. 3. The business of the company shall be managed and conducted by a president, a board of directors, a clerk, treasurer, and such other officers, agents, and factors, as the company authorizes for that purpose.

choice of.  
R. S. 38, §§ 3, 4,  
5.  
7 Gray, 1.

SECT. 4. The directors, clerk, and treasurer, shall be chosen annually by the stockholders, and shall hold their offices until others are chosen and qualified in their stead. The manner of such choice, and the mode of the choice or appointment of all other agents, factors, and officers of the company, shall be prescribed by the by-laws.

Directors.  
President.  
R. S. 38, § 3.

SECT. 5. The number of the directors shall not be less than three. One of them shall be chosen president by the directors or by the company, as the by-laws shall direct.

Clerk and treasurer.  
R. S. 38, § 4.  
9 Pick. 80.  
3 Met. 282.  
8 Cush. 93.

SECT. 6. The clerk shall be sworn, and shall record all the votes of the company in a book to be kept for that purpose, and perform such other duties as shall be assigned to him. The treasurer shall give bond in such sum and with such sureties as shall be required by the by-laws for the faithful discharge of his duty.



SECT. 7. At all meetings of the company absent stockholders may vote by proxy authorized in writing; but no proxy shall be valid unless executed and dated within six months previous to the meeting at which it is used if the maker thereof resides in the United States; and no person shall as proxy or attorney cast more than fifty votes unless all the shares so represented by him are owned by one person; and no officer of the corporation as proxy or attorney shall cast more than twenty votes. Every company may determine by its by-laws what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting, to constitute a quorum. If the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

Stockholders' meetings.  
Votes, quorum, proxies, &c.  
R. S. 38, § 7.  
16 Mass. 94.

SECT. 8. The capital stock of every company, the amount whereof has been fixed and limited by such company according to law, shall remain so fixed, subject to be increased or reduced pursuant to the provisions of this chapter.

Capital, to remain as fixed, &c.  
R. S. 38, § 8.

SECT. 9. The amount of the capital stock of every company not organized shall be fixed and limited by the company, and shall at its first meeting be divided into shares, of which a record shall be made by the clerk.

Stock of future companies to be in shares.  
R. S. 38, § 9.  
6 Pick. 23.  
3 Met. 282.  
6 Gray, 586.

SECT. 10. The shares shall be numbered; and every stockholder shall have a certificate under the seal of the corporation and signed by the treasurer, certifying his property in such shares as are expressed in the certificate.

Shares to be numbered, &c.  
R. S. 38, § 10.  
1852, 180, § 1.  
16 Mass. 94.

SECT. 11. Every company may, at any meeting called for the purpose, increase its capital stock and the number of shares therein: *provided*, that the stock when so increased shall not exceed the amount authorized by law.

Capital stock may be increased.  
R. S. 38, § 11.

SECT. 12. Every company may, by a vote of three-fourths of the general stockholders at a meeting duly called for the purpose, issue two kinds of stock, namely, *general stock* and *special stock*. The special stock shall at no time exceed two-fifths of the actual capital of the corporation, and shall be subject to redemption at par after a fixed time to be expressed in the certificates. Holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed half-yearly sum or dividend to be expressed in the certificates, not exceeding four per cent., and they shall in no event be liable for the debts of the corporation beyond their stock. Holders of such general stock shall be jointly and severally individually liable for all the debts of the corporation until such special stock shall be redeemed in full.

special and general.  
Rights, &c., of holders of.  
1855, 298.

SECT. 13. Shares may be transferred by the proprietor, by an instrument in writing under his hand and recorded by the clerk of the corporation in a book to be kept for that purpose. The purchaser named in such instrument so recorded shall, on producing the same to the treasurer and delivering to him the former certificate, be entitled to a new certificate.

Shares, how transferred.  
R. S. 38, § 12.  
1846, 45.

SECT. 14. Every company may from time to time, at a legal meeting called for the purpose, assess upon each share such sums of money as the company thinks proper, not exceeding in the whole the amount at which each share was originally limited; and such sums assessed shall be paid to the treasurer at such times and by such instalments as the company directs. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock.

Assessments, how made.  
Notes of stockholders not receivable for.  
R. S. 38, §§ 13, 24.

SECT. 15. If the proprietor of any share neglects to pay a sum duly assessed thereon for the space of thirty days after the time appointed for payment, the treasurer of the company may sell by public auction a

Shares may be sold to pay assessments.  
R. S. 38, § 14.

14 Mass. 286.  
16 Mass. 102.

Notice of sales,  
and manner of  
transfer.  
R. S. 38, § 15.  
4 Gray, 75.

Stockholders  
liable, &c.  
R. S. 38, § 16.  
6 Met. 119, 123.  
12 Met. 3.  
8 Cush. 93, 182.  
11 Cush. 183.  
4 Gray, 75.

Certificate of  
capital to be  
recorded.  
R. S. 38, § 17.  
12 Met. 3.  
8 Cush. 182.

Same provision  
as to increase  
of capital.  
R. S. 38, § 18.  
6 Met. 122.  
8 Cush. 182.

Officers individ-  
ually liable for  
neglect.  
R. S. 38, § 19.

Mode of reduc-  
ing capital  
stock; liability  
of directors.  
R. S. 38, § 20.

If capital is  
withdrawn be-  
fore payment of  
debts, stock-  
holders liable.  
R. S. 38, § 21.

Notice to be  
given annually  
of the state of  
corporate af-  
fairs, or stock-  
holders to be  
liable.  
R. S. 38, § 22.  
1857, 276, § 2.  
8 Cush. 182.

sufficient number of his shares to pay all assessments then due from him, with necessary and incidental charges.

SECT. 16. The treasurer shall give notice of the time and place appointed for such sale, and of the sum due on each share, by advertising the same three weeks successively before the sale in some newspaper printed in the county where the manufactory is established, and if there is no such paper, then in some newspaper printed in an adjoining county; and a deed of the shares so sold, made by the treasurer and acknowledged before a justice of the peace and recorded as provided in section thirteen, shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.

SECT. 17. The members of every company shall be jointly and severally liable for all debts and contracts made by the company, until the whole amount of the capital stock fixed and limited by the company in manner aforesaid is paid in and a certificate thereof made and recorded as prescribed in the following section.

SECT. 18. The president and directors, with the treasurer and clerk, of such companies shall, after the payment of the last instalment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president, treasurer, clerk, and a majority of the directors; and they shall cause the same to be recorded in the registry of deeds for the county or district wherein the works of the company are established.

SECT. 19. If a company increases its capital stock as before provided in this chapter, the officers mentioned in the preceding section, after the payment of the last instalment of such additional stock, shall make a certificate of the amount so added and paid in, sign and swear to the same, and cause it to be recorded in the manner therein provided.

SECT. 20. If any of said officers refuse or neglect to perform the duties required of them in the two preceding sections, they shall be jointly and severally liable for all debts of the company contracted after the expiration of thirty days from the payment of the last instalment and before such certificate is so recorded.

SECT. 21. Every company may, by a vote at any meeting called for the purpose, reduce its capital stock; in which case, a certified copy of the vote shall be recorded in the registry of deeds for the county or district wherein the works of the company are established; and in default thereof, the directors of the company shall be jointly and severally liable for all debts of the company contracted after thirty days from such reduction and before the recording of such copy.

SECT. 22. If any part of the capital stock of a company is withdrawn and refunded to the stockholders before the payment of all the debts of the company contracted previously to the recording of the copy of a vote for that purpose in the registry of deeds as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of such debts.

SECT. 23. Every such company incorporated prior to the twenty-ninth day of June in the year eighteen hundred and fifty-seven shall give notice annually in some newspaper printed in the county where the works of the company are established, and if there is no such paper, then in some newspaper in an adjoining county, of the amount of all assessments voted by the company and actually paid in, and the amount of all existing debts, which notice shall be signed by the president and a majority of the directors; and if any such company fails so to do, all its stockholders shall be jointly and severally liable for all the debts of the company then existing, and for all contracted before such notice is given.

1860 Ch. 121.



SECT. 24. Companies subsequently established shall make, publish, and deposit, all the certificates and returns required of corporations organized under chapter sixty-one in the manner and under similar liabilities to those therein specified.

Publications, &c., required of certain corporations. 1857, 276, §§ 1, 2.

SECT. 25. If the directors of any company mentioned in section one declare and pay any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing and for all thereafter contracted so long as they respectively continue in office: *provided*, that the amount for which they shall all be so liable shall not exceed the amount of such dividend, and if any of the directors are absent at the time of making the dividend, or object thereto and file their objection in writing with the clerk of the company, they shall be exempted from such liability.

Dividends made when corporation insolvent; directors liable. R. S. 38, § 23.

SECT. 26. No loan of money shall be made by such company to any stockholder therein; and if any such loan is made to a stockholder, the officers who make it or assent thereto shall be jointly and severally liable to the extent of such loan and interest for all the debts of the company contracted before the repayment of the sum so loaned.

Officer consenting to loan to stockholders liable. R. S. 38, § 24.

SECT. 27. The whole amount of the debts which any such company at any time owes, shall not exceed the amount of its capital stock actually paid in; and in case of any excess, the directors under whose administration it occurs shall be jointly and severally liable to the extent of such excess for all the debts of the company then existing and for all that are contracted so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock: *provided*, that any of the directors who are absent at the time of contracting any debt contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the fact to the stockholders at a meeting which they may call for that purpose.

Debts of corporation not to exceed, &c.; liability of directors, &c. R. S. 38, § 25.

SECT. 28. All manufacturing companies incorporated before the twenty-third day of February in the year one thousand eight hundred and thirty, which prior to the passage of the Revised Statutes in pursuance of chapter fifty-three, of the statutes of the year one thousand eight hundred and twenty-nine, have voted to adopt the provisions contained in said last mentioned statute, and which have performed all things prescribed in chapter thirty-eight of the Revised Statutes, shall together with their respective members and officers be entitled to all the rights, privileges, and immunities, and be subject to all the liabilities, to which they may be entitled or subject by the laws in force at the time when this chapter shall take effect.

Rights of companies incorporated before Feb. 23, 1830, &c. R. S. 38, § 27. See § 36.

SECT. 29. If any such company at a legal meeting called for the purpose has adopted the provisions of chapter thirty-eight of the Revised Statutes, or shall adopt the provisions contained in this chapter, and shall have caused to be recorded in the registry of deeds in the county or district where such corporation is established, a certificate signed by the president, treasurer, clerk, and a majority of the directors, stating the amount of capital actually paid in, and if any part thereof has been divided or withdrawn, the amount so divided and withdrawn; stating also the amount of the debts and credits, and an estimate of the value of the real and personal estate of said corporation for the purpose of carrying on the business thereof, at the time of making such certificate; and if such officers have made oath that they have carefully examined the records and accounts of said corporation, and faithfully estimated the value of the property and funds thereof, and that said certificate by them signed is true according to their best knowledge and belief; then no stockholder in such company shall be liable for any

if such corporations adopt the provisions of this chapter. R. S. 38, § 26. See § 36.



debts of the company contracted after the recording of such certificate, except for the causes and in the manner herein before provided.

If false certificates are made knowingly, officers liable.  
R. S. 38, § 28.  
6 Met. 122.

SECT. 30. If any certificate made, or any public notice given, by the officers of a company in pursuance of the provisions of this chapter, is false in any material representation, all the officers who signed the same knowing it to be false shall be jointly and severally liable for all the debts of the company contracted while they were stockholders or officers thereof.

Suits against officers so liable.  
R. S. 38, § 29.  
1852, 312.

SECT. 31. When any of the officers of a company are liable by the provisions of this chapter to pay the debts of the company, or any part thereof, any person to whom they are so liable may have an action of tort against any one or more of said officers; and the declaration in such action shall state the claim against the company and the ground on which the plaintiff expects to charge the defendants personally; and such action may be brought notwithstanding the pendency of an action against the company for the recovery of the same claim or demand; and both of the actions may be prosecuted until the plaintiff obtains the payment of his debt and the costs of both actions.

When stockholders' persons, &c., may be taken, &c.  
R. S. 38, § 30.  
1851, 315, § 1.  
1852, 24, § 1.  
16 Mass. 389.  
17 Mass. 64, 330.  
6 Met. 124, 126.  
13 Met. 498.  
8 Cush. 93.  
9 Cush. 578, 75.  
4 Gray, 75.  
13 Gray, 182.

SECT. 32. When the stockholders of such a company are liable by the provisions of this chapter to pay the debts of such company, or any part thereof, their persons and property may be taken therefor on a writ of attachment or on execution issued against the company for such debt, in the same manner as on writs and executions issued against them for their individual debts; but the person or property of a stockholder shall not be taken upon such execution issued in any action instituted subsequent to the twenty-fourth day of June one thousand eight hundred and fifty-one, unless a summons in the action was left with such stockholder.

Party summoned may defend.  
Separate judgment.  
Supersedeas.  
1851, 315, § 2.  
4 Gray, 75, 274.

SECT. 33. Any stockholder with whom such summons has been left shall be admitted to defend in such action, and if it appears that he is not liable therein, judgment shall be entered for him upon the issue joined, and for his costs; and judgment may be entered in the same action against the corporation for damages and costs as upon a default. An execution that may issue upon such judgment against such corporation shall have annexed thereto a supersedeas as to such stockholder.

How executions may be satisfied in such case.  
Proviso.  
1851, 315, § 3.  
1852, 24.  
4 Gray, 274.

SECT. 34. Upon an execution issued on a judgment recovered against a corporation the stockholders whereof are liable for its debts or any part thereof, in which a demand has been made and the execution is not satisfied, the person or property of any officer of the corporation at the time when the cause of action accrued, or when the judgment was rendered, may be taken, and if no property of such officer can be found to satisfy the execution, then the person or property of any stockholder may be taken thereon. The provisions of this and the preceding section shall not apply to executions issued in any action which was pending on the twenty-fourth day of June one thousand eight hundred and fifty-one.

Remedy of officers, &c., who pay company debts.  
R. S. 38, §§ 32, 33.  
4 Gray, 75.

SECT. 35. An officer or stockholder of a company who voluntarily or by compulsion pays a debt of the company for which he is made liable by the provisions of this chapter, may recover the amount so paid in an action of contract against the company for money paid for its use, in which action the property of the company only shall be liable to be taken, and not the property of any stockholder.

What charters revocable by legislature.  
R. S. 38, § 36.

SECT. 36. The charters of corporations established subject to the provisions of chapter thirty-eight of the Revised Statutes or of this chapter, and of the corporations mentioned in sections twenty-eight and twenty-nine, may be revoked by the legislature for any cause which they deem sufficient.

Cotton factories, &c., may

SECT. 37. Any corporation organized for the manufacture of cotton or woollen goods may, upon the consent of four-fifths of the stockholders

by a vote at a meeting called for the purpose, carry on the manufacture of silk, linen, flax, or India rubber, goods.

SECT. 38. The provisions contained in this chapter may be amended or repealed at the pleasure of the legislature.

manufacture silk, &c. 1852, 195. Provisions may be repealed. R. S. 38, § 37.

## CHAPTER 61.

### OF CORPORATIONS ORGANIZED UNDER GENERAL STATUTES.

COMPANIES FOR CUTTING AND SELLING ICE, OR FOR MECHANICAL, MINING, QUARRYING, AND MANUFACTURING PURPOSES.

SECTION

1. Three or more persons may become a corporation.
2. Purpose and location shall be specified, &c.
3. First meeting, how called.
4. May confirm, &c., former organization, &c.
5. Organization, powers, &c., of.
6. Capital stock, amount, increase, and reduction of.
7. May hold real and personal estate and do business out of state.
8. Certificate of name, stock, &c., of corporation to be made, sworn to, published, &c., before commencing business.
9. upon increase, &c., of stock.

SECTION

10. Certificates of stock, assets, liabilities, &c., to be made, sworn to, and filed.
11. Liability of officers neglecting, &c., to comply.
12. how may be limited.
13. Secretary to publish abstract, &c.
14. Cotton and woollen manufacturers.

GAS-LIGHT COMPANIES.

15. Ten or more persons may become a corporation for manufacturing, &c., gas. Exception.
16. Corporation may dig up streets, &c.
17. Under control of selectmen, &c.
18. Other companies may hold stock.
19. Legislature may amend, &c.

COMPANIES FOR CUTTING AND SELLING ICE, OR FOR MECHANICAL, MINING, QUARRYING, AND MANUFACTURING PURPOSES.

SECTION 1. Three or more persons who shall have associated themselves together by articles of agreement in writing for the purpose of cutting, storing, and selling ice, or of carrying on any mechanical, mining, quarrying, or manufacturing business, except that of distilling or manufacturing intoxicating liquors, and shall have complied with the provisions of this chapter, shall be and remain a corporation under any name indicating their corporate character assumed in their articles of association, and which is not previously in use by any other corporation or company.

Three or more persons may become a corporation. 1851, 133, §§ 1, 6. 1852, 9, §§ 1, 2.

SECT. 2. The purpose for and the place within which such corporation is established shall be distinctly and definitely specified in the articles of association; and such corporation shall not direct its operations or appropriate its funds to any other purpose.

Purpose and location shall be specified, &c. 1851, 133, § 3. See § 11.

SECT. 3. The first meeting of such corporations hereafter organized shall be called by a notice signed by one or more of the persons named in such agreement, stating the time, place, and purposes, of the meeting, a copy of which shall seven days at least before the meeting be given to each member or published in some newspaper printed in the county where the corporation is to be located.

First meeting, how called. 1855, 478, § 2.

SECT. 4. If doubts arise whether any such corporation is legally organized, the stockholders, at a special meeting called for the purpose under their by-laws or under the preceding section, may by vote confirm such organization and all proceedings under it; and by so doing, and depositing one copy of such vote with the clerk of the city or town where the corporation is located, and one with the secretary of the commonwealth, such corporation and the subsequent acts of the company shall be held legal and valid as if the original organization had been legal.

May confirm, &c., former organization, &c. 1855, 478, § 3.



Organization, powers, &c.  
1851, 133, §§ 4, 5.  
1857, 276, § 2.

SECT. 5. Every corporation so organized and its officers and stockholders shall have all the powers and privileges and be subject to all the duties, restrictions, and liabilities, set forth in chapter sixty so far as they are applicable, except section twenty-three of said chapter; and the president, directors, and treasurer, shall be chosen according to the provisions of that chapter.

Capital stock, amount, increase, and reduction of.  
1851, 133, §§ 2, 8, 16; 1855, 68, § 1;  
1855, 478, § 5.  
See § 9.

SECT. 6. The amount of capital stock of such corporation shall be fixed and limited in its articles of association. The corporation may increase or diminish its amount and the number of shares at any meeting of the stockholders specially called for the purpose, but the capital shall never be less than five thousand nor more than five hundred thousand dollars, and no share shall be issued for less than its par value.

May hold property, &c., out of state.  
1851, 133, § 7.  
1855, 478, § 1.  
1857, 24.

SECT. 7. Such corporation may in its corporate name take, hold, and convey, such real and personal estate as is necessary for the purposes of its organization; may carry on its business, or so much thereof as is convenient, beyond the limits of the state, and may there purchase and hold any real or personal estate necessary for conducting the same.

Certificate to be published, &c., before commencing business.  
1851, 133, § 4.  
1855, 68, § 2.  
1857, 276, § 1.  
See §§ 11, 12.

SECT. 8. Before such corporation commences business, the president, treasurer, and a majority of the directors, shall sign, swear to, publish three times in some newspaper printed in the town or county wherein such corporation is situated, and deposit with the secretary of the commonwealth, a certificate setting forth the corporate name and purpose of the association, the amount of the capital stock, the amount actually paid in, and the par value of the shares in the corporation; and shall file a copy thereof with the clerk of the city or town wherein the corporation is situated, to be by him recorded in a book kept for the purpose. Within thirty days after the payment of any instalment called for by the directors, a certificate thereof shall be in like manner signed, sworn to, deposited, filed, and recorded.

upon increase, &c., of stock.  
1851, 133, § 8.  
1855, 478, § 5.  
See §§ 11, 12.

SECT. 9. When the capital stock and shares of any such corporation are increased or reduced under the provisions of section six, a certificate thereof shall be made, signed, sworn to, deposited, and recorded in manner aforesaid.

Certificates of stock, assets, liabilities, &c., to be made, sworn to, and filed.  
1851, 133, §§ 9, 10.  
1854, 438, § 1.  
1855, 68, § 3.  
See §§ 11, 12.  
1851 Ch. 121.

SECT. 10. Every such corporation shall file the certificates required of corporations by sections eighteen and nineteen of chapter sixty, and the directors shall annually in December make, and the president, treasurer, and a majority of the directors, shall sign, swear to, and deposit with the clerk of the city or town in which such corporation is established or located, a certificate stating the amount of capital stock paid in, the name of and number of shares held by each stockholder, the amount invested in real estate and in personal estate, the amounts of property owned and debts due to the corporation on the first day of the month next preceding the date of such certificate; and the amount as nearly as can be ascertained of existing demands against the corporation at the date of the certificate.

Liability of officers neglecting, &c., to comply.  
R. S. 38, § 19.  
1851, 133, § 11.  
1855, 478, § 4.

SECT. 11. If the officers of any such corporation violate the provisions of section two, or neglect or refuse to perform the duties required by sections eight, nine, and ten, they shall be jointly and severally liable for all debts of the corporation contracted during the continuance of such violation, refusal, or neglect.

how may be limited.  
1855, 478, § 4.

SECT. 12. When the officers of such corporation have failed to perform the duties prescribed in sections eight, nine, and ten, the certificates therein mentioned may be made, published, and filed, at any time after such failure; and such officers shall not be personally liable for the debts of the corporation contracted after the requisitions of said sections have been complied with.

Secretary to publish abstract, &c.

SECT. 13. The secretary of the commonwealth shall annually prepare, cause to be printed, and on the first Wednesday of January submit



to the legislature, a true abstract from the certificates required by this chapter to be deposited with him. 1851, 133, § 14.

SECT. 14. Corporations organized for the purpose of manufacturing cotton or woollen goods shall have the powers conferred upon like corporations organized under special charters by section thirty-seven of chapter sixty. Cotton and woollen manufacturers. 1852, 195.

GAS-LIGHT COMPANIES.

SECT. 15. For the purpose of making and selling gas for light in a city or town, ten or more persons may organize as a corporation under and shall be subject to the provisions of this chapter; but in a city or town in which a gas company exists in active operation no such corporation shall be organized unless the parties to the association are inhabitants of the place; nor unless the existing corporation has realized an annual yearly dividend of seven per cent. on its capital stock for a period of five years. Ten or more persons may become a corporation for manufacturing, &c., gas. Exception. 1855, 146, § 1. 1857, 276, § 1.

SECT. 16. Such corporations may, with the consent in writing of the mayor and aldermen or selectmen, dig up and open the grounds in any of the streets, lanes, and highways, of such place, so far as is necessary to accomplish the object of the corporation; but such consent shall not affect the right or remedy to recover damages for any injury which shall be caused to persons or property by the doings of such corporations. They shall put all such streets, lanes, and highways, which are opened, into as good repair as they were in when opened; and upon failure so to do within a reasonable time shall be deemed guilty of a nuisance. Corporation may dig up streets, &c. 1855, 146, § 2.

SECT. 17. The mayor and aldermen or selectmen of a place in which pipes or conductors of such a corporation are sunk, may regulate, restrict, and control, all acts and doings of such corporation which may in any manner affect the health, safety, convenience, or property, of the inhabitants of such place. Under control of selectmen, &c. 1855, 146, § 3.

SECT. 18. Any manufacturing, machine, or other company, having its place of business in any place into which it is proposed to introduce the manufacture of gas for light, may hold not exceeding ten per cent. of the stock in such gas-light company. Other companies may hold stock. 1855, 146, § 4.

GENERAL PROVISION.

SECT. 19. The legislature may amend or repeal this chapter so as to affect existing corporations, and may by special acts annul or dissolve any such corporation. Legislature may amend, &c. 1851, 133, § 13.

CHAPTER 62.

OF TURNPIKE, CANAL, AND BRIDGE CORPORATIONS.

- SECTION
- TURNPIKES.
1. Turnpikes. Shares personal estate.
  2. Corporation may erect gates, &c., post rates of toll, &c.
  3. Gates, how removed.
  4. Rates of toll.
  5. Who exempt from payment of toll.
  6. Penalty for evading toll.
  7. for exacting illegal toll.
  8. for using wheels contrary to law.
  9. for false account of weight, &c.
  10. for locking wheels without shoe.
  11. for opening roads to avoid gates.

- SECTION
12. Corporation liable for defects. Exception.
  13. Fines, how applied.
  14. Commissioners may lay out turnpikes as highways.
  15. to allow and apportion damages. Proceedings if town refuses to pay.
  16. When made highway, rights of corporation to cease. Land to revert.
  17. Corporation to exhibit accounts to governor, &c.
  18. If out of repair, gates may be opened.
  19. May be dissolved.

CANALS.		BRIDGES.	
SECTION		SECTION	
20. Master of canal boat to exhibit certificate to collector. Penalty. Blank certificates to be furnished.		23. Limitation of liability of corporation.	
21. Penalty for false statement.		24. Same subject.	
22. Collector may require load to be weighed. Cost, by whom paid.		PENALTIES.	
		25. Penalties, how recovered.	

## TURNPIKES.

Turnpikes.  
Shares personal estate.  
R. S. 39, § 10.  
9 Pick. 80.

Corporations may erect gates, &c., post rates of toll, &c.  
R. S. 39, §§ 22, 27, 30, 31.  
2 Mass. 143.  
3 Pick. 342.

Gates, how removed.  
R. S. 39, §§ 28, 29.

Rates of toll.  
R. S. 39, §§ 22, 23, 24.  
3 Greenl. 191.

SECTION 1. Shares in a turnpike corporation shall be personal estate; and shall be transferred by deed acknowledged before a justice of the peace and recorded by the clerk of the corporation in a book kept by him for the purpose.

SECT. 2. Such corporation may erect gates in such places as the county commissioners direct, but no gate where full toll is to be taken shall be erected within ten miles of any other gate on the same road, except in cases expressly authorized by the legislature; and no gate shall be erected on a county or town road previously established. At every gate where toll is collected, the corporation shall erect and keep exposed to view in some conspicuous place a sign-board with all the rates of toll fairly and legibly written or printed thereon in letters of a large size; otherwise it shall not be entitled to demand toll at said gate.

SECT. 3. When the directors of such corporation desire to remove a gate of its road, they may petition the county commissioners for permission so to do; who at the expense of the corporation shall give reasonable notice to all persons interested of the time and place of meeting for a hearing, by advertising the same in some newspaper fourteen days at least before the time appointed for such meeting. If they think it expedient they may view the premises either by themselves or by a committee appointed for the purpose; and after hearing all parties interested they shall determine whether the gate shall be removed as prayed for, and may order it to be removed accordingly.

SECT. 4. Such corporation may demand of each traveller or passenger at each of the gates at which it is allowed to receive full toll, and at all other gates in the same proportion, the following rates of toll, namely: for each coach, chariot, phaeton, or other four-wheeled spring carriage drawn by two horses, twenty-five cents, and if drawn by more than two horses, two cents for each additional horse; for every cart or wagon drawn by two horses, ten cents, and if drawn by more than two horses, two cents for each additional horse; for every cart or wagon drawn by two oxen, ten cents, and if by more than two oxen, twelve and a half cents; for every cart or wagon drawn by more than four oxen or horses, two cents for each additional ox or horse; for every curriole, fifteen cents; for every chaise, chair, sulky, or other two-wheeled carriage for pleasure, drawn by one horse, twelve and a half cents; for every cart, wagon, or truck, drawn by one horse, six cents and one-quarter of a cent; for each wagon or carriage, with four wheels, drawn by one horse only, according to the following rates of toll: for every such carriage the body or seats of which are placed on springs and covered with cloth, canvas, or leather, and used for the conveyance of persons and personal baggage only, twelve and a half cents; for every such carriage without springs, six cents; and for all other carriages of four wheels drawn by one horse, for the conveyance of persons and personal baggage, that rate of toll which is the nearest to the mean sum, in cents, between the two rates of toll above specified, as established at each of such gates; for every man and horse, four cents; for every sleigh or sled drawn by two oxen or horses, eight cents; and if drawn by more than two oxen or horses, one cent for each additional ox or horse; for every sleigh or sled drawn by one horse, four cents; for all horses, mules, or neat cattle, led or



driven, besides those in teams or carriages, one cent each; for all sheep or swine, at the rate of three cents by the dozen.

Carts or wagons having wheels the felloes of which are six inches broad or more, shall be subject to pay only half the toll to which other carts or wagons are subject.

The rates of toll may be commuted with any person.

SECT. 5. No toll shall be demanded or received of any person passing on foot upon any occasion, or passing with his horse or carriage to or from his usual place of public worship, or on military duty, either on foot, horseback, or in a carriage; nor from any person residing in the town where the gate is placed, unless he is going or returning from beyond the limits of said town; nor from any person going to or returning from any grist mill, or on the common and ordinary business or concerns of the family. But any person passing a turnpike gate and claiming to be exempted by law from the payment of toll, shall, if required by the toll-gatherer, first declare to him his name and place of abode; and if for the purpose of avoiding the payment of toll he willfully gives a false statement and thereby passes the gate toll free, he shall forfeit ten dollars to the use of the corporation for each offence.

Who exempt from payment of toll.  
R. S. 39, §§ 25, 26,  
4 Pick. 341.

SECT. 6. Whoever, not exempt by law from paying toll, passes or attempts to pass a toll gate lawfully established, without first paying the legal toll and with intent to avoid paying the same; or with his horse, team, or cattle, with like intent, turns out of any road on which such toll gate is so established, and again enters thereon; shall forfeit a sum not exceeding twenty-five dollars for each offence.

Penalty for evading toll.  
R. S. 39, §§ 32, 33,  
4 Pick. 341.  
4 Cush. 503.

SECT. 7. If such corporation, or its toll-gatherers, or any person in its employment, demands or receives of any person passing on its road, more toll than is by law established, or unreasonably delays or hinders any traveller or passenger from passing any of its gates or roads, it shall forfeit a sum not exceeding fifty dollars, to be recovered by the person so injured, to his own use, in an action of tort.

for exacting illegal toll.  
R. S. 39, §§ 38, 39,  
1852, 312.

SECT. 8. All loaded carts or wagons passing on a turnpike road and carrying more than forty-five hundred pounds, shall be drawn on wheels having each a felloe not less than three and a half inches wide; and whoever passes on such road with a cart or wagon so loaded and drawn on wheels having narrower felloes, shall pay the corporation three times the legal toll therefor.

for using wheels contrary to law.  
R. S. 39, § 36.

SECT. 9. Every person passing on a turnpike road and driving or having the care of a loaded cart or wagon with wheels the felloes of which are less than three and a half inches wide, shall upon the request of the toll-gatherer give a true account of the weight of the load and also his name and place of abode; and if he refuses to declare, or willfully misrepresents, the weight of his load, or gives a false account of his name or place of abode, with intent to defraud the corporation, he shall forfeit the sum of ten dollars for each offence.

for false account of weight, &c.  
R. S. 39, § 37.

SECT. 10. Whoever driving or having the care of a loaded cart or wagon passing on a turnpike road, locks, chains, or fastens, any wheel of such cart or wagon, without putting under the wheel an iron shoe not less than six inches wide and twelve inches long, shall for each offence forfeit a sum not exceeding twenty dollars.

for locking wheels without shoe.  
R. S. 39, § 44.

SECT. 11. Whoever, except in the opening or making of a highway, opens or makes any road or passway leading from a turnpike road, and reunites said road or passway with such turnpike road, or with any road connected therewith, for the purpose of avoiding or aiding others to avoid a gate on the turnpike road, shall forfeit to the use of the corporation a sum not exceeding one thousand dollars.

for opening road to avoid gates.  
R. S. 39, §§ 34, 35.

SECT. 12. When a person liable to the payment of toll sustains an injury by reason of a turnpike road being insufficient or out of repair, the corporation owning the road shall be answerable for such injury, and

Corporation liable for defects. Exemption.  
R. S. 39, § 42.



1838, 104.  
4 Pick. 341.  
2 Gray, 68.

Fines, how ap-  
plied.  
R. S. 39, § 41.

Commissioners  
may lay out  
turnpikes as  
highways.  
R. S. 39, §§ 16,  
18.  
1845, 209, § 1.  
18 Pick. 486.  
8 Cush. 360.

to allow and  
apportion dam-  
ages. Proceed-  
ings if town re-  
fuses to pay.  
R. S. 39, §§ 17,  
19, 20.  
1845, 209, § 2.  
12 Met. 455.  
3 Cush. 360.  
12 Met. 455.  
10 Cush. 295.

When made  
highway,  
rights, &c., of  
corporation to  
cease. Land to  
revert.  
R. S. 39, §§ 15,  
21.

Corporation to  
exhibit ac-  
counts to gov-  
ernor, &c.  
R. S. 39, § 13.

If out of repair  
gates may be  
opened.  
R. S. 39, § 40.  
1840, 12.

also liable to indictment for such insufficiency and want of repair; but such corporation shall not be liable for damages to any person whose carriage and load exceed the weight of six tons.

SECT. 13. All fines imposed on a turnpike corporation for neglecting to repair its road shall be appropriated to that purpose. The court imposing a fine shall appoint a suitable agent so to apply it, who shall receive the same of the officer having the warrant for collecting it, and make return of his doings therein to the court, according to the order. The receipt of such agent upon the warrant shall be a sufficient discharge to the officer.

SECT. 14. When such corporation makes application to the county commissioners to permit it to relinquish its franchise as to the whole or part of its road which it is bound to support within their jurisdiction, requesting that the same may be laid out as a common highway; or when the commissioners on application determine that the common convenience and necessity require such road to be laid out as a common highway; they may with the assent of the corporation so lay out the same or any part thereof, and make alterations therein; proceeding in all respects in conformity with the provisions of chapter forty-three respecting the laying out of highways.

SECT. 15. The commissioners upon such taking may allow such damages as they think reasonable to the corporation, to be paid out of the county treasury, and they may order a part of such damages, not exceeding one-third thereof, to be refunded to the county treasury by the cities and towns through which the road passes, at such times as they direct. In apportioning the proportions to be paid by each, they shall have regard to the length of way in each, and the advantages to be derived to it.

If a city or town refuses or neglects to pay its proportion, the same proceedings may be had to enforce the payment as are provided in case of expenses of making highways by the commissioners where cities or towns neglect to make the same.

In the assessment of damages there shall be allowed to persons injured such damages only as they would be entitled to beyond the damages they would have sustained by the continuance of the turnpike road, taking into consideration any advantage which may accrue in consequence of making the same a highway.

SECT. 16. When a turnpike road or part thereof is established as a highway, all the rights, privileges, duties, and obligations, of the corporation, so far as they relate to that part of the road, shall cease; and when any such road is discontinued in whole or in part, the land over which the part discontinued was laid shall revert in the persons, their heirs and assigns, who were owners thereof at the time it was taken or purchased for the purpose of making such road; any conveyance thereof by deed to the corporation notwithstanding.

SECT. 17. Every such corporation established subsequently to the sixteenth day of March in the year one thousand eight hundred and five, shall annually in January exhibit to the governor and council a true account of the income or dividends arising from its tolls, together with its necessary disbursements for the year; and the books of the corporation shall at all times be subject to the inspection of the governor and council and the legislature.

SECT. 18. When the road of any such last mentioned corporation is suffered to be out of repair, and complaint is made to the commissioners, and a sufficient recognizance given to the county with sureties to the satisfaction of the commissioners for the payment of all costs and expenses which may arise by reason of the proceedings thereon if the complainant does not prevail, they may, after giving at least fourteen days' notice of said complaint to the president or clerk of the corpora-

tion, order that the gates be set open; and may order the costs and expenses to be paid by the corporation, and issue a warrant for the collection of the same. When an attested copy of such order is left with the president or clerk, the gates shall be set open immediately, and no toll shall be demanded until the commissioners revoke said order.

SECT. 19. The legislature may at any time dissolve any such last mentioned corporation.

May be dissolved.  
R. S. 39, § 14.

CANALS.

SECT. 20. The master or conductor of every boat laden with goods, wares, or merchandise, which enters the waters of a canal to be carried thereon, shall exhibit to the collector of tolls a certificate signed by such master or conductor, wherein shall be set forth the name of the owner of the boat, the name of the place to which it is destined, and the quantity or weight of the respective articles laden on board; therein distinguishing each article, as to quantity or weight, according to the amount of toll which the same is liable to pay.

Master of canal boat to exhibit certificate to collector.  
Penalty. Blank certificates to be furnished.  
R. S. 39, §§ 88, 89, 92.

If the conductor or master neglects or refuses to exhibit such certificate, or if he knowingly, and with intent to defraud said proprietors, makes or delivers a false certificate of the kind or quantity of goods, wares, or merchandise, laden on board such boat, he shall forfeit to the proprietors of the canal one hundred dollars.

The proprietors shall prepare the proper blank forms of certificates of loading; and the masters and conductors of boats shall be entitled to use them without expense.

SECT. 21. Whoever, knowingly and with intent to defraud the proprietors of a canal, makes or causes to be made any false statement of the quantity or quality of goods, wares, or merchandise, laden or to be laden on board of a boat used on such canal, shall forfeit one hundred dollars.

Penalty for false statement.  
R. S. 39, § 90.

SECT. 22. When the collector of tolls on a canal thinks proper to have the loading of a boat weighed in order to ascertain the amount of toll payable therefor, he may detain such boat, and cause the goods, wares, and merchandise, laden on board, to be weighed; and if it is found that the loading is greater than the quantity stated in the certificate, the master or conductor of the boat, in addition to the penalty hereinbefore provided, shall pay the costs and charges of unloading, weighing, and reloading such goods, wares, or merchandise; but if it is found that the quantity is not greater than is stated in the certificate, the proprietors of the canal shall pay all such costs and charges, and reasonable damages for the detention of the master or conductor, and the persons employed in such boat, to be recovered in an action of tort against said proprietors.

Collector may require load to be weighed.  
Cost by whom paid.  
R. S. 39, § 91.  
1852, 312.

BRIDGES.

SECT. 23. If any person having the care of a drove of neat cattle or horses, and driving the same over a turnpike bridge, or toll bridge, at one and the same time and without the consent of the toll-gatherer or other agent of the corporation owning such bridge, permits more than twenty neat cattle or horses to be upon such bridge, the same being more than fifty feet in length from one abutment, pier, or trestle part, to another, or if any person drives or transports over such bridge, without such consent, a loaded cart, wagon, or other carriage, the weight of which exceeds forty-five hundred pounds, exclusive of the team and carriage, and thereby breaks or injures such bridge, the corporation owning the same shall not be liable for any loss or injury occasioned thereby to the owner of such cattle or other things.

Limitation of liability of corporation.  
R. S. 39, § 43.  
1849, 69.

SECT. 24. No corporation shall be liable in damages for a deficiency

Same subject.

1838, 104.

in its bridges, to any person whose carriage and load thereon exceed the weight of six tons.

## PENALTIES.

Penalties, how recovered.  
R. S. 39, § 94.  
1852, 312.

SECT. 25. All penalties and forfeitures accruing to such a corporation under the provisions of this chapter, may be recovered in an action of tort in the name of its treasurer.

## CHAPTER 63.

## OF RAILROAD CORPORATIONS.

## SECTION

1. Railroad corporations to be under provisions of this chapter.

## ORGANIZATION, OFFICERS.

2. Organization of officers, &c.
3. Salaried officers not eligible as directors.

## MEETINGS, VOTES.

4. Meetings, how called.
5. Votes.
6. Proxies.

## CAPITAL STOCK, ASSESSMENTS, &amp;C.

7. Certificate of stock subscribed, to be filed.
8. Stock not to issue at less than par.
9. Assessments, how made and collected.
10. if unpaid, shares may be forfeited, &c.
11. Shares, personal estate. Transfer of.
12. Corporation may hold stock in telegraph companies.

## CHARTERS.

13. Petitions for charters to be accompanied by report of engineer, map, &c.
14. Plans to be placed in state library.
15. Petitions not acted upon until notice, &c.
16. Roads to be within limits specified.

## LOCATION OF ROAD.

17. Width of road, and materials for construction.
18. Location to be filed.

## TAKING LANDS, &amp;C.

19. Corporation may purchase or take land, &c.
20. Land for depot purposes, &c., to be taxed.

## DAMAGES.

21. Corporation to pay damages, as in case of highways.
22. Either party may have jury.
23. Proceedings when land lies in adjoining counties.
24. Guardians, &c., may release damages.
25. Damages, how assessed where claimants have different interests.
26. in case of mortgaged lands.
27. same subject.
28. Application for damages by owners of private ways.
29. Application for damages to be made within three years.
30. Time enlarged if suits pending, &c.
31. Upon abatement of petition, &c., new proceedings may be had within one year.
32. Security for damages, &c., if required.

## SECTION

33. Commissioners may issue warrants of distress. Rights of corporation neglecting payment, to cease.
34. S. J. C. may restrain corporations not complying with previous sections.
35. Corporation may tender damages. Party applying for jury to pay costs unless, &c.
36. In Boston, damages to be assessed by board of aldermen.
37. Jury in such case.

## ALTERATION OF ROAD.

38. Corporation may vary direction of road. Proceedings thereon.
39. Damages in such case.

## CONSTRUCTION.

40. Commissioners may order embankments, &c.
41. Corporations neglecting to comply, S. J. C. may enforce performance; or owner recover double damages.
42. to make and maintain fences in certain cases.
43. to construct fences and barriers against cattle.
44. penalty, &c., for neglect.
45. to furnish plan, &c., of land, &c., taken.

## CROSSING HIGHWAYS, &amp;C.

46. Railroads not to obstruct other roads.
47. crossing highway, &c., to pass over or under.
48. Corporation wishing to raise or lower highway, &c., to obtain decree of commissioners, &c.
49. obstructing highways, neglecting bridges, &c., commissioners may order, &c.
50. proceeding without decree, or neglecting to give security, S. J. C. may restrain, &c.
51. wishing to raise or lower turnpike, &c. Proceedings.
52. Parties disagreeing as to alterations, either may appeal to commissioners.
53. Selectmen, &c., may request that way be raised or lowered.
54. Commissioners may decide upon necessity of raising or lowering ways.
55. Corporation may, under direction of commissioners, alter course of highways, &c.
56. may by consent alter course of turnpike, &c.
57. Commissioners may authorize laying out ways across railroads. Expenses.



SECTION

- 58. Notice to corporation. Manner of constructing crossing.
- 59. Commissioners may authorize selectmen, &c., to lay out way across railroad.
- 60. Other duties of corporation at crossings.
- 61. Repairs of bridges at crossings.
- 62. Jurisdiction in cases of obstructions by railroads to be in county commissioners.
- 63. S. J. C. may enforce decisions.

CROSSINGS IN PRIVATE LANDS.

- 64. Commissioners may establish crossings where railroad separates lands.
- 65. may alter such crossings.
- 66. not to order unless corporation liable to maintain. Surety for costs.

DAMAGES AT CROSSINGS.

- 67. Corporation liable to towns for expenses incurred by neglect at crossings.
- 68. liability of, for obstructing ways, &c.
- 69. Towns, &c., subject to damages, may recover of corporation if liable.

PURCHASE OF TURNPIKES.

- 70. Turnpike corporations may assign franchises to railroad corporations.
- 71. Assignment to be with consent of commissioners, &c.
- 72. Damages, how estimated.

DRAWBRIDGES.

- 73. Corporation to provide superintendent of drawbridge.
- 74. Duties of superintendent.
- 75. of commanders of vessels.
- 76. Time allowed for trains.
- 77. Certain rights not affected.
- 78. Penalty for obstructing superintendent, &c.
- 79. for impairing bridge, obstructing draw, &c.
- 80. for injuring railroad bridge, &c.

REGULATIONS FOR OPERATING ROAD.

- 81. Brakeman to every two cars.
- 82. Rear car of freight trains to have brake and brakeman.
- 83. Bell to be attached to locomotive engines and rung, &c.
- 84. Sign-boards to be erected at crossings.
- 85. at travelled places upon petition of selectmen, &c.  
Cost of application.
- 86. Gates, &c., may be erected, if necessary.
- 87. Same subject. Decision of commissioners to be complied with. Costs.
- 88. Proceedings in such case in Boston.
- 89. Selectmen, &c., may make request for flagman at crossings. Proceedings.
- 90. Penalty for neglect to comply, &c.
- 91. Penalty on agent, &c., for neglect.
- 92. Commissioners may alter gates at crossings.
- 93. Engine to be stopped within five hundred feet of crossing.
- 94. Penalty on enginemen.
- 95. on engineers, firemen, &c., for negligence.
- 96. on person having control of passenger train for carelessness.
- 97. Liability of corporation when life of a passenger is lost by negligence, &c.
- 98. when life of person not a passenger, &c., is lost.
- 99. Indictments.
- 100. Duty of corporation when life is lost.

SECTION

- 101. Corporation liable for damages by fire from engines. May insure.

PENALTIES FOR OBSTRUCTING ROAD, &c.

- 102. Penalty for being on track.
- 103. for driving cattle upon railroad.
- 104. for neglect in suffering cattle to go upon railroad.
- 105. for obstructing carriages or injuring railroads.
- 106. and endangering life.
- 107. for obstructing engines, &c.
- 108. for obstructing with intent, &c.
- 109. in favor of corporation, how recovered.

ACCOMMODATIONS FOR PASSENGERS.  
TOLLS, &c.

- 110. Corporation to furnish accommodations for passengers. Penalty.
- 111. to furnish checks.
- 112. may establish tolls subject, &c.
- 113. Penalty for fraudulent evasion, &c., of tolls or fare.

RELATIONS OF CONNECTING ROADS.

- 114. Corporations to forward goods to connecting roads, &c. Penalty.
- 115. whose roads unite, may contract for transportation, &c. Profits regarded as income.
- 116. owning road liable for damages, &c.
- 117. shall transport passengers, &c., for each other. If they cannot agree, commissioners to be appointed.
- 118. When roads terminate in same place, &c., each shall furnish depots, &c. If they do not agree, commissioners may be appointed. Compensation of commissioners.
- 119. No motive power to run on road without consent.

BONDS AND MORTGAGES.

- 120. Corporations may issue bonds for funding floating debt, &c.
- 121. Bonds to be approved.
- 122. binding though sold below par.
- 123. Mortgages to include bonds previously issued, &c.
- 124. Trustees entitled to possession may contract with corporation to operate road. Conditions.
- 125. to call annual meetings of bond holders and make return to secretary.
- 126. if they do not, bond holders may call meeting.
- 127. election and confirmation of.
- 128. Equity jurisdiction of S. J. C.
- 129. Mortgage, &c., of road to commonwealth. Terms.
- 130. what property bound by.
- 131. to be recorded.

RETURNS AND REPORTS.

- 132. Corporation to submit books to inspection of committees of legislature. To furnish annual report. Contents of.
- 133. Report to state fatal accidents, &c.
- 134. if not full, directors to state reasons.
- 135. penalty for not furnishing.
- 136. Secretary to transmit reports, and furnish abstract to legislature, &c.
- 137. Special report on completion of road.

RIGHTS OF COMMONWEALTH.

- 138. State may purchase railroad after twenty years.

## HORSE RAILROADS.

## SECTION

139. Horse railroads excepted.  
 140. time of construction of.  
 141. Penalty for evasion of tolls, &c.  
 142. Horse cars to stop at crossings of steam railroads. Penalty.

## SECTION

143. Corporation to furnish report. Form and contents of.  
 144. Penalty for neglect.  
 145. Secretary to furnish blanks.

Railroad corporations, powers of, &c.  
 R. S. 39, § 45.

SECTION 1. Railroad companies incorporated under the authority of this commonwealth shall have the powers and privileges, and be subject to the duties, liabilities, and other provisions, contained in this chapter, so far as the same are consistent with their respective charters.

## ORGANIZATION, OFFICERS.

Organization of officers, &c.  
 R. S. 39, § 49.

SECT. 2. The immediate government and direction of the affairs of every such corporation shall be vested in a board of not less than five directors chosen in the manner herein after provided, who shall hold their offices until others are elected in their places. The directors shall elect one of their number to be president of the board and of the corporation; and they may choose a clerk, who shall be sworn, and a treasurer, who shall give bonds to the corporation in the sum required by the by-laws for the faithful discharge of his trust.

Salaried officers not eligible as directors.  
 1840, 83, §§ 1, 2.

SECT. 3. With the exception of the president, no officer or agent who receives a salary or stated periodical compensation for his services from a corporation to which the credit of the state has been loaned, shall while such liability of the state continues be eligible as a director.

## MEETINGS, VOTES.

Meetings, how called.  
 R. S. 39, § 51.  
 Votes.  
 R. S. 39, § 50.  
 1843, 68, § 2.

SECT. 4. Meetings shall be called and notified in the manner provided in the by-laws.

SECT. 5. At all meetings each member shall be entitled to one vote for each share held by him: *provided*, that he shall not be entitled to a vote for any shares beyond one-tenth part of the whole number of shares of the stock of the corporation. No vote shall be given upon shares owned by the corporation or pledged in any form to or for its benefit.

Proxies.  
 1843, 68, §§ 1, 3.  
 1858, 76, § 1.

SECT. 6. No proxy shall be valid unless executed and dated within six months previously to the meeting at which it is used; and no person shall as proxy or attorney cast more than fifty votes, unless all the shares so represented by him are owned by one person, and no officer of the corporation shall as proxy or attorney cast more than twenty votes.

## CAPITAL STOCK, ASSESSMENTS, &amp;C.

Certificate of stock subscribed, to be filed.  
 1852, 303, § 1.

SECT. 7. No corporation chartered subsequently to the twentieth day of June in the year eighteen hundred and fifty-two shall begin to build its road until a certificate is filed in the office of the secretary of the commonwealth, subscribed and sworn to by the president and a majority of the directors, stating that all the stock named in its charter has been subscribed for by responsible parties, and that twenty per cent. of the par value of each and every share thereof has been actually paid into its treasury.

Stock not to be issued at less than par.  
 1852, 303, § 2.

SECT. 8. No corporation chartered subsequently to said twentieth day of June, or obtaining since that date an extension of time for the construction of its road, shall issue stock for a less sum to be actually paid in on each share, than the par value named in its charter.

Assessments, how made and collected.  
 R. S. 39, § 53.

SECT. 9. The president and directors may from time to time make such equal assessments on all the shares in the corporation as they deem expedient and necessary for its purposes, and may direct the same to be

paid to the treasurer, who shall give notice thereof to the stockholders. If a stockholder neglects to pay his assessments for thirty days after notice from the treasurer, the directors may order the treasurer after giving notice of the sale to sell such shares by public auction to the highest bidder; and the same shall accordingly be transferred to the purchaser. If the shares of a stockholder do not sell for a sum sufficient to pay his assessments with interest and charges of sale, he shall be liable to the corporation for any deficiency; if such shares sell for more, he shall be entitled to the surplus remaining; but no assessment shall be laid upon the shares to a greater amount than the sum at which they shall be fixed by the charter or by vote or agreement of the stockholders.

13 Met. 312.  
9 Cush. 6.  
1 Gray, 546.  
2 Gray, 277.  
4 Gray, 62.

SECT. 10. When a subscriber or shareholder has paid nothing upon his shares after thirty days from the time when an assessment has become due, his shares may be declared forfeited by the directors, who may transfer them to any responsible person who subscribes for the same.

If assessments are unpaid, shares may be forfeited, &c. 1852, 303, § 3.

SECT. 11. The shares in the capital stock of such corporation shall be deemed personal estate, and may be transferred by a conveyance in writing, recorded either by the treasurer in books to be kept in his office or by an officer duly authorized by the directors in books to be kept at such other place as they may appoint. When recorded in such other place, they shall within ten days thereafter be also recorded in the books kept by the treasurer; and no conveyance of shares shall be valid against any other persons than the grantors or their representatives, unless so recorded. On making the transfer a new certificate shall be granted.

Shares personal estate. Transfer of. R. S. 39, § 52.

12 Gray 232.

SECT. 12. A corporation may hold stock in a telegraph company whose line of telegraph connects two or more places on the line of its road, to an amount not exceeding two hundred dollars for each mile so connected.

Corporation may hold stock in telegraph companies. 1849, 93, § 8.

CHARTERS.

SECT. 13. No petition for a charter for a railroad corporation shall be acted upon unless it is accompanied with a map of the proposed route projected upon an appropriate scale; and with a profile of the route projected with a vertical scale comparing with the horizontal scale in the proportion of ten to one; nor unless it is accompanied and supported by the report of a skilful engineer, founded on actual examination of the route, and by other proper evidence showing the character of the soil, the manner in which it is proposed to construct the road, the general profile of the surface of the country through which it is proposed to be made, the feasibility of the route, and an estimate of the probable expense of construction.

Petitions for charters to be accompanied by report of engineer, map, &c. R. S. 39, § 46. 1849, 131, § 2.

SECT. 14. Plans and profiles presented to a committee of the legislature in the hearing of a petition for such a charter shall be placed by them in the state library.

Plans, &c., to be placed in state library. 1848, 140, § 1.

SECT. 15. No petition shall be acted upon until notice of the pendency thereof has been published according to law, which notice shall designate the intended route with such certainty as to give reasonable notice to all persons interested therein that their rights may be affected by the granting of the petition, and that they may have an opportunity to appear and object thereto; but the provisions of this section and of section thirteen shall not prevent the legislature from requiring surveys, plans, and further estimates.

Petitions not to be acted upon until notice, &c. R. S. 39, § 47. See Ch. 2, §§ 10, 11, 12.

SECT. 16. Every charter shall confine the road within the limits indicated by the notice required in the preceding section, shall specify the several cities and towns through which the same may pass, and shall otherwise designate the route on which the road is authorized to be made with as much certainty as the nature of the case will admit.

Roads to be within limits specified. R. S. 39, § 48.



## LOCATION OF ROAD.

Width of road,  
and materials.  
R. S. 39, § 54.  
1853, 351, § 1.  
9 Met. 553.  
1 Gray, 357.  
4 Gray, 302, 304.

SECT. 17. A corporation may lay out its road not exceeding five rods wide; and for the purpose of cuttings, embankments, and procuring stone and gravel, may within the limits of its charter in the manner herein provided take as much more land as may be necessary for the proper construction and security of the road, or as may be at any time necessary for depot or station purposes.

Location to be  
filed.  
R. S. 39, § 75.  
4 Cush. 69.  
1 Gray, 340.  
2 Gray, 574.

SECT. 18. The corporation shall file the location of its road within one year with the commissioners of each county through which the same passes, defining the courses, distances, and boundaries, of such portion thereof as lies within each county.

## TAKING LANDS, &amp;C.

Corporation  
may purchase  
or take land, &c.  
R. S. 39, § 55.  
1853, 351, § 1.  
9 Met. 553.  
3 Cush. 82.  
4 Cush. 469.  
1 Gray, 357.  
5 Gray, 35.  
See § 21.

SECT. 19. A corporation may purchase or otherwise take land or materials necessary for making or securing its road and for depot and station purposes. If it is not able to obtain such land or materials by an agreement with the owner, it shall pay such damages therefor as the county commissioners estimate and determine. Land and materials without the limits of the road shall not be so taken without the permission of the owner, unless the commissioners on the application of the corporation and after notice to the owner first prescribe the limits within which the same may be taken.

Land for depot  
to be taxed.  
1853, 351, § 3.  
4 Met. 566.

SECT. 20. Land so taken or purchased for depot or station purposes without the limits of the road shall not be exempt from taxation.

## DAMAGES.

Damages.  
R. S. 39, § 56.  
1849, 153.  
3 Met. 350.  
9 Met. 553.  
3 Cush. 81, 107.  
4 Cush. 469.  
10 Cush. 385.  
2 Gray, 6, 235.  
5 Gray, 35.  
7 Gray, 390.  
See §§ 22, 26, 40.

SECT. 21. The corporation shall pay all damages occasioned by laying out and making and maintaining its road, or by taking any land or materials as provided in section nineteen; and such damages shall upon the application of either party be estimated by the commissioners in the manner provided in laying out highways; and when it is intended to take land or materials, application may be made before the actual taking and appropriation thereof.

Either party  
may have jury.  
R. S. 39, § 57.  
1841, 125, §§ 1, 3.  
1847, 181, § 1.  
21 Pick. 258.  
13 Met. 316, 449,  
479.  
3 Cush. 58.  
4 Cush. 291.  
1 Gray, 72.

SECT. 22. Either party if dissatisfied with the estimate made by the commissioners may, at any time within one year after it is completed and returned, apply for a jury to assess the damages. Upon such application the prevailing party shall recover legal costs, and the proceedings thereon shall be the same as is provided for the recovery of damages in the laying out of highways; but no jury shall be competent to alter or reverse any order made under section forty.

Proceedings  
when land lies  
in adjoining  
counties.  
1853, 5, §§ 1, 2.

SECT. 23. Where land owned by one person lies contiguously in different counties, applications for damages under section twenty-one may be made by the owner of the land to the commissioners of either of such counties; and the commissioners of the county to whom application is first made shall have exclusive jurisdiction with like powers and duties as set forth in said section and section forty; and either party may apply for a jury as provided in the preceding section, which jury shall be from the same county as the commissioners, and shall estimate such damages the same as though the land lay entirely in one county.

Guardians, &c.,  
may release  
damages.  
R. S. 39, § 93.

SECT. 24. When the lands or other property of a person under guardianship or lands held in trust are taken for the use of a railroad, the guardian or trustee may release all damages in the premises in like manner as if the same were held in his own right.

Damages, how  
assessed where  
claimants have

SECT. 25. When persons having a claim for damages sustained in their property by the laying out or alteration of a railroad have different or separate interests in the property, so that an estate for life or for a

term of years in the same belongs to one person and the remainder or reversion in fee to another, entire damages shall be assessed in the same manner as is provided in other cases, without any apportionment thereof; which damages shall be paid over and disposed of in the manner provided in sections seventeen and eighteen of chapter forty-three in relation to damages assessed in like cases in laying out highways.

different interests.  
1851, 290, §§ 1, 2.

SECT. 26. Where lands are mortgaged, both mortgagors and mortgagees, in addition to their rights under the mortgage, shall have the same powers, rights, and privileges, and be subject to the same liabilities and duties, as are created and provided in this chapter for land owners in cases of damages arising under section twenty-one; and all petitions for the estimation of such damages shall state all mortgages known by the party petitioning to exist upon the premises to be adjudicated upon. Mortgagors and mortgagees may join in any such petition, and the tribunal to which it is presented shall order the petitioner to give notice thereof to all parties interested as mortgagors or mortgagees by serving each of them, fourteen days at least before the time of hearing, with an attested copy thereof, and the order thereon that they may appear at said hearing and become parties to the proceedings.

Damages, how assessed in case of mortgaged lands.  
1855, 247, §§ 1, 4, 5.

SECT. 27. When mortgagors or mortgagees commence or become parties to proceedings upon a petition for such damages, entire damages shall upon final judgment be assessed for the property taken, and such portion thereof ordered to be paid to every mortgagee, being a party, in the order of his mortgage, as is equal to the sum then unpaid thereon, and the balance to the mortgagor; and separate judgment shall be entered accordingly for each mortgagee, who shall hold his judgment in trust, first with any proceeds realized thereon to satisfy his mortgage debt, and after such debt is in any way satisfied, to assign the judgment or pay over any balance of proceeds to the mortgagor or other person entitled thereto.

Same subject.  
1855, 247, §§ 1, 2, 3.

SECT. 28. No application for damages shall be sustained against a corporation by the owners of a private way, by reason of any obstruction thereto occasioned by the railroad crossing the same, unless the application is made within one year from the time when the way is so obstructed.

Application for damages to private ways.  
R. S. 39, § 71.  
3 Cush. 101, 114.

SECT. 29. No application to the commissioners to estimate damages for land or property taken, shall, except as provided in the following section, be sustained unless made within three years from the time of taking the same.

for damages to be made within three years.  
R. S. 39, § 58.  
7 Met. 78.  
3 Cush. 82.  
9 Cush. 1.  
2 Gray, 232.

SECT. 30. Where suits are pending or are hereafter brought in which the right of such corporation to lay out and construct its road on any particular location is drawn in question, the time for applications to the commissioners for the ascertaining of damages caused by the taking of land or other property in and upon such location may be made at any time within one year after the final determination of such suits upon the merits: *provided*, that such suits, if not now pending, are brought within one year from the time of such taking, or are brought for the purpose of trying the same right which was drawn in question in some former suit now pending or brought as aforesaid, and which failed for want of jurisdiction, defect of form, or other like cause, not deciding the merits of the controversy, and are brought within six months after such determination of a former suit.

Time extended, if suits pending, &c.  
R. S. 39, § 59.  
7 Gray, 451.

SECT. 31. If a party makes application for the assessment of his damages within the time limited by law, or for a jury to assess the same, or is a party to such application for a jury by any other person, and the petition or other proceeding is quashed, abated, or otherwise avoided or defeated, for any inaccuracy, irregularity, or matter of form; or if after verdict for such applicant or other party the judgment is arrested or reversed on a writ of error, or the proceedings quashed on certiorari;

Upon abatement, &c., new proceedings may be had within one year.  
1847, 181, § 2.



such applicant, petitioner, or other party, may commence such proceedings anew at any time within one year from such abatement, reversal, or other determination.

Security for damages, &c., if required.  
R. S. 39, § 61.  
1855, 9, § 1.

SECT. 32. Upon application to the commissioners by either party for an estimate of damages, they shall if requested by the owner require the corporation to give security to their satisfaction for the payment of all damages and costs which may be awarded by them or a jury for the land or property taken; and if upon petition of the owner with notice to the adverse party the security appears to the commissioners to have become insufficient, they shall require the corporation to give further security to their satisfaction; and all the right or authority of the corporation to enter upon or use the land or other property, except for making surveys, shall be suspended until it gives the security required.

Commissioners may issue warrants of distress.  
Rights of corporation neglecting payment to cease.  
1847, 259, § 3.  
1855, 9, § 2.

SECT. 33. Upon an award of damages by county commissioners or a jury against a corporation on the petition of a person injured by the location and construction of its road, the commissioners, after the time to petition for a jury has expired, may issue warrants of distress to compel the payment of the damages with costs and interest; and if the corporation for thirty days after a warrant of distress or an execution has issued against it for damages and costs for taking land or other property, neglects to satisfy the same, all right and authority to enter upon or use such land or property, except for making surveys, shall be suspended until it pays such warrant or execution.

S. J. C. may restrain corporations not complying with previous sections.  
1854, 2.  
1855, 9, § 3.

SECT. 34. If upon the petition of an owner of land or property mentioned in either of the two preceding sections, it appears to the supreme judicial court or any justice thereof in term time or vacation, that a corporation has for thirty days neglected to comply with any order under section thirty-two, or to satisfy any warrant or execution mentioned in section thirty-three, the court or justice may by injunction or other suitable process in equity prohibit and restrain the corporation from entering upon or using such land or property contrary to the provisions of said sections.

Corporation may tender damages. Party applying for jury to pay costs, unless, &c.  
R. S. 39, § 62.  
§ Cush. 218.

SECT. 35. After the commissioners have made their estimate, the corporation may tender to the owner of the land or other property the amount of damages estimated, in full satisfaction thereof. If the owner refuses to receive the same, with costs to be taxed to that period, and applies for a jury, he shall, unless he recovers upon the final hearing a greater amount of damages than the sum tendered, pay all costs caused by the application and arising after tender. If the corporation applies for a jury, and upon a final hearing the damages as estimated by the commissioners are not reduced, it shall pay all costs caused by the application.

In Boston, damages to be assessed by board of aldermen.  
R. S. 39, § 63.  
1854, 448, § 33.

SECT. 36. If a corporation by virtue of its charter takes land or other property within the city of Boston, the board of aldermen of said city shall, except as provided in the following section, have all the power of commissioners in like cases; and like proceedings shall be had before said board for the purpose of ascertaining, securing, and obtaining payment of, damages, and subject to the same limitations, as upon an application to the commissioners.

Jury in such case.  
R. S. 39, § 64.  
1854, 448, § 33.  
1859, 196.  
4 Gray, 302, 304.

SECT. 37. Either party, if dissatisfied with the estimate of damages thus made by the board of aldermen, may apply for a jury at the next term of the superior court for the county, after the estimate is made known to the parties; and thereupon the same proceedings shall be had as in case of estimating and enforcing payment of damages for laying out ways within said city.

#### ALTERATION OF ROAD.

Corporation may vary direction of road.

SECT. 38. A corporation after having taken land for its road may vary the direction of the road in the place where such land is situated;



but it shall not locate any part thereof without the limits prescribed by the act of incorporation. It shall before the expiration of the time required by law for completing the road file the location of the different parts thereof where such variations are made with the county commissioners, or if in the city of Boston with the board of aldermen, and the time allowed for completing the whole road shall not be extended in consequence of such variation.

Proceedings thereon.  
R. S. 39, § 73.  
1854, 448, § 33.  
1 Gray, 340.

SECT. 39. Every corporation shall be liable to the owners of lands taken for making such variations, for all damages occasioned thereby, to be recovered in the manner herein before provided for recovering such damages.

Damages in such case.  
R. S. 39, § 76.  
1 Gray, 357.

CONSTRUCTION.

SECT. 40. At the time of estimating damages to land owners under section twenty-one, the commissioners shall in addition thereto order the corporation to construct and maintain such embankments, drains, culverts, walls, fences, or other structures, as they judge reasonable for the security and benefit of such owners, and prescribe the time and manner of making or repairing the same.

Commissioners may order embankments, &c.  
1841, 125, § 1, 3.  
2 Cush. 538.  
6 Cush. 421.  
1 Gray, 614.  
See §§ 22, 23.

SECT. 41. If the corporation neglects to comply with such order, the land owner or his assigns interested in its execution may apply to the supreme judicial court, which may grant all processes necessary to enforce the specific performance thereof. Or if it appears that the corporation for more than forty-eight hours after notice of such neglect given in writing to the president or superintendent neglected to commence the work required to be done, or thereafter unreasonably delayed to complete the same, the person so interested may maintain an action of tort against the corporation, in which he may recover double the damages sustained by him by reason of the neglect.

S. J. C. may enforce performance; or owner may recover double damages.  
1841, 125, § 2.  
1852, 312.  
6 Cush. 421.  
1 Gray, 614.

SECT. 42. When the owner of land through which a railroad constructed prior to the seventeenth day of April in the year eighteen hundred and forty-one passes, has not received all damages assessed to him, or has not agreed to maintain suitable fences upon such road, upon the application of the owner or of the mayor and aldermen or selectmen of the city or town, the county commissioners may require the corporation to make and maintain fences suitable for the benefit and security of the land owner, and of travellers upon the road.

Corporation to make and maintain fences in certain cases.  
1841, 125, § 4.

SECT. 43. Each corporation shall erect and maintain suitable fences, with convenient bars, gates, or openings therein, at such places as may reasonably be required, upon both sides of the entire length of any railroad which it shall have constructed subsequently to the sixteenth day of May in the year eighteen hundred and forty-six, except at the crossings of a turnpike, highway, or other way, or in places where a convenient use of the road would be thereby obstructed; and shall also construct and maintain sufficient barriers at such places as may be necessary, and, where it is practicable so to do, to prevent the entrance of cattle upon the road.

*Of Mass. 1845*  
to construct fences and barriers against cattle.  
1846, 271, § 3.

*12 Gray 58.  
1 Bell 16. 193.  
14 " 153.*

SECT. 44. A corporation unreasonably neglecting to comply with the provisions of the preceding section shall for every such neglect forfeit a sum not exceeding two hundred dollars for every month during which the neglect continues; and the supreme judicial court, or any justice thereof, either in term time or vacation, may by injunction or other suitable process in equity compel the corporation to comply with such provisions; and upon such neglect, may restrain and prohibit the corporation from crossing any turnpike, highway, or town way, or using any land, until said provisions are complied with.

penalty, &c., for neglect.  
1846, 271, § 4.  
1855, 350, § 5.

SECT. 45. After a corporation has by virtue of its charter taken land or other property for the purpose of its road, it shall, before pro-

to furnish plan, &c., of land, &c., taken.

R. S. 39, § 60.  
1848, 327, § 2.  
2 Gray, 574.

ceeding to construct the road, furnish a plan of the land to the owner, and, if requested by the owner or occupant, fence the same; and upon demand made by the owner of such other property within three years from the taking of the same, such corporation shall within thirty days furnish him with a plan or description thereof in writing. If such plans or descriptions are not so furnished, all the rights of the corporation to enter upon or use such land or other property, except for making surveys, shall be suspended until it has so delivered a description or plan.

## CROSSING HIGHWAYS, &amp;C.

SECT. 46. If a railroad is laid out across a turnpike road or other way, it shall be so made as not to obstruct the same.

SECT. 47. A corporation which constructs its road across a turnpike, highway, or town way, shall construct it so as to cross over or under the same; if over, a sufficient space shall be left under the railroad conveniently to accommodate the travel upon the turnpike or way; if under, the corporation shall build and maintain such bridges with suitable approaches thereto as in like manner to accommodate the travel upon the turnpike or way over the crossing.

SECT. 48. Such corporation may raise or lower any highway or town way for the purpose of having its road pass over or under the same; but before proceeding to cross, alter, or excavate for the purpose of crossing a highway or town way, it shall obtain from the county commissioners a decree prescribing what alterations may be made in the way, and the manner and time of making the alterations or structures the commissioners may require at the crossing; and before entering upon, excavating, or altering the way, shall give security, satisfactory to the commissioners, to the city or town in which the crossing is situated, that it will faithfully comply with the requirements of the decree to the acceptance of the commissioners, and indemnify the city or town from all damages and charges by reason of any failure so to do.

SECT. 49. If upon application of the mayor and aldermen or selectmen of any place to the county commissioners it appears that the corporation crosses with its road a highway or town way in such place so as to cause an obstruction thereto, or refuses or neglects to erect or keep in proper repair any bridge or other structure required or necessary at such crossing, the commissioners, after due notice to the corporation, may pass a decree prescribing what alterations, structures, or repairs it shall make at the crossing, and the time within which they shall be made; and shall order the corporation to pay the costs of the application. They may further order the corporation to give like security, as provided in the preceding section, for the faithful performance of the requirements of the decree and the indemnity of said place upon any failure in such performance.

SECT. 50. If it is made to appear to the supreme judicial court, or any justice thereof, in term time or vacation, upon the petition of the mayor and aldermen or selectmen of any place, that a corporation has excavated or altered a highway or town way without obtaining the decree and giving the security required by section forty-eight, or has neglected for fifteen days to give security as required by the preceding section, the court or justice may, by injunction or other suitable process according to the practice of courts of equity, restrain and prohibit the corporation from entering upon, altering, excavating, or crossing the way, until such decree is obtained or the security given.

SECT. 51. A corporation may raise or lower any turnpike for the purpose of having its road pass over or under the same; but before proceeding to make such alteration, it shall in writing notify the presi-

11, Gray 380, 95  
12, Allen 183, 107  
Highways not  
to be obstructed.

R. S. 39, § 66.  
7 Met. 72.  
3 Cush. 108.

2 Gray, 56, 465.  
Railroads  
crossing high-  
way, &c., to  
pass over or  
under.

1846, 271, § 1.  
7 Cush. 497.

Corporation  
wishing to  
raise or lower  
highway, &c.,  
to obtain de-  
cree, &c.

R. S. 39, § 67.

1855, 350, § 1.

23 Pick. 326.

3 Cush. 116, 117.

9 Cush. 1.

2 Gray, 56, 465.

See §§ 50, 60.

obstructing  
highways, neg-  
lecting bridges,  
&c., commis-  
sioners may  
order, &c.  
1855, 359, §§ 2, 3.

proceeding  
without decree,  
or neglecting to  
give security,  
S. J. C. may re-  
strain, &c.  
1855, 350, § 3.

wishing to  
raise or lower  
turnpike, &c.  
R. S. 39, § 67.



dent or clerk of the turnpike corporation, which within thirty days after receiving the notice shall notify in writing the railroad corporation of the alterations, if any, which they may require to have made therein for such purpose.

23 Pick. 226.  
8 Cush. 116, 117.  
9 Cush. 1.  
2 Gray, 56, 465.

SECT. 52. If the parties do not agree what alterations are necessary, the railroad corporation, or the proprietors of the turnpike, may apply to the county commissioners at their next regular meeting after the expiration of said thirty days, to determine whether any and what alterations shall be made, and their decision shall be final. If the corporation unreasonably neglects to make such alteration as the commissioners order, the proprietors shall have the same remedies as are prescribed for the recovery of damages caused by making a railroad.

Parties disagreeing as to alterations, either may appeal to commissioners.  
R. S. 39, § 68.

SECT. 53. If the mayor and aldermen or selectmen of a city or town wherein a turnpike, highway, or town way crossed by a railroad on a level therewith is situated, are of opinion that it is necessary for the security of the public that the turnpike or way should be raised or lowered so as to pass over or under the railroad, they may in writing request the corporation owning the railroad so to raise or lower such turnpike or way. If the corporation neglects or refuses so to do, the mayor and aldermen or selectmen may apply to the county commissioners to decide upon the reasonableness of the request.

Selectmen, &c., may request that way be raised or lowered.  
1842, 22.  
3 Cush. 116.  
6 Cush. 424.  
1 Allen 109.

SECT. 54. If the commissioners, after due notice and hearing the parties, decide that such raising or lowering is necessary for the security of the public, the corporation shall comply with the decision and pay the costs of the application. If the commissioners decide that the alteration is not necessary, the mayor and aldermen or selectmen shall pay the costs. If the corporation unreasonably refuses or neglects to carry into effect the decision of the commissioners, the mayor and aldermen or selectmen may proceed to do it, and may in an action of tort against the corporation recover all charges and expenses occasioned by making the alteration.

Commissioners may decide upon necessity of raising or lowering ways.  
1842, 22.  
1852, 312.  
3 Cush. 116.  
6 Cush. 424.  
2 Gray, 463.  
1 Allen 521.

SECT. 55. A corporation may alter the course of a highway or town way for the purpose of facilitating the crossing of the same by its road or permitting its road to pass at the side thereof without crossing, upon obtaining a decree of the county commissioners prescribing the manner and time of such alteration. Before granting the decree the commissioners after due notice to the town in which the way is situated shall decide that the alteration will not essentially injure the way. The corporation shall pay all damages occasioned to private property by the alteration as in case of land taken for its road.

Corporation may, under direction of commissioners, alter course of highways, &c.  
1849, 139, § 1.  
10 Allen 608.

SECT. 56. A corporation may with the consent of a turnpike or canal corporation, alter the course of a turnpike road, canal, or feeder to a canal, where the same interferes with the convenient location of its road.

may by consent alter course of turnpike, &c.  
1837, 226, § 1.

SECT. 57. If after the laying out and making of a railroad the public convenience and necessity require a turnpike road or other way to be laid out across it, such road or way may be so laid out and established when the county commissioners so authorize and direct; and all expenses of and incident to constructing and maintaining the road or way at such crossing shall be borne by the county, city, town, or corporation, owning the same. 1 Allen 329. - 11 Gray 155. - 565. 2 Allen 108.

Commissioners may authorize laying out ways across railroads.  
Expenses.  
R. S. 39, § 69.  
1857, 287, §§ 1, 4.

11 Gray 512

SECT. 58. The commissioners before laying out any way across a railroad shall cause due notice to be given to the corporation that it may be heard in the premises; and after hearing all parties interested they may lay out the same, directing whether the crossing shall be over, under, or at a level with, the railroad, but not permitting it to be at a level unless public necessity so requires. If the way shall pass over the railroad they shall determine and specify in what manner the bridge

Notice to corporation. Manner of constructing crossing.  
R. S. 39, § 69.  
1857, 287, §§ 2, 4, 5.

11 Gray 512.



necessary for the crossing shall be constructed. Such ways shall be so made as not to obstruct or injure the railroad.

Commissioners may authorize selectmen, &c., to lay out way across railroad. 1857, 287, §§ 3, 5.

7 Allen 521.

SECT. 59. The mayor and aldermen or selectmen, before laying out a way across a railroad, shall apply to the county commissioners for permission so to do. The commissioners shall cause due notice of the application to be given to the corporation owning the railroad; and after hearing the parties interested they may authorize the mayor and aldermen or selectmen so to lay out the way, and shall require it to be laid out and constructed in accordance with the provisions of the preceding section. They shall give special authority permitting it to be laid out upon a level with the railroad when in their opinion public necessity so requires.

Other duties of corporation at crossings. 1857, 287, § 6.

SECT. 60. A corporation whose road is crossed by a turnpike or other way on a level therewith, shall at its own expense so guard or protect its rails by plank, timber, or otherwise, as to secure a safe and easy passage across its road; and if in the opinion of the county commissioners any subsequent alteration of the turnpike or other way, or any additional safeguards, are required at the crossing, they may order the corporation to establish the same as provided in section forty-eight.

SECT. 61. A corporation shall maintain and keep in repair all bridges with their approaches and abutments which it constructs over or under any turnpike road, canal, highway, or other way.

SECT. 62. The original jurisdiction of all questions touching obstructions to turnpikes, highways, or town ways, caused by the construction or operation of railroads, shall be vested in the county commissioners within their respective jurisdictions.

SECT. 63. The supreme judicial court shall have jurisdiction in equity, and may compel such corporations to raise or lower any turnpike, highway, or town way, when the county commissioners have decided in due and legal form that such raising or lowering is necessary for the security of the public; and to comply with the orders, decrees, and judgments, of county commissioners, in all cases touching obstructions to such ways by railroads.

#### CROSSINGS IN PRIVATE LANDS.

SECT. 64. When a railroad laid out by authority of law through land without the consent of the owner, separates one portion thereof from another, or from a highway or other public way, and the owner has a right to cross the railroad, if a difference arises between him and the corporation owning the road as to the place or manner in which he shall cross, either party may apply to the county commissioners to direct such place or manner. The commissioners after due notice to the other party and hearing the parties make such order in relation thereto and the costs of the application as they may deem proper.

SECT. 65. If a crossing is deemed inconvenient by such owner or corporation, either party may apply to the commissioners to alter the same, and upon like notice and hearing they may make like order in relation thereto.

SECT. 66. Unless the corporation makes the application the commissioners shall not under the two preceding sections order it to construct or maintain any crossing without its consent, except where it is liable by law or by agreement to construct a crossing for the owner of the land; and no application under said sections shall be proceeded with until the applicant furnishes sufficient recognizance to the county with sureties to the satisfaction of the commissioners for the payment of costs and expenses according to their order.

Commissioners may establish crossings where railroad separates lands. 1857, 213, § 1.

may alter such crossings. 1857, 213, § 2.

not to order unless corporation liable to maintain. Surety for costs. 1858, 213, §§ 3, 4.

Repairs of bridges at crossings. R. S. 39, § 72. 1846, 271, § 1. 7 Met. 70. 3 Cush. 107. 7 Cush. 490, 497.

Jurisdiction in cases of obstructions. 1849, 222, § 1. 4 Cush. 68. 2 Gray, 51. S. J. C. may enforce decisions. 1849, 222, § 5. 6 Cush. 421. 7 Cush. 506. 10 Cush. 12. 2 Gray, 460.

12 Allen 259  
Off. Mass. 424  
10 Allen 602

DAMAGES AT CROSSINGS.

SECT. 67. A city or town may recover of the corporation whose road crosses a highway or town way therein, all damages, charges, and expenses, incurred by such city or town by reason of the neglect or refusal of the corporation to erect or keep in repair all structures required or necessary at such crossing.

Corporation liable to towns for expenses caused by neglect at crossings. 1855, 350, § 4.

SECT. 68. If a corporation, its servants, or agents, wilfully or negligently obstruct a highway, town way, or public street, by its engines, tenders, or cars, it shall be liable to a fine not exceeding one hundred dollars for every such offence.

Liability of, for obstructing ways, &c. 1854, 378. 1858, 45.

SECT. 69. When a party upon the trial of an action recovers damages of a city or town for an injury caused to his person or property by a defect in a highway within the location of a railroad, the city or town, if the corporation owning the road is liable for such damages and has had reasonable notice to defend the action, may, in addition to the damages, recover all costs of both plaintiff and defendant in the action.

Towns, &c., subject to damages, may recover of corporation, if liable. 1854, 88.

PURCHASE OF TURNPIKES.

SECT. 70. When a turnpike road interferes with the convenient location of a railroad, the turnpike corporation may, in pursuance of a vote therefor at a meeting called for the purpose, assign and transfer its franchise as to the whole or part of its road to the railroad corporation. Thereafter all the rights and duties of the turnpike corporation shall cease and be discontinued so far as they relate to the part of the road so assigned, and the railroad corporation may locate its road upon any part of the same ground.

Turnpike corporations may assign franchises to railroad corporations. 1837, 226, § 2.

SECT. 71. No part of a turnpike road shall be assigned or used as provided in the preceding section, without the consent in writing of the county commissioners if such part is located in a single county, or of the superior court in one county, if it lies in two or more counties.

with consent of commissioners, &c. 1837, 226, § 3. 1850, 196.

SECT. 72. Damages caused by taking the property of any person under the two preceding sections shall be estimated and paid as in case of land taken under section nineteen.

Damages, how estimated. 1837, 226, § 4.

DRAWBRIDGES.

SECT. 73. Every corporation shall provide for each drawbridge of the company a steady and discreet superintendent, experienced in the management of vessels, who shall have full control and direction of the passing of vessels through the draw.

Corporation to provide superintendent of drawbridge. 1855, 434, § 1, 2.

SECT. 74. The superintendent shall at all hours of the day and night be ready to open the draw, shall, having regard to the convenient and secure passage of engines and trains and the state of the tide, decide when and the order in which vessels may pass, allowing no unnecessary detention; shall give all necessary advice and furnish proper facilities for such passing; and shall keep posted up in a convenient place, for the inspection of all persons interested, a written copy of his regulations conforming to the provisions of sections seventy-three to eighty inclusive.

Duties of superintendent. 1855, 434, §§ 2, 3.

SECT. 75. Every commander of a vessel applying to pass such draw shall give the superintendent a true report of his vessel's draught of water, and shall be governed by him as to priority of right when two or more vessels apply to pass at the same time; he shall, unless otherwise directed by the superintendent, in passing go to the right, according to the tide if practicable; and except as he may be authorized by the superintendent shall so place his buoys, warping-lines, anchors, or cables,

of commanders of vessels. 1855, 434, §§ 3, 4.



as neither to interfere with other vessels nor obstruct the bridge; and he shall be allowed a reasonable time for his vessel to pass.

Time allowed for trains. 1855, 434, § 4.

SECT. 76. Railroad trains shall be allowed fifteen minutes to cross a draw before and after their table time for being due, and a further reasonable time to pass shall be allowed to any approaching train.

Certain rights not affected. 1855, 434, § 4.

SECT. 77. Nothing contained in the four preceding sections shall abridge the rights of any such corporation as they existed on the twenty-first day of May in the year eighteen hundred and fifty-five.

Penalty for obstructing superintendent. 1855, 434, § 5.

SECT. 78. Whoever obstructs the superintendent in the performance of his duties or violates any provision of the five preceding sections shall pay a fine of not less than three nor more than fifty dollars.

for impairing bridge, obstructing draw, &c. 1855, 434, § 6.

SECT. 79. Whoever breaks, defaces, or impairs, any such bridge, or wharf, or pier appurtenant thereto, or unnecessarily opens or obstructs the draw without the consent of the superintendent, or without such consent makes fast or moors any scow, raft, or other vessel, to such bridge within wake of the draw, shall pay a fine of not less than three nor more than twenty dollars.

for injuring railroad bridge, &c. 1855, 434, § 7.

SECT. 80. Whoever wilfully injures or damages any railroad bridge, wharf, or pier, or wilfully disturbs or hinders the superintendent in the discharge of his duties, shall forfeit for each offence a sum not less than fifty nor more than one hundred dollars, and be further liable in damages to the corporation against which the offence is committed.

REGULATIONS FOR OPERATING ROAD.

Brakeman to every two cars. 1837, 236, § 8.

SECT. 81. No corporation shall run or permit to be run upon its road any train of cars moved by steam power for the transportation of passengers, unless there is placed upon the train one trusty and skilful brakeman to every two cars in the train.

Rear car of freight trains to have brake and brakeman. 1849, 161, § 1.

SECT. 82. If a corporation runs or permits to be run upon its road a train of cars for the transportation of merchandise without a good and sufficient brake attached to the rear or hindmost car of the train, and a trusty and skilful brakeman placed and permanently stationed on said car, it shall forfeit a sum not exceeding one hundred dollars for each offence.

Bell to be attached to locomotive engines and rung, &c. R. S. 39, § 78. 1859, 125, § 3. 2 Cush. 539. 10 Cush. 562.

SECT. 83. Every corporation shall cause a bell of at least thirty-five pounds in weight to be placed on each locomotive engine passing upon its road; and such bell shall be rung at the distance of at least eighty rods from the place where the road crosses a turnpike, highway, or town way, upon the same level therewith, and in like manner when the road crosses any other travelled place, over which a sign-board is required to be maintained, as provided in section eighty-five, and shall be kept ringing until the engine has crossed such turnpike or way.

Sign-boards to be erected at crossings. R. S. 39, § 79. 1849, 222, § 2. 1859, 125, § 1. 2 Cush. 539. 10 Cush. 562. 7 Gray, 100.

SECT. 84. Every corporation shall cause boards, well supported by posts or otherwise, to be placed and constantly maintained across each turnpike, highway, or town way, where it is crossed by the railroad upon the same level therewith; said posts and boards shall be of such height as to be easily seen by travellers without obstructing the travel; and on each side of the boards the following inscription shall be printed in capital letters of at least the size of nine inches each,—RAILROAD CROSSING—LOOK OUT FOR THE ENGINE WHILE THE BELL RINGS.

at travelled places, upon petition of selectmen, &c. Costs of application. 1859, 125, § 2.

SECT. 85. If the mayor and aldermen or selectmen of a city or town wherein a travelled place is so crossed by a railroad, decide that it is necessary for the better security of the public, that such sign-boards should be maintained at such travelled place, they may in writing request the corporation owning the railroad to erect and maintain them. If the corporation neglects or refuses so to do, the mayor and aldermen or selectmen may apply to the county commissioners to decide upon the reasonableness of their requests. If the commissioners, after due



notice and hearing of the parties, decide that such erection is necessary for the better security of the public, the corporation shall comply with their decision, and pay the costs of the application. If they decide that it is not so necessary, one-half of the costs of the application shall be paid by the city or town, and one-half by the corporation.

SECT. 86. If the mayor and aldermen or selectmen of a city or town wherein a highway, town way, or travelled place, so crossed by a railroad is situated, shall be of opinion that the provisions contained in the three preceding sections are not a sufficient security to the public, and that it is necessary for such security that gates should be erected across such railroad, turnpike, highway, town way, or travelled place, and that an agent be stationed to open and close such gates when an engine passes, or that bars be erected instead of gates, for security across such travelled place, they may in writing request the corporation to erect gates and station an agent, or request the erection of bars. If the corporation shall refuse or neglect to comply with the request, the mayor and aldermen or selectmen may apply to the county commissioners, who shall give due notice and hear the parties.

Gates, &c., may be erected, if necessary.  
R. S. 39, § 80.  
1849, 222, §§ 2, 3.  
7 Gray, 98.

SECT. 87. If the commissioners decide that the public security requires the erection of gates and providing an agent, or the erection of bars, as requested, the corporation shall comply with the decision and pay the costs of the application. If the commissioners decide that the establishment of gates and an agent, or of bars, as requested, is not required, the mayor and aldermen or selectmen shall pay the costs of the application. If the application is for the establishment of gates and an agent at a travelled place, not adjudged to be a town way or highway, and the commissioners decide that bars will furnish sufficient security, they may order them to be erected and make such order respecting costs as justice shall require.

same subject.  
Decision of commissioners to be complied with.  
Costs.  
R. S. 39, § 80.  
1849, 222, §§ 2, 3.  
7 Gray, 98.

SECT. 88. In the city of Boston the above request may be made by any two or more of the inhabitants of the city, and upon the neglect or refusal of the corporation to comply with their request, they may apply to the board of aldermen; and thereupon like proceedings shall be had, with like liabilities as to costs, as are provided in the preceding section.

proceedings in such case in Boston.  
1849, 222, § 1.  
1851, 317.  
1854, 448, § 33.  
1856, 245.

SECT. 89. If the mayor and aldermen or selectmen of a city or town wherein a turnpike, highway, street, or town way, so crossed by a railroad, is situated, decide that the safety of the public would be more effectually secured by the stationing of a flag-man than by the erection of a gate at the crossing, they may in writing request the corporation to which the railroad belongs to station a flag-man at the crossing, who shall display a flag whenever a locomotive engine or train of cars passes thereat. If the corporation refuses or neglects so to do, the mayor and aldermen or selectmen may apply to the county commissioners to decide upon the reasonableness of the request; and if the commissioners after due notice and hearing the parties decide that the stationing of such flag-man is necessary for the security of the public, the corporation shall comply with the decision and pay the costs of the application. If the commissioners decide that the stationing of such flag-man is not required, the mayor and aldermen or selectmen shall pay the costs.

Selectmen, &c., may make request for flag-man at crossings.  
Proceedings.  
1856, 245.

SECT. 90. If a corporation unreasonably neglects or refuses to comply with any order or decision made under the seven preceding sections, it shall forfeit for every such refusal or neglect a sum not exceeding one thousand dollars.

Penalty for neglect, &c.  
R. S. 39, § 81.

SECT. 91. If an agent so stationed neglects to open or close the gates for the safe passing of an engine on the railroad, or a traveller on the turnpike or other way, or if a flag-man so stationed neglects to display his flag as above required, the agent or flag-man shall for every neglect forfeit a sum not exceeding one hundred dollars; and the corporation shall also be liable for all damages sustained by any person by

Penalty on agent, &c., for neglect.  
R. S. 39, § 81.  
1852, 312.

reason of such neglect of any of its agents, to be recovered in an action of tort.

Commissioners may alter gates at crossings. 1854, 401.

SECT. 92. County commissioners may, on the petition of any party, order an alteration of the location and construction of railroad gates at crossings when in their opinion the better security of human life or the convenience of the public travel so requires.

Engine to be stopped within five hundred feet of crossing. 1855, 452, § 1. 1859, 39, §§ 1, 2.

SECT. 93. When a railroad other than a horse railroad or a railroad on which no passenger trains are run is crossed by another at grade, every engineman on either of the roads shall, before reaching the crossing, stop his engine at some point within five hundred feet therefrom; and shall pass slowly over the crossing; but one stop shall be sufficient for all such crossings within six hundred feet of each other upon the same road.

Penalty on enginemen. 1855, 452, §§ 1, 2.

SECT. 94. Every engineman violating the provisions of the preceding section shall for each offence forfeit one hundred dollars, and the corporation on whose road the offence is committed shall forfeit the further sum of three hundred dollars; such forfeitures to be recovered by complaint in the county where the offence is committed.

on engineers, firemen, &c., for negligence. 1857, 230, § 7.

SECT. 95. When an engineer, fireman, or other agent of a corporation is guilty of negligence or carelessness whereby an injury is done to any person or corporation, he shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding one thousand dollars.

on person having control of passenger train for carelessness. 1853, 418.

SECT. 96. Whoever, having management or control of or over a railway train while being used for the common carriage of persons, is guilty of gross carelessness or neglect in or in relation to the conduct, management, or control thereof, shall forfeit a sum not exceeding five thousand dollars, or be imprisoned not more than three years.

Liability of corporation when life of a passenger is lost by negligence, &c. 1840, 80.

SECT. 97. If by reason of the negligence or carelessness of a corporation, or of the unfitness or gross negligence or carelessness of its servants or agents, the life of any person being a passenger is lost, the corporation shall be punished by a fine not exceeding five thousand nor less than five hundred dollars, to be recovered by indictment and paid to the executor or administrator for the use of the widow and children of the deceased in equal moieties, but if there are no children to the use of the widow, or if no widow to the use of the next of kin.

when life of person not a passenger, &c., is lost. 1853, 414, § 1, 2. 11 Cush. 512.

SECT. 98. If by reason of the negligence or carelessness of a corporation, or of the unfitness or gross negligence or carelessness of its servants or agents while engaged in its business, the life of any person being in the exercise of due diligence, and not being a passenger or in the employment of such corporation, is lost, the corporation shall be punished by a fine not exceeding five thousand nor less than five hundred dollars, to be recovered by indictment and paid to the executor or administrator for the use of the widow and children as provided in the preceding section: *provided*, that the corporation shall not be so liable for the loss of life by any person while walking or being upon its road contrary to law or the reasonable rules and regulations of the corporation.

Indictments. 1853, 414, § 3. 11 Cush. 512.

SECT. 99. Indictments against a corporation for loss of life shall be prosecuted within one year from the injury causing the death.

Duty of corporation when life is lost. 1849, 172, §§ 1, 2. 1859, 215.

SECT. 100. When an accident attended with loss of life to any person occurs upon a railroad, the corporation owning the road shall cause immediate notice thereof to be given to a coroner of the county residing nearest to the place of the accident.

Corporation liable for damages by fire from engines. May insure. 1840, 85, § 1. 43 Met. 99. 114 Cush. 288.

SECT. 101. Every corporation shall be responsible in damages to any person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engines; and shall have an insurable interest in the property upon its route for which it may be so held responsible, and may procure insurance thereon in its own behalf.

13 Allen 370

6 Allen 87

8 " 138

98 Mass. 111

" " 114 Cush. 288.



PENALTIES FOR OBSTRUCTING ROAD, &C.

SECT. 102. Whoever without right knowingly stands or walks on a railroad track shall forfeit a sum not less than five nor more than fifty dollars.

Penalty for being on track. R. S. 39, § 4. 1853, 414, § 4.

SECT. 103. Whoever, after a railroad is opened for use, rides, drives, or leads a horse or other beast on the same without the consent of the corporation or its agent, except in places where the road is crossed by a turnpike road, railroad, or way, upon the same level therewith, shall for every such offence forfeit a sum not exceeding one hundred dollars, and be liable for all damages thereby sustained by any person, to be recovered in an action of tort.

for driving cattle upon railroad. R. S. 39, § 85. 1852, 312.

SECT. 104. The person through whose fault or negligence a horse or other beast goes at large within the limits of a railroad after it is opened for use, shall for every such offence forfeit a sum not exceeding twenty dollars, and be liable for any damages thereby sustained by any person, to be recovered in an action of tort.

for neglect in suffering cattle to go upon railroad. R. S. 39, § 86.

SECT. 105. Whoever wilfully and maliciously obstructs the passing of any carriage on a railroad, or in any way injures such road or any thing appertaining thereto, or any materials or implements for the construction or use thereof, or aids or abets in such trespass, shall forfeit to the use of the corporation for each offence treble the amount of damages proved to have been sustained thereby, to be recovered in an action of tort; and may further be punished by fine not exceeding one thousand dollars, or imprisonment for a term not exceeding one year.

for obstruct-carriages or injuring railroads. R. S. 39, § 77. 1859, 135.

SECT. 106. Whoever commits any of the acts mentioned in the preceding section, in such manner as thereby to endanger life, shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or by imprisonment in the state prison not exceeding twenty years.

and endangering life. R. S. 39, § 77. 1850, 44.

SECT. 107. Whoever, by himself or others, obstructs any engine or carriage passing upon a railroad, or endangers the safety of persons conveyed in or upon the same, or aids or assists therein, shall be punished by solitary imprisonment in the state prison not exceeding ten days, and by confinement afterwards in said prison at hard labor not exceeding twenty years.

for obstructing engines, &c. 1852, 186, § 1.

SECT. 108. Whoever wilfully does or causes to be done any thing with intent to obstruct any engine or carriage passing upon a railroad, or with intent to endanger the safety of persons conveyed in or upon the same, or aids or assists therein, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

for obstructing with intent, &c. 1852, 186, § 2.

SECT. 109. All penalties and forfeitures accruing to a corporation under this chapter may be recovered in an action of tort in the name of its treasurer.

in favor of corporation, how recovered. R. S. 39, § 94.

ACCOMMODATIONS FOR PASSENGERS. — TOLLS, &C.

SECT. 110. Every corporation shall furnish reasonable accommodations for the convenience and safety of passengers; and for every wilful neglect to provide the same shall forfeit not less than five nor more than twenty dollars, to be recovered in an action of tort.

Corporation to accommodate passengers. Penalty. 1849, 191, § 2. 1852, 312.

SECT. 111. Corporations when requested shall give checks to passengers for their baggage when delivered for transportation, and shall redeliver the same to the passengers upon the surrender of their checks. A corporation refusing to comply with the requirements of this section shall forfeit ten dollars for each offence.

to furnish checks. 1854, 23. 15 May 1850

SECT. 112. Each corporation may establish, for its sole benefit, a toll upon all passengers and property conveyed or transported on its road, at such rates as may be determined by the directors thereof; and may

may establish tolls, subject, &c. R. S. 39, § 83.



12 Gray 188. from time to time regulate such conveyance and transportation, the  
 15 " 20. weight of loads, and all other things in relation to the use of its road,  
 1 Allen 268. as the directors may determine; but the legislature may from time to  
 11 " 233. time alter or reduce the rates of toll according to the provisions, if any,  
 contained in the charter of the corporation: *provided*, that such tolls  
 shall not without the consent of the corporation be so reduced as to  
 produce with all profits less than ten per cent. a year.

Penalty for fraudulent evasion, &c., of tolls or fare. 1849, 191, § 2.

SECT. 113. Whoever fraudulently evades or attempts to evade the payment of any toll or fare lawfully established by a corporation, either by giving a false answer to the collector of the toll or fare, or by travelling beyond the point to which he has paid the same, or by leaving the train without having paid the toll or fare established for the distance travelled, or otherwise, shall be punished by fine of not less than five nor more than twenty dollars for each offence. Whoever does not upon demand first pay such toll or fare shall not be entitled to be transported over a road.

15 Gray 23.

RELATIONS OF CONNECTING ROADS.

Corporations to forward goods to connecting roads, &c. Penalty. 1859, 209, §§ 1, 2.

SECT. 114. Corporations shall promptly forward merchandise consigned, ordered, or directed, to be sent over another road connecting therewith, according to the directions contained thereon or accompanying the same, and shall not receive and forward over their roads any merchandise consigned, ordered, or expressly directed, to be received and forwarded by a different route. A corporation wilfully violating the provisions of this section, if the freight or expense of carriage of such merchandise is paid or secured to the forwarding road, shall, for each offence, forfeit one hundred dollars, to be recovered by action of tort by any person or corporation injuriously affected thereby.

whose roads unite, may contract for transportation, &c. Profits regarded as income. 1838, 99, §§ 1, 2.

SECT. 115. Two corporations created by this state or by the concurrent acts of this and an adjoining state, whose roads enter upon or connect with each other, may contract that either corporation shall perform all the transportation of persons and freight upon and over the road of the other. The income arising from such contracts shall be subject to the provisions of law in regard to the right of the state to purchase the roads or reduce their tolls, in the same manner as that arising from the use of the roads. 8 Allen 238.

owning road liable for damages, &c. 1838, 99, § 3.

SECT. 116. Where such contracts are made, the corporation owning the road shall be liable for all damage done or injury sustained thereon or in the use thereof in the same manner and to the same extent that it would be liable if it performed the transportation itself.

shall transport passengers, &c., for each other. If they cannot agree, &c. 1845, 191, §§ 2, 3. 9 Cush. 369. 7 Gray, 31.

SECT. 117. Every corporation owning a road in use shall at reasonable times and for a reasonable compensation draw over the same the passengers, merchandise, and cars, of any other corporation authorized by the legislature to enter with its road upon, or unite the same with, and use, the road of the first named corporation. If the corporations cannot agree upon the stated periods at which the cars shall be so drawn and the compensation to be paid, the supreme judicial court upon the petition of either party, and notice to the other, shall appoint three commissioners, who, after due notice to and hearing the parties interested, shall determine such rate of compensation, and fix such periods having reference to the convenience and interest of the corporations and the public to be accommodated thereby; and the award of the commissioners or a major part of them shall be binding upon the respective corporations interested therein, until the same shall have been revised or altered by commissioners so appointed; but no such revision or alteration shall be made within one year after the award.

Where roads terminate in same place, &c., each shall fur-

SECT. 118. Where two or more railroads terminate in the same city or town, and one corporation is authorized to enter with its road upon, unite the same with, and use, the road of another of said corporations,

5 Allen 218.

12 Allen 262.

12 " 397.

11 Gray 266.

11 Gray 253, 661.

1860 Ch. 201.

each corporation may enter upon and use the road of the other, and each shall for a reasonable compensation provide upon its road convenient and suitable depot accommodations for the passengers and merchandise of the other road passing to and over it, and shall receive and deliver the same in the manner it receives and delivers its own passengers and freight. If the corporations cannot agree upon the terms and conditions upon which such accommodations shall be furnished and the business transacted, commissioners may be appointed in the manner prescribed in the preceding section, who shall determine the rate of compensation to be paid for the depot accommodations required for the proper reception and delivery of such passengers and merchandise, and upon the application of either party determine all questions between the parties in relation to the transportation of freight and passengers over and other business upon and connected with said roads in which they are jointly interested, and the manner in which the business shall be done, and apportion to the corporations their respective shares of the expenses, receipts, and income, of the same; and the award of the commissioners, or the major part of them, subject to the limitations and restrictions contained in the preceding section, shall be binding upon the respective corporations. The compensation of the commissioners for services and expenses under the two preceding sections, shall be paid by the respective corporations in such proportions as the commissioners shall determine.

nish depots, &c. If they do not agree, commissioners may be appointed. Compensation of commissioners.  
1845, 191, §§ 2, 3.  
1857, 291, §§ 1, 2, 3.  
1858, 10.  
7 Gray, 31.

12 Gray 397.

12 Gray 233, 66.

SECT. 119. No locomotive engine or other motive power shall be allowed to run upon a railroad constructed by authority of this state, except such as is owned and controlled by the corporation owning and managing the road, unless with the consent of the corporation.

No motive power to run on road without consent.  
1845, 191, § 1.

12 Gray 188 & Allen 138

BONDS AND MORTGAGES.

SECT. 120. A corporation, for the purpose of funding its floating debt or for money borrowed for any purpose sanctioned by law, may, upon being authorized by a majority of the votes at a meeting of its stockholders called for the purpose, issue bonds in sums of not less than one hundred dollars each payable at periods not exceeding twenty years from the date thereof and bearing interest not exceeding the rate of six per cent. a year, payable annually or semi-annually, to an amount not exceeding the capital stock actually paid in by its stockholders.

Corporations may issue bonds for funding floating debt, &c.  
1854, 286, §§ 1, 2.  
See Ch. 53, § 6.

12 Allen 381.

SECT. 121. No bond shall be issued unless approved by one or more of the finance committee of the corporation, or some other person appointed for that purpose, who shall certify that it is properly issued and recorded upon the books of the corporation.

Bonds to be approved.  
1854, 286, § 4.

10 Allen 151

SECT. 122. All bonds or notes issued by such corporation shall be binding and collectable in law, notwithstanding such notes or bonds were negotiated and sold by the corporation or its agents at less than par.

binding, though sold below par.  
1854, 286, § 5.

SECT. 123. No corporation having issued bonds under the provisions of section one hundred and twenty, shall subsequently make or execute any mortgage upon its road, equipments, and franchise, or any of its property, real or personal, without including in and securing by such mortgage all bonds previously issued and all preëxisting debts and liabilities of the corporation.

Mortgages to include bonds previously issued, &c.  
1854, 286, § 3.

10 Allen 151.

SECT. 124. When a corporation, having executed a mortgage of its property, rights, and privileges, or any part thereof, to trustees, for the benefit of its general creditors or of any particular class of creditors, has made default in the performance of the condition so that the trustees or their successors are entitled to the actual possession and usufruct of the property, rights, and privileges, therein conveyed in trust for the purposes specified in the mortgage, the trustees, instead of retaining in their own hands the actual possession of the mortgaged premises and running

Trustees entitled to possession may contract with corporation to operate road. Conditions.  
1857, 178, § 1.



the trains under their own direction and on their own responsibility, may contract with the corporation to take and retain for them the possession and use of the mortgaged premises and use and operate the same on its own responsibility under the direction of its officers, accounting with the trustees for the earnings and income, and paying over the net income and profits periodically when and as far as the same may by the terms of the mortgage be necessary for the fulfilment of its conditions: *provided*, that all liabilities incurred by the corporation or other party in operating the road under such contract, shall be held as claims against and paid out of the income in the same manner and to the same extent as if the property had remained in the actual possession of the trustees and been operated by them; and *provided*, that at a meeting of the bond holders or creditors under the mortgage duly notified in two or more daily newspapers published in the city of Boston, and in one newspaper at least in each county through which the road is located, ten days before said meeting, a majority in amount of those present or represented shall vote in favor of such contract, each bond holder or creditor casting one vote personally or by proxy for every hundred dollars held by him.

Trustees in possession to call annual meetings of bond holders and make return to secretary. 1857, 178, § 2.

SECT. 125. Trustees in possession of a railroad under a mortgage, shall annually notify a meeting, to be held in December, of the bond holders or creditors for whose security they hold the road in trust, such notice to be published at least ten days previously to the time of holding such meeting in two or more daily newspapers in Boston and in one paper at least in each county through which the road is located; and at such meeting they shall submit a report of their doings for the year, similar to the annual report of railroad directors to stockholders. On or before the thirty-first day of December annually they shall transmit to the secretary of the commonwealth the same returns of their acts, doings, receipts, and expenditures, as are required of railroad corporations, and be subject to the same forfeitures and penalties for any default.

if they do not, bond holders may call meeting. 1857, 178, § 3.

SECT. 126. Upon failure of the trustees to call the meeting as required by the preceding section, five or more bond holders or creditors, whose claims secured by the mortgage amount to not less than ten thousand dollars, may in the manner therein prescribed call such meeting to be held in the January following said December.

Trustees under mortgage, election and confirmation of. 1857, 178, § 4.

SECT. 127. At the annual meeting held under either of the two preceding sections, the bond holders or creditors may elect three trustees under the mortgage for the ensuing year and until others are chosen and qualified, each bond holder or creditor casting in person or by proxy one vote for each hundred dollars due and secured to him under the mortgage. And the trustees, or either of them, or any bond holder or creditor, may in a summary manner present the proceedings of the meeting to a justice of the supreme judicial court, in court or at chambers, the party presenting such proceedings giving notice thereof and of his intention to move for their affirmation to the former trustees under the mortgage, to the trustees of every other existing mortgage upon the road, and to the corporation giving the mortgage, seven days at least before the hearing thereon; which notice may be served by any officer or indifferent person. The justice may hear the parties and ratify the election, and make such order and decree as he may deem necessary and just to transfer the property to the new trustees; which order and decree shall be filed in such clerk's office of the court as the justice may direct.

Equity jurisdiction of S. J. C. 1857, 178, § 5.

SECT. 128. The supreme judicial court and each of the justices thereof shall have full equity jurisdiction according to the usage and practice of courts of equity of all cases arising under the three preceding sections, and of all questions arising out of railroad mortgages, and may in a summary manner remove any trustee under a railroad mortgage, whether such trustee is in possession of the railroad or not, and appoint



a new trustee in his stead, whether such trustee is elected by the bond holders or creditors as provided in said sections or not.

SECT. 129. When such corporation is required to convey in pledge or mortgage to the commonwealth its road with the franchise and property to it belonging, to secure a loan or debt owing or to become due from it to the commonwealth, the conveyance shall by its terms be of the road, franchise, and property, of the corporation, as it exists at the time of the execution thereof, whether the corporation has acquired a full title to the land upon which its road is authorized to be made or not, or whether its road is completed or not; and the conveyance shall be in full force without any record thereof.

Mortgage, &c., of road to commonwealth. Terms. 1838, 99, § 4. 1843, 10.

SECT. 130. The conveyance shall, as against any claims or encumbrances to which the road, franchise, or property, may be thereafter subjected, operate to cover and bind any lands included within the location of the road, the title to which or the easement upon which shall be thereafter acquired, and any additions which shall be thereafter made to the road by labor, materials, or otherwise, and any lands thereafter purchased and appropriated for depots for the road, or any buildings or fixtures placed thereon, and also any engines, cars, or other apparatus, which may be placed upon the road or procured therefor, as fully as if the road had been completed and all said property acquired and owned by the corporation at the time of the execution of the conveyance; but the conveyance shall not be construed to include or affect any personal property which has been sold by the corporation to a *bona fide* purchaser before the commonwealth takes possession thereof under the conveyance.

what property bound by. 1838, 99, § 5.

SECT. 131. The treasurer of the commonwealth shall forthwith upon their delivery cause all such bonds and mortgages to be recorded in the registry of deeds in each county and district through which the road conveyed thereby may pass.

to be recorded. 1843, 10.

RETURNS AND REPORTS.

SECT. 132. Every corporation shall at all times submit its books to the inspection of any committee of the legislature appointed for the purpose; and its directors shall annually on or before the first Wednesday of January prepare, make oath to, and transmit to the secretary of the commonwealth, together with one thousand printed copies of the same, a report of their doings under their charter for the year ending the thirtieth day of November preceding; the first annual report stating the number of months and days included therein. The report shall set forth copies of all contracts made with other railroads under section one hundred and fifteen, and specify the receipts and expenditures under the same; and shall contain full information upon the following items, viz:—

Corporation to submit books to inspection of committees of legislature. To furnish annual report. Contents of. R. S. 39, § 82. 1838, 99, § 2. 1846, 251, § 1. 1849, 191, § 1. 1854, 423. 1856, 165, §§ 1, 2. 1857, 46, § 5. 1857, 168; 240, § 2. 1858, 46, § 8.

FORM OF RAILROAD RETURN TO THE LEGISLATURE.

1. Capital stock, \$
2. Number of shares of capital stock issued.
3. Increase of capital since last report.
4. Capital paid in per last report, \$
5. Capital paid in since last report.
6. Total amount of capital stock paid in.
7. Funded debt per last report.
8. Funded debt paid since last report.
9. Funded debt, increase of, since last report.
10. Total present amount of funded debt.
11. Floating debt per last report.
12. Floating debt paid since last report.
13. Floating debt, increase of, since last report.
14. Total present amount of floating debt.
15. Total present amount of funded and floating debt.
16. Average rate of interest per annum paid during the year.
17. Maximum amount of debts during the year.

*Cost of Road and Equipment.*

18. For graduation and masonry per last report.
19. For graduation and masonry paid during the past year.
20. Total amount expended for graduation and masonry.
21. For wooden bridges per last report.
22. For wooden bridges paid during the past year.
23. Total amount expended for wooden bridges.
24. Total amount

Form of rail-  
road reports.

expended for iron bridges, (if any.) 25. For superstructure, including iron, per last report. 26. For superstructure, including iron, paid during the past year. 27. Total amount expended for superstructure, including iron. 28. For stations, buildings, and fixtures, per last report. 29. For stations, buildings, and fixtures, paid during the past year. 30. Total amount expended for stations, buildings, and fixtures. 31. For land, land damages, and fences, per last report. 32. For land, land damages, and fences, paid during the past year. 33. Total amount expended for land, land damages, and fences. 34. For locomotives, per last report. 35. For locomotives, paid during the past year. 36. Total amount expended for locomotives. 37. For passenger and baggage cars, per last report. 38. For passenger and baggage cars, paid during the past year. 39. Total amount expended for passenger and baggage cars. 40. For merchandise cars, per last report. 41. For merchandise cars, paid during the past year. 42. Total amount expended for merchandise cars. 43. For engineering, per last report. 44. For engineering, paid during the past year. 45. Total amount expended for engineering. 46. For agencies and other expenses, per last report. 47. For agencies and other expenses, paid during the past year. 48. Total amount expended for agencies and other expenses. 49. Total cost of road and equipment. 50. The amount of assets or property held by the corporation in addition to the cost of the road.

*Characteristics of Road.*

51. Length of road. 52. Length of single main track. 53. Length of double main track. 54. Length of branches owned by the company, stating whether they have a single or double track. 55. Aggregate length of sidings and other tracks, excepting main track and branches. 56. Weight of rail per yard, in main road. 57. Weight of rail per yard, in branch road; (specify the different weights per yard.) 58. Maximum grade, with its length in main road. 59. Maximum grade, with its length in branch roads. 60. Total rise and fall in main road. 61. Total rise and fall in branch roads. 62. Shortest radius of curvature, with length of curve in main road. 63. Shortest radius of curvature, with length of curve in branch roads. 64. Total degrees of curvature in main road. 65. Total degrees of curvature in branch roads. 66. Total length of straight line in main road. 67. Total length of straight line in branches. 68. Aggregate length of wooden truss bridges. 69. Aggregate length of all other wooden bridges. 70. Aggregate length of iron bridges. 71. Whole length of road unfenced on both sides. 72. Number of public ways crossed at grade. 73. Number of railroads crossed at grade. 74. Remarks. 75. Way stations for express trains. 76. Way stations for accommodation trains. 77. Flag stations. 78. Whole number of way stations. 79. Whole number of flag stations.

*Doings during the Year.*

80. Miles run by passenger trains. 81. Miles run by freight trains. 82. Miles run by other trains. 83. Total miles run. 84. Number of passengers carried in the cars. 85. Number of passengers carried one mile. 86. Number of tons of merchandise carried in the cars. 87. Number of tons of merchandise carried one mile. 88. Number of passengers carried one mile to and from other roads. 89. Number of tons carried one mile to and from other roads. 90. Rate of speed adopted for express passenger trains, including stops. 91. Average rate of speed actually attained by express passenger trains, including stops and detentions. 92. Rate of speed adopted for accommodation trains. 93. Rate of speed actually attained by accommodation trains, including stops and detentions. 94. Average rate of speed actually attained by special trains, including stops and detentions. 95. Average rate of speed adopted for freight trains, including stops. 96. Estimated weight, in tons, of passenger cars, (not including passengers,) hauled one mile. 97. Estimated weight, in tons, of merchandise cars, (not including freight,) hauled one mile.

*Expenditures for Making the Road.*

98. For repairs of road, maintenance of way, exclusive of wooden bridges and renewals of iron. 99. For repairs of wooden bridges. 100. For renewals of iron, including laying down. — 101. For wages of switchmen, (average per month, \$ .) }  
102. For wages of gate-keepers, (average per month, \$ .) } Total .  
103. For wages of signal-men, (average per month, \$ .) }  
104. For wages of watchmen, (average per month, \$ .) }

105. Number of men employed, exclusive of those engaged in construction. 106. For removing ice and snow, (this item to include all labor, tools, repairs, and extra steam-power used.) 107. For repairs of fences, gates, houses for signal-men, gate-keepers, switchmen, tool-houses. 108. Total for maintenance of way.

*Motive Power and Cars.*

109. For repairs of locomotives. 110. For new locomotives to cover depreciation. 111. For repairs of passenger cars. 112. For new passenger cars to cover depreciation. 113. For repairs of merchandise cars. 114. For new merchandise cars to cover depreciation. 115. For repairs of gravel and other cars. 116. Total for maintenance of

motive power and cars. 117. Number of engines. 118. Number of passenger cars. 119. Number of baggage cars. 120. Number of merchandise cars. 121. Number of gravel cars. Form of railroad reports.

*Miscellaneous.*

122. For fuel used by engines during the year, viz.: 123. Number of cords of wood and cost of same. 124. Number of tons of coal, at two thousand two hundred and forty pounds to the ton, and cost of same. 125. For oil used by cars and engines. 126. For waste and other material for cleaning. 127. For salaries, wages, and incidental expenses chargeable to passenger department. 128. For salaries, wages, and incidental expenses chargeable to freight department. 129. For gratuities and damages. 130. For taxes and insurance. 131. For ferries. 132. For repairs of station buildings, aqueducts, fixtures, furniture. 133. For renewals of iron, including laying down. 134. For new iron laid down, deducting the value of old iron taken up. 135. For amount paid other companies, in tolls, for passengers and freight carried on their roads, specifying each company. 136. For amount paid other companies as rent for use of their roads, specifying each company. 137. For salaries of president, treasurer, superintendent, law expenses, office expenses of the above offices, and all other expenses, not included in any of the foregoing items. 138. Total miscellaneous. 139. Total expenditures for working the road. 140. For interest.

*Income during the Year.*

141. For passengers — 1. On main road, including branches owned by company; 2. To and from other roads, specifying what. 142. For freight — 1. On main road and branches owned by company; 2. To and from other connecting roads. 143. U. S. mails. 144. Rents. 145. Total income. 146. Net earnings, after deducting expenses.

*Dividends.*

147. per cent., total, \$ . 148. Surplus not divided. 149. Surplus last year. 150. Total surplus.

*Estimated Depreciation beyond the Renewals, viz.*

151. Road and bridges. 152. Buildings. 153. Engines and cars.

*Mortgage Debts.*

154. Amount of debts secured by mortgage of road and franchise, or any property of the corporation, per last report. 155. Mortgage debt paid since last report. 156. Increase of mortgage debt since last report. 157. Present amount of mortgage debts. 158. Number of mortgages on road and franchise, or any property of the corporation.

SECT. 133. The annual report shall also state whether any fatal accident or serious injury has occurred to a passenger or other person upon the road during the period covered by the report; and if so the cause of such accident or injury and the circumstances under which it occurred.

Accidents to be reported.  
1846, 251, § 3.  
1849, 191, § 4.

SECT. 134. If the directors of any corporation find it impracticable to return therein all the items in detail required by this chapter, they shall in such report state the reasons why such details cannot be given.

Report, if not full, directors to state reasons.  
1846, 251, § 4.  
1849, 191, § 4.

SECT. 135. Every corporation neglecting to make and furnish such report at the time prescribed in section one hundred and thirty-two shall forfeit to the use of the commonwealth fifty dollars for each day's neglect, to be recovered by the treasurer; and if any corporation unreasonably refuses or neglects to comply with the other provisions of said section, it shall forfeit for every such refusal or neglect a sum not exceeding five thousand dollars.

penalty for not furnishing.  
R. S. 39, § 82.  
1851, 102, § 2.  
1857, 40, § 6.

SECT. 136. The secretary shall annually in November furnish to every corporation a table prepared in conformity with the provisions of section one hundred and thirty-two; and shall annually on or before the thirty-first day of January transmit one set of the reports furnished him under said section to each member of the legislature, and shall also deliver a copy of the report of each corporation to every other such corporation in the state. He shall prepare with such other information as he deems useful, an abstract of such reports in form as follows: —

Secretary to transmit reports, and furnish abstract to legislature, &c.  
1846, 251, § 2.  
1849, 191, § 4.  
1851, 102, § 1.  
1854, 354.  
1856, 165, § 3.  
1858, 7.  
1858, 46, § 8.



Name of road.	Capital.	Capital paid in.	Debt.	Length.	Length of double track.	Length of branches.	Speed of passenger trains.	Speed of freight trains.	Earnings.	Expense of working.	Amount of assets.	Cost of the road.	Net earnings.	Dividends.	Surplus.	Casualties.	
																Fatal.	Not fatal.

And he shall annually on or before the second Wednesday of January transmit four hundred bound copies thereof to the legislature.

Special report on completion of road. 1837, 226, § 6. 1859, 262.

SECT. 137. In addition to the annual report required by section one hundred and thirty-two, the corporation shall, when it has completed and opened its road for use, make a report under oath to the legislature, stating the total amount of capital paid in; specifying the amount expended in constructing its road, for engines, cars, depots, car-houses, and other buildings, and the amount of all other miscellaneous expenses. Such report shall also state the length of the road, the number of planes on it with their inclination per mile, the greatest curvature on the road, the average width of the grade, and the manner in which the rails are supported.

RIGHTS OF COMMONWEALTH.

State may purchase railroad after twenty years. R. S. 39, § 84.

SECT. 138. The commonwealth may at any time during the continuance of the charter of any corporation, after the expiration of twenty years from the opening of its road for use, purchase of the corporation its road, and all its franchise, property, rights, and privileges, by paying therefor such sum as will reimburse it the amount of capital paid in, with a net profit thereon of ten per cent. a year from the time of the payment thereof by the stockholders to the time of the purchase.

HORSE RAILROADS.

Horse railroads excepted.

SECT. 139. Horse and street railroad corporations shall not be subject to the preceding sections except as provided in their several charters.

time of construction of. 1857, 198, §§ 1, 2.

SECT. 140. Every horse or street railroad corporation chartered subsequently to the twentieth day of May eighteen hundred and fifty-seven shall construct its road within twelve months after its location; and the location of the road of every such corporation failing to commence the construction of its road within six months after its location, shall be void.

Penalty for evasion of tolls, &c. 1857, 240, § 5.

SECT. 141. The provisions of section one hundred and thirteen shall apply to all horse and street railroad corporations.

Horse cars to stop at crossings of steam railroads. Penalty. 1859, 126, § 2.

SECT. 142. When a horse railroad crosses or is crossed by a steam railroad at grade, the driver of the car upon the horse railroad shall when approaching the point of intersection stop his car within one hundred feet of the crossing. For each violation of this section the driver shall forfeit five dollars, and the corporation on whose railroad the offence is committed shall forfeit ten dollars.

Corporation to furnish report. Form and contents of. 1857, 40, §§ 5, 7. 1857, 240, §§ 1, 2. 1858, 46, § 8.

SECT. 143. The directors of every such corporation shall annually on or before the first Wednesday of January make oath to and transmit to the secretary of the commonwealth, together with one thousand printed copies of the same, a report of their doings under their charter for the year ending the thirtieth day of November preceding; the first annual report stating the number of months and days included therein. Such report shall contain full and complete information upon the following items, viz.: —

## FORM OF RETURN.

*Condition of the Company.*

1. Capital stock, fixed by charter. 2. Capital stock, as voted by the company. 3. Capital stock paid in, in cash. 4. Capital stock paid in, in work and materials, by contractors and others. 5. Funded debt. 6. Floating debt. 7. Total debt. 8. Amount of above debt secured by mortgage of the road and franchise, or any property belonging to the corporation or standing in its name. 9. Number of mortgages on road and franchise, or any property of the corporation, specifying the number and amount of mortgages on road and franchise, and each kind of property. 10. Amount of assets on hand, exclusive of the road and equipment, and exclusive of all property on hand, used, or which is to be used, in running the road and keeping it in repair. Horse railroad reports.

*Cost of the Road.*

11. Amount expended for labor in excavating for the track, laying foundation and rails. 12. Amount expended for timber for foundation. 13. Amount expended for iron and other metal for rails, chairs, spikes, or other articles, used in building the road. 14. Amount expended for paving. 15. Amount expended for paving stones. 16. Amount expended for engineering. 17. Amount expended for interest, salaries of officers during construction of road, and other expenses not included in any of the above items, which have been included on the books of the company in the cost of the road, not including items of equipment or running expenses, as mentioned below. 18. Total cost of road. 19. Amount included in the present and in past years, among the running expenses for estimated or actual depreciation of the road. 20. Net cost of road.

*Cost of Equipment.*

21. Number of cars, and cost. 22. Number of horses, and cost. 23. Cost of omnibuses, sleighs, and other vehicles, excepting cars, owned by the company. 24. Cost of land and buildings thereon when purchased. 25. Cost of buildings used for offices, stables, &c., erected by the company, or standing on land not owned by the company. 26. Cost of other articles of equipment, (specifying what.) 27. Total cost of equipment. 28. Amount included in the present and in past years in the running expenses for estimated or actual depreciation of any of the above items. 29. Net amount at which the equipment stands charged on the books of the company.

*Characteristics of the Road.*

30. Length of single main track. 31. Length of double main track. 32. Total length of road. 33. Length of branches owned by the company, stating whether they have a single or double track. 34. Aggregate length of switches, sidings, turnouts, and other track, excepting main track and branches. 35. Total length of rail. 36. Weight of rail used, per yard, (specifying whether of cast or rolled iron.) 37. Maximum grade, per mile, on road, with length of grade. 38. Shortest radius of curvature, with length of curve. 39. Greatest length of single track on road between two turnouts. 40. Total length of main track which is paved.

*Doings during the Year.*

41. Total number of miles run during the year. 42. Number of passengers carried in the cars. 43. Rate of speed adopted, including stops and detentions. 44. Rate of speed actually attained, including stops and detentions. 45. Number of persons employed, regularly, (specifying the occupations of each.) 46. Total number of trips run during the year. 47. Average number of passengers each trip.

*Expenditures for Working the Road.*

48. For repairs of road, including repairs of foundation, renewals of iron, and renewals of pavement. 49. For general repairs, including repairs of cars, omnibuses, and harnesses, and for shoeing horses. 50. For repairs of real estate, including repairs of buildings used as stables, offices, or for any other purposes, by the company. 51. For wages, including the wages of every person regularly employed, excepting the president, directors, superintendent, and treasurer. 52. For interest. 53. For taxes and insurance. 54. For tolls paid other companies for the right to pass over their roads. 55. For rent paid other companies for use of their roads. 56. For provender, — to include cost of hay, grain, straw, or other articles, used for the food and bedding of horses. 57. For miscellaneous articles purchased during the year, — such as harnesses, blankets, &c., the use of which continues for one or more years, — and not included in the cost of equipment. 58. For loss on horses, — that is to say, the difference between the present estimated value of the horses owned by the company subtracted from the estimated value of those on hand at the commencement of the year, added to the cost of those purchased during the year; or if this is the first report of the company, then the difference between the estimated value of the horses on hand and their cost, — giving the present average estimated value of each horse.

Horse road reports.

59. For incidental expenses, — to include printing, president's, directors', treasurer's, and superintendent's salaries, and all expenses other than those belonging to the actual working of the road. 60. For all other expenses. 61. For amount charged on the company's books during the year for estimated or actual depreciation of the following property: 62. Cars, \$ ; 63. Horses, \$ ; 64. Omnibuses, \$ ; 65. Real estate, \$ ; 66. Road, \$ ; 67. Other property, \$ ; 68. Total, \$ ; 69. Total expenses, \$

*Earnings.*

70. Received from passengers in cars and omnibuses, and for tickets sold. 71. From other roads, as toll or rent for use of road. 72. From United States mails. 73. For sales of manure. 74. From other sources. 75. Total earnings. 76. Net earnings, after deducting expenses. 77. Surplus earnings of previous year on hand. 78. Net earnings, as above. 79. Total surplus for payment of dividends. 80. Dividends declared during the year. 81. Total percentage of dividends for the year. 82. Present surplus.

*Miscellaneous.*

83. Increase during the year. 84. Of capital stock, as fixed by the charter. 85. Of capital stock, as voted by the company. 86. Of capital stock paid in. 87. Increase of funded debt during the year. 88. Increase of floating debt during the year. 89. Decrease of funded debt during the year. 90. Decrease of floating debt during the year. 91. Increase of mortgage debt during the year. 92. Decrease of mortgage debt during the year. 93. Increase in cost of road during the year, including amount charged for depreciation thereon. 94. Decrease in nominal cost of road, by amount charged for depreciation thereon. 95. Increase in cost of equipment during the year, including amount charged for depreciation thereon. 96. Decrease in cost of equipment, by sale of any portion thereof, or by amount charged for depreciation. 97. List of accidents on road during the year.

Penalty for neglect. 1857, 240, § 3.

SECT. 144. Every corporation refusing or neglecting to make the return required by the preceding section shall forfeit one hundred dollars for each day's refusal or neglect. And the secretary of the commonwealth shall notify the attorney-general of such refusal or neglect, who shall forthwith prosecute the same in behalf of the state.

Secretary to furnish blanks. 1857, 240, § 4.

SECT. 145. The secretary shall annually in November cause to be prepared and transmit to such corporations blank forms for returns.

CHAPTER 64.

OF TELEGRAPH COMPANIES.

SECTION

1. Companies subject to this chapter.
2. may construct lines upon highways, &c., not to incommode public.
3. Mayor and aldermen, &c., to specify places, kinds of posts, &c. Record.
4. to assess damages of land owners. Costs.
5. Compensation.
6. Applicant may have jury.
7. Capital to be subscribed. Statement to be filed.
8. Limit of debt.

SECTION

9. Liability of officers.
10. Duties of companies. Penalty for neglect.
11. In case of damage, company liable, &c. Liability of towns.
12. Corporation to make annual returns, &c.
13. Unincorporated companies subject to this chapter.
14. No easement obtained by having telegraph posts, &c.
15. Penalty for injuring, &c., lines, wires, &c.

Companies subject to this chapter. 1849, 93, § 1.

SECTION 1. Every company incorporated for the transmission of intelligence by electricity shall possess the powers and privileges, and be subject to the duties, restrictions, and liabilities, prescribed in this chapter.

may construct lines upon highways, &c., not to incommode public. 1849, 93, §§ 2, 3.

SECT. 2. Each company may under the provisions of the following section construct lines of electric telegraph upon and along the highways and public roads, and across any waters within the state, by the erection of the posts, piers, abutments, and other fixtures, (except bridges,) necessary to sustain the wires of its lines; but shall not incommode



mode the public use of highways or public roads, nor endanger or interrupt the navigation of any waters.

SECT. 3. The mayor and aldermen or selectmen of any place through which the lines of a company are to pass, shall give the company a writing specifying where the posts may be located, the kind of posts, and the height at which and the places where the wires may run. After the erection of the lines, having first given the company or its agents opportunity to be heard, they may direct any alteration in the location or erection of the posts, piers, or abutments, and in the height of the wires. Such specifications and decisions shall be recorded in the records of the city or town.

Mayor and aldermen, &c., to specify places, kinds of posts, &c.  
Record.  
1849, 93, § 3

SECT. 4. An owner of land near to or adjoining a highway or road along which lines are constructed by the company, who considers himself injured thereby, may within three months after such construction apply to the mayor and aldermen or selectmen to assess and appraise his damage. Before entering upon the service they shall severally be sworn faithfully and impartially to perform the duties required of them by this chapter. They shall on view make a just appraisal in writing of the loss or damage, if any, to the applicant, sign duplicates thereof, and on demand deliver one copy to the applicant and the other to the company or its agent. If damages are assessed, the company shall pay the same with the costs of the appraisers. If the appraisers award that the applicant has suffered no damage, he shall pay the costs of the appraisers.

to assess damages of land owners.  
Costs.  
1849, 93, § 4.

SECT. 5. The mayor and aldermen and selectmen shall each receive for services performed under this chapter two dollars a day.

Compensation.  
1849, 93, § 5.

SECT. 6. Any person aggrieved by the assessment of his damages may have the matter determined by a jury, and the proceedings shall be according to the provisions of section seventy-three of chapter forty-three concerning town ways and private ways. If the jury increase the damages, the same and all charges shall be paid by the company otherwise the charges shall be paid by the applicant.

Applicant may have jury.  
1849, 93, § 4.

SECT. 7. A company shall not commence the construction of its line until three-fourths of its capital stock has been unconditionally subscribed for; and the directors shall within ten days of commencing said line file in the office of the secretary of the commonwealth a sworn statement of the subscription.

Capital to be subscribed.  
Statement to be filed.  
1851, 247, § 3.

SECT. 8. A company shall not at any time contract or owe debts to a larger amount than one-half part of its capital stock actually paid in.

Limit of debt.  
1851, 247, § 4.

SECT. 9. The president and treasurer of each company shall be jointly and severally liable for all its indebtedness, in case of wilful neglect or omission on their part to comply with any of the provisions of this chapter.

Liability of officers.  
1851, 247, § 6.

SECT. 10. Every company shall receive despatches from and for other telegraph lines, companies, and associations, and from and for any person; and on payment of the usual charges for transmitting despatches according to the regulations of the company, shall transmit the same faithfully and impartially. For every wilful neglect or refusal so to do the company shall forfeit a sum not exceeding one hundred dollars, to be recovered in an action of tort by the person, association, or company, sending or desiring to send the despatch.

Duties of companies.  
Penalty for neglect.  
1849, 93, § 6.  
1852, 312.

SECT. 11. When an injury is done to a person, or to property, by the posts, wires, or other apparatus, of a telegraphic line, the company shall be responsible in damages to the party injured. If the same are erected on a highway or town way, the city or town shall not, by reason of any thing contained in this chapter, or done thereunder, be discharged from its liability, but all damages and costs recovered against a city or town on account of such injury, shall be reimbursed by the company owning the posts, wires, or other apparatus.

In case of damage, company liable, &c.  
Liability of towns.  
1850, 260, §§ 1, 2.  
1851, 247, § 2.

SECT. 12. Every telegraph company shall annually on or before the

Corporation to

make annual returns, &c.  
1851, 247, § 5.  
1857, 40.  
1853, 46.

Unincorporated companies subject to this chapter.

1849, 93, §§ 1, 6.  
1851, 247, § 2.

No easement obtained by having telegraph posts, &c.  
1851, 247, § 1.

Penalty for injuring, &c., lines, wires, &c.  
1849, 93, § 7.

fifteenth day of October make returns to the secretary of the commonwealth, according to forms to be furnished on application to him, specifying therein the location and line of its telegraph, its name, capital actually paid in and how invested, annual receipts and expenditures, real estate and its value, cash on hand, credits on book account, and the amount of its indebtedness; which return shall be signed by the president, clerk, and treasurer, of the company, and by them be sworn to be true according to the best of their knowledge and belief.

SECT. 13. Owners and associations engaged in the business of telegraphing for the public by electricity, although not incorporated, shall be subject to the liabilities and governed by the provisions of this chapter in the same manner as corporations.

SECT. 14. No enjoyment by a person or corporation for any length of time of the privilege of having or maintaining telegraph posts, wires, or apparatus, in, upon, over, or attached to, any buildings or lands of other persons, shall give a legal right to the continued enjoyment of such easement, or raise any presumption of a grant thereof.

SECT. 15. Whoever unlawfully and intentionally injures, molests, or destroys, any of the lines, wires, posts, piers, or abutments, or any of the materials or property, of any company, owner, or association, shall be punished by fine not exceeding five hundred dollars, or imprisonment not exceeding two years, or both.

## CHAPTER 65.

### OF AQUEDUCT CORPORATIONS.

#### SECTION

1. Proprietors of aqueducts, how incorporated.
2. Corporate name.
3. Organization, meetings, and choice of clerk.
4. Shares and transfers to be entered in books.
5. Directors, &c., to be chosen.
6. Assessments, how made and collected.
7. Shares, personal estate, &c.
8. Real estate.
9. Corporation may dig up highways, &c.

#### SECTION

10. Liability of corporators after dissolution of company.
11. If no corporate property, individuals liable for debts.
12. Upon dissolution, corporators to be tenants in common of the real estate.
13. Penalty for injuring aqueducts.
14. Towns to have use of water in case of fires.
15. Warrants of distress for damages, as against railroad corporations.
16. Application, when to be filed.

Proprietors of aqueducts, how incorporated.  
R. S. 40, § 1.

SECTION 1. Persons who have associated by an agreement in writing to become proprietors of an aqueduct for the purpose of conveying fresh water into or within a city or town, or of funds for establishing such aqueduct, may apply in writing to a justice of the peace for the county in which the aqueduct or any portion thereof is situated or proposed to be made, stating the name and style of their association and the objects of their proposed meeting, and requesting him to call the same. The justice may thereupon issue his warrant stating the time, place, and objects of the meeting, and directing some one of the persons applying to notify the same; who shall post up in some public place in the city or town the substance of the warrant with his notice annexed thereto seven days at least before the meeting.

Corporate name, &c.  
R. S. 40, § 2.

SECT. 2. The proprietors organized in pursuance of such warrant and their successors shall be a corporation by the name and style which they have adopted. Such corporation and every corporation organized under chapter forty of the Revised Statutes shall be subject to the provisions of this chapter.



SECT. 3. The proprietors may at a legal meeting agree upon the method of calling future meetings of the corporation, and may choose a clerk, who shall be sworn, and shall record in books to be provided and kept by him for that purpose all by-laws, votes, and other proceedings, of the corporation; which books shall at all times be subject to the inspection of any person appointed for that purpose by the legislature.

Organization, meetings, and choice of clerk. R. S. 40, § 3.

SECT. 4. The clerk at or immediately after the first meeting shall enter in the books the names of the several proprietors and the shares owned by each; and transfers of shares shall be entered by him in the books within three months after they are made, in such form and for such fees as the directors order. No person shall be deemed a proprietor whose share or interest is not so entered.

Shares and transfers to be entered in books. R. S. 40, § 4.

SECT. 5. The proprietors may choose any number of directors and other officers to manage the business; and the directors shall choose one of their number to be the president of the corporation.

Directors, &c., to be chosen. R. S. 40, § 6.

SECT. 6. The directors may make such assessments on each share as they find necessary; and on the default of any proprietor to pay an assessment for thirty days after notice thereof, they may sell by public auction so many of his shares as will be sufficient to pay the same with necessary charges; the sale of such shares being first advertised three weeks successively in some newspaper printed in the county, or notifications thereof being posted up thirty days at least before the sale in some public places in the city or town. All surplus moneys arising from the sale shall be paid to the owner of the shares sold.

Assessments, how made and collected. R. S. 40, § 7.

SECT. 7. The shares shall be deemed personal estate, and be transferable by such mode of conveyance in writing as the corporation determines.

Shares, personal estate, &c. R. S. 40, § 5.

SECT. 8. Each corporation may purchase and hold real estate necessary for the purpose of its association not exceeding thirty thousand dollars in value.

Real estate. R. S. 40, § 8.

SECT. 9. A corporation may, with the assent of the mayor and aldermen or selectmen in writing, dig up and open any street or way for the purpose of placing such pipes as are necessary in constructing its aqueduct, or for repairing or extending the same: *provided*, the same be done in such manner as not to prevent the convenient passing of teams and carriages.

Corporation may dig up highways, &c. R. S. 40, § 9.

SECT. 10. Contracts made by or with a corporation shall remain in force after its dissolution. The last shareholders shall continue liable and capable as a corporation in all suits respecting such contracts and agreements until they are performed: *provided*, that suit is commenced within six years after the dissolution, or within the like time after the right of action accrued.

Liability of corporations after dissolution of company. R. S. 40, § 10.

SECT. 11. If no corporate property can be found to satisfy a judgment recovered against the shareholders after the dissolution, and it is not satisfied within six months after it is recovered, the judgment creditor may satisfy the same out of the private estate of such shareholders or any of them, in the same manner as if the judgment had been against them in their private capacity.

If no corporate property, individuals liable for debts. R. S. 40, § 11.

SECT. 12. If the corporation at its dissolution is seised of real estate, the several persons who are then proprietors shall become tenants in common thereof in proportion to the shares or interests which they then respectively hold in the stock of the corporation.

Upon dissolution, real estate to be in common. R. S. 40, § 12.

SECT. 13. Whoever shall maliciously injure an aqueduct or any of its appurtenances shall forfeit a sum not exceeding one hundred dollars, to the use of the city or town in which the offence is committed, to be recovered in an action of tort; and shall pay treble the amount of the damages sustained by the corporation, to be recovered in a like action.

Penalty for injuring aqueducts. R. S. 40, § 14. 1852, 312.

SECT. 14. A city or town in which such aqueduct is situated may put conductors into the pipes for the purpose of drawing therefrom, free

Towns to have use of water in



case of fires.  
R. S. 40, § 15.

Warrants of  
distress for  
damages, as  
against rail-  
road corpora-  
tions.  
1851, 289, § 1.  
See Ch. 63, §§ 33,  
34.

Application,  
when to be  
filed.  
1851, 289, § 2.

of expense, as much water as is necessary when a building is on fire therein: *provided*, that the conductors are so secured that water shall not be drawn therefrom unless for the purpose of extinguishing fires.

SECT. 15. When, upon the application of a person who has sustained injury in his lands, or by the diversion of water, from the operations of an aqueduct corporation, damages have been assessed against such corporation by county commissioners or the verdict of a jury, in pursuance of authority conferred upon them by the act incorporating the company or otherwise, the commissioners may issue warrants of distress to compel payment of such damages with interest and costs, in the manner and with the limitations prescribed in relation to railroad corporations.

SECT. 16. No such damages shall be recovered or allowed against a corporation, except for injuries sustained within three years next preceding the filing of the application to the county commissioners.

CHAPTER 66.

1861 Ch. 180

OF AGRICULTURAL AND HORTICULTURAL SOCIETIES.

SECTION

1. Agricultural societies may be entitled to annual sum from the treasury, by, &c.
2. Societies claiming allowance to file certificate.
3. Bounty.
4. Restriction on premiums.
5. Societies to make annual returns, with passages, &c., marked.
6. Forfeiture of bounty.
7. Premiums to be offered by societies, &c.
8. for trees for ship timber.
9. Surplus to be at interest.
10. To what societies provisions apply.
11. Cattle shows regulated.

SECTION

12. Penalty.
13. Extent of foregoing provisions.
14. Marshals to be appointed to execute regulations; to have powers of constables.
15. Field crop for premium to be weighed, &c.
16. Time of annual exhibitions.

AGRICULTURAL, HORTICULTURAL, AND ORNAMENTAL TREE ASSOCIATIONS.

17. Ten or more persons may become a corporation. Powers and privileges.

FARMERS' CLUBS.

18. Farmers' clubs to receive publications, &c.

Agricultural societies may be entitled to annual sum from the treasury, by, &c.  
R. S. 42, § 1.  
1852, 246.

Societies claiming allowance to file certificate.  
R. S. 42, § 3.  
1847, 69, § 1.  
1852, 142, § 4.  
1853, 127, § 1.

Bounty.  
R. S. 42, § 3.  
1847, 69, § 2.

Restriction on premiums.  
1856, 181, § 1.  
1859, 232, § 1.

SECTION 1. Every incorporated agricultural society which has raised by contribution of individuals and put out at interest on public or private security, or invested in real estate, buildings, and appurtenances, for its use and accommodation, the sum of one thousand dollars, as a capital appropriated for the uses of the society, shall be entitled to receive in the month of October annually, out of the treasury of the commonwealth, the sum of two hundred dollars, and in that proportion annually for any greater sum so contributed and put at interest or invested; but no society shall receive from the treasury more than six hundred dollars in one year.

SECT. 2. Every society which claims said bounty shall annually on or before the tenth day of December, file in the office of the secretary of the board of agriculture a certificate signed by its president and treasurer, specifying under oath the sum so actually contributed and put at interest or invested in real estate, buildings, or appurtenances, for its use and accommodation, and then held so invested, or well secured as a capital stock.

SECT. 3. The amount of bounty to which a society is entitled for any year shall be ascertained by the certificate last filed by it under the preceding section.

SECT. 4. No society receiving the bounty shall distribute any part thereof for an animal or article for which a premium is awarded, unless it was produced within the limits of the society, or the animal has been

owned and kept within its limits, by the person to whom the premium is awarded, for three months next preceding the award. And no animal or article for which a premium has been awarded to the owners by any such society shall be considered a subject for any further premium of the society, except for qualities different from those for which the former premium was awarded, or for a higher premium, and no animal or article shall be offered for a premium at more than one such society in the same year; but nothing in this chapter shall affect, restrain, or limit, a competitor for premiums offered by the state board of agriculture or the Massachusetts Society for the Promotion of Agriculture to be awarded within the incorporated county agricultural societies, but such premiums shall be subject to the rules and regulations prescribed by said board or the trustees of said Massachusetts Society.

SECT. 5. Every such society shall annually on or before the tenth day of December make a full return of its doings, signed by its president and secretary, to the secretary of the board of agriculture, embracing a statement of the expenditure of all money, specifying the nature of the encouragement proposed by the society, the objects for which its premiums have been offered, and the persons to whom they have been awarded, and including all reports of committees and all statements of experiments and cultivation regarded by the president and secretary as worthy of publication; and shall accompany the same with such general observations concerning the state of agriculture and manufactures in the state as it may deem important or useful. The return, whether in printed or manuscript form, shall be marked in such manner that those passages in the several reports and statements deemed by such officers most worthy of public notice, study, and application, may be easily distinguished.

SECT. 6. A society which neglects in any year to comply with the laws relating thereto, or with the regulations of the board of agriculture, shall not be entitled to the bounty of the state the year next succeeding.

SECT. 7. Every society which receives said bounty shall offer annually, by way of premiums, or shall otherwise apply for the encouragement or improvement of agriculture or manufactures, a sum not less than the amount so annually received, and shall offer such premiums for agricultural experiments and in such manner as the state board of agriculture requires.

SECT. 8. Every such society shall annually offer such premiums and encouragement for the raising and preserving of oaks and other forest trees, as to it seems proper and best adapted to perpetuate within the state an adequate supply of ship timber.

SECT. 9. All money offered for premiums which is not awarded or paid shall be put out at interest and added to the capital stock of the society.

SECT. 10. The foregoing provisions shall not extend to an agricultural society incorporated for any territory less than a county, except by special enactment for that purpose.

SECT. 11. Incorporated agricultural societies may by their officers define and fix bounds of sufficient extent for the erection of their cattle pens and yards, and for convenient passage ways to and about the same, on the days of their cattle shows and exhibitions, and also for their ploughing matches and trials of working oxen; within which bounds no persons shall be permitted to enter or pass unless in conformity with the regulations of the officers of such societies.

SECT. 12. Whoever contrary to the regulations, and after notice thereof, enters or passes within the bounds so fixed, shall forfeit a sum not exceeding five dollars.

SECT. 13. The foregoing provisions shall not authorize a society to

Societies to make annual returns, with passages, &c., marked.  
R. S. 42, § 4.  
1847, 69, § 1.  
1852, 142, § 4.  
1853, 127, § 1.

Forfeiture of bounty.  
1847, 69, § 3.  
1853, 127, § 3.  
1856, 181, § 2.  
1859, 232, § 5.

Premiums to be offered by societies, &c.  
R. S. 42, § 4.  
1859, 232, § 4.

for trees for ship timber.  
R. S. 42, § 6.

Surplus to be at interest.  
R. S. 42, § 5.

To what societies provisions apply.  
R. S. 42, § 7.

Cattle shows regulated.  
R. S. 42, § 8.

1861 Ch. 127.  
Penalty.  
R. S. 42, § 9.  
1847, 69, § 5.

Limit of bounds.  
R. S. 42, § 10.

occupy or include within such bounds the land of any person without his consent, nor to obstruct the public travel on any turnpike or public highway.

Marshals to be appointed to execute regulations ; to have powers of constables.  
R. S. 42, § 11.

SECT. 14. The officers of each society may appoint a sufficient number of suitable persons, inhabitants of the county, to act as marshals at cattle shows and exhibitions, who shall have and exercise all the powers of constables in relation to the preservation of the public peace and the service and execution of criminal process within the respective towns where such shows and exhibitions are held, and which process may be directed to them accordingly ; and they shall exercise their office from twelve o'clock at noon of the day preceding the commencement of such shows and exhibitions until twelve o'clock at noon of the day succeeding the termination thereof, and no longer.

Field crop for premium to be weighed, &c.  
1859, 231, § 2.

SECT. 15. No incorporated agricultural society shall award a premium for a field crop, without satisfactory evidence under oath presented to its committee or other officers, that the whole merchantable crop entered for premium was weighed when harvested if a grass or root crop, and when threshed or husked if a grain or corn crop ; but such society may require further modes of ascertaining the merchantable amount of product, either at the time of harvesting or at any other times.

Time of annual exhibitions.  
1859, 232, § 3.  
Sec 1860, Ch. 125.

SECT. 16. The agricultural societies shall commence their annual exhibitions as follows :—

Middlesex North, and Highland, on the last Thursday but two in September ;

Middlesex South, and Hampden East, on the last Tuesday but one of September ;

Middlesex, and Hampden, on the last Thursday but one of September ;

Essex, Worcester North, [*and Berkshire,*] on the last Tuesday of September ;

Housatonic, on the last Wednesday of September ;

Franklin, Worcester County West, and Norfolk, on the last Thursday of September ;

1860 Ch. 125.  
1861 Ch. 82  
1861 Ch. 103

Berkshire, Worcester, and Bristol, on the first Tuesday of October ;

Hampshire, Hampden, and Franklin, Worcester South, and Plymouth, on the first Thursday of October ;

Barnstable, on the second Tuesday of October ;

Nantucket, and Hampshire, on the second Thursday of October ;

Martha's Vineyard, on the third Tuesday of October.

#### AGRICULTURAL, HORTICULTURAL, AND ORNAMENTAL TREE ASSOCIATIONS.

Ten or more persons may become a corporation.  
Powers and privileges.  
1853, 312.

SECT. 17. Ten or more persons in any county, city, or town, within the state, who by agreement in writing associate for the purpose of encouraging agriculture, horticulture, or for improving and ornamenting the streets and public squares of any city or town by planting and cultivating ornamental trees therein, may become a corporation by such name as they assume therefor, upon calling their first meeting and being organized in the manner provided in sections ten and eleven of chapter thirty-three ; and shall thereupon during the pleasure of the legislature have for their purposes all the rights, powers, and privileges given by sections ten to thirteen of said chapter inclusive, and may hold real and personal estate not exceeding ten thousand dollars.

#### FARMERS' CLUBS.

SECT. 18. Farmers' clubs properly organized and holding regular meetings shall, upon application made annually in November to the

1861 Ch. 127 Farmers' clubs to receive pub-



secretary of the state board of agriculture, receive copies of the report of said board and its other publications in proportion to the number of their members and applications so made. Clubs receiving such benefits shall annually in October make returns to said secretary of the agricultural experiments made by them, and of the reports of their committees.

Heations, &c.  
1859, 203, § 2.

## CHAPTER 67.

### OF PROPRIETORS OF WHARVES, GENERAL FIELDS, AND REAL ESTATE LYING IN COMMON.

**SECTION**

1. Proprietors of common lands may be corporation.
2. Justice may call meeting.
3. Notice, &c., of first meeting.
4. Proprietors when assembled may organize, &c.
5. Tenure of offices.
6. Clerk to be sworn. Duty of.
7. Treasurer, duty and power of.
8. Proprietors may sue and be sued, &c.
9. may make by-laws.
10. Powers of moderator.
11. of proprietors at legal meeting.
12. Votes.
13. Proprietors may raise money, &c.
14. Assessments, how collected.
15. Sale of shares to pay assessments.
16. Owner of shares sold may redeem.
17. When proprietors may sell, &c.
18. After dissolution, records to be deposited, &c.
19. Certain corporate powers, &c., to remain.
20. After division, meetings may be held, &c.

**GENERAL FIELDS.**

21. Proprietors of general fields may hold meetings, &c.
22. Justice may issue warrant.
23. Meetings, how notified.
24. Votes. Proxies.

**SECTION**

25. Choice of clerk, assessors, &c. ; to be sworn.
26. field drivers.
27. Proprietors may make regulations, &c.
28. of enclosed land not to vote.
29. trespassing, &c., to be liable as strangers.
30. may raise money. Remedy for over-assessment.
31. Clerk to issue warrant for collecting, &c.
32. Proprietor injured by beasts of stranger.
33. Apportionment of fence, &c.
34. Proprietors when not to maintain fence.
35. Expense of apportioning fence, &c.
36. Proceedings when part of fence assigned is deficient.
37. Party neglecting to repair, liable to double damages, &c.
38. Liability to repair in case of sudden destruction, &c.
39. Any proprietor may enclose his land.
40. Proprietors to run lines once in two years, &c.
41. Superior court may order proprietors to fence land as general field.
42. Order not to be made, unless, &c.
43. After order, proprietors to have powers as if enclosed by consent.
44. Division may be made of general field by petition, &c.
45. Same subject.
46. Proprietors may discontinue general fields.

**SECTION 1.** When lands, wharves, or other real estate, are held in common by five or more proprietors, they may form themselves into a corporation in the manner and for the purposes hereinafter mentioned.

**SECT. 2.** Upon the application of five or more proprietors to a justice of the peace, he shall issue his warrant to one of the applicants directing him to call a meeting of all the proprietors, and expressing in the warrant the time, place, occasion, and purpose, of the meeting.

**SECT. 3.** The meeting shall be called by posting up a notice containing the substance of the warrant, and signed by the person to whom the warrant is directed ; which notice shall fourteen days at least before the meeting be posted up in one or more public places in the town, and published in a newspaper printed in the county where the estate lies. If there is no such paper then in a newspaper printed in some adjoining county.

**SECT. 4.** The proprietors when assembled pursuant to such notice may, upon a vote of a majority in number and interest of the votes which all the proprietors could cast if present, proceed to organize themselves as a corporation under the provisions of this chapter ; and they may thereupon choose a clerk, treasurer, collector, and such com-

Proprietors may be corporation.  
R. S. 43, § 1.  
10 Met. 408, 419.  
Justice may call meeting.  
R. S. 43, § 2.

Notice, &c., of first meeting.  
R. S. 43, § 3.

Proprietors when assembled may organize, &c.  
R. S. 43, § 4.

mittees and other officers, as they think necessary for the management of their affairs, and may agree upon and direct the manner of calling future meetings.

Tenure of offices.  
R. S. 43, § 16.  
Clerk to be sworn. Duty of.  
R. S. 43, § 14.

SECT. 5. All officers chosen by the proprietors shall hold their offices until their successors are chosen and qualified.

SECT. 6. The clerk shall be sworn, and shall record all votes, orders, and proceedings, of the proprietors, in books to be kept in his custody for that purpose until they are delivered to the clerk of the city or town as hereinafter provided.

Treasurer, duty and powers of.  
R. S. 43, § 15.

SECT. 7. The treasurer shall demand and receive all money due or belonging to them, shall sue for and recover in his own name to their use all fines and penalties incurred under sections nine and ten, shall pay out all money in his hands according to the order of the proprietors, and shall render his accounts thereof from time to time when required.

Proprietors may sue and be sued, &c.  
R. S. 43, § 12.

SECT. 8. Such proprietors may sue and be sued and prosecute and defend as a corporate body for any matters concerning their common property; and any action brought by them for trespass on their common property may be pleaded in abatement or answered in bar of an action for the same trespass brought by them or any of them in their individual capacity.

may make by-laws.  
R. S. 43, § 11.

SECT. 9. They may make by-laws not repugnant to the laws of the state for the orderly conducting of their business, with penalties for the breach thereof not exceeding three dollars for any one offence: *provided*, that such of them as have penalties annexed shall be approved by the commissioners in the county where the estate lies.

Power of moderator.  
R. S. 43, § 13.

SECT. 10. The moderator presiding at any meeting of the proprietors shall have the same power as the moderator of a town meeting, except the power of confining or causing any person to be carried out of the meeting; and all persons who resist or disobey his orders shall be subject to the pecuniary penalties provided for the like offences at a town meeting.

of proprietors at legal meeting.  
R. S. 43, § 5.

SECT. 11. The proprietors may at a legal meeting exercise any of the powers granted to them in this chapter; but no business shall be acted on unless it is expressed in the notice for the meeting.

Votes.  
R. S. 43, § 6.

SECT. 12. Each proprietor shall be entitled to vote according to the number of his shares or the amount of his interest when the same is known, and when not known, the proprietors shall vote equally. Absent proprietors may vote by proxy authorized in writing.

Proprietors may raise money, &c.  
R. S. 43, § 7.  
5 Greenl. 164.  
7 Greenl. 404.  
2 Mass. 475.  
10 Mass. 5.

SECT. 13. The proprietors may by vote adopt such measures as they think proper for managing, improving, or dividing, their common property, and for carrying on their business; and for this purpose they may raise money by assessments on the proprietors in proportion to their respective rights and interests in the property.

Assessments, how collected.  
R. S. 43, § 8.  
4 Greenl. 237.

SECT. 14. If a proprietor neglects to pay the sum so assessed on him for the space of six months after demand therefor by the collector or other proper officer, or after a notice of such assessment posted and published in the manner before prescribed for the first meeting, the committee of the proprietors or other officers authorized by them for that purpose, may sell by public auction so much of the right or share of such proprietor as is sufficient to pay the sum so due from him with all the reasonable charges of the sale, and shall give to the purchaser a deed of the part so sold.

Sale of shares to pay assessments.  
R. S. 43, § 9.

SECT. 15. No such sale shall be made until notice is given of the time and place appointed therefor by posting and publishing the same in the manner before provided for notifying the first meeting, thirty days at least before the time appointed for the sale.

Owner of shares sold may redeem.

SECT. 16. The proprietor of the share or part sold may, at any time within one year after the sale, redeem the same by paying to the pur-

chaser or his assigns the sum for which it was sold with interest at the rate of twelve per cent. a year from the time of the sale. R. S. 43, § 10.

SECT. 17. When the proprietors are ten or more in number, they may, upon a vote of more than two-thirds both in number and interest at any legal meeting, sell such estate and divide the proceeds thereof, and not otherwise. When proprietors may sell, &c. 1837, 180.

SECT. 18. After the final division of their common property the proprietors may cause their records to be deposited with the clerk of the city or town in which the land or any part of it lies; and the clerk may make and certify copies from the records in like manner as the clerk of the proprietors might have done. After dissolution, records to be deposited, &c. R. S. 43, § 17.

SECT. 19. A final division of the common property shall not dissolve the corporation until the expiration of ten years thereafter; but the persons who were members and proprietors at the time of the division, and their respective heirs, shall retain their corporate powers for the purpose of collecting all taxes, debts, and effects, due or belonging to the corporation, and shall be liable to pay all its debts. Certain corporate powers, &c., to remain. R. S. 43, § 18.

SECT. 20. The proprietors may, after such division and within ten years, call and hold meetings and vote and raise money by assessments as before provided for the payment of their debts and all other charges and demands against them, and may do all other lawful acts necessary for closing their business. After division, meetings may be held, &c. R. S. 43, § 19.

GENERAL FIELDS.

SECT. 21. When several distinct lots or pieces of land are enclosed and fenced in one common field, or when all the proprietors of such lands agree to enclose them in that manner, the proprietors if not less than five in number may in the manner hereinafter provided hold regular meetings from time to time for the purpose of managing their common concerns. Proprietors of general fields may hold meetings, &c. R. S. 43, § 20.

SECT. 22. Upon the application of two or more proprietors to a justice of the peace, he shall issue his warrant to one of the applicants directing him to call a meeting of the proprietors and expressing in the warrant the time, place, and purpose, of the meeting. Justice may issue warrant. R. S. 43, § 21. 3 Gray, 457.

SECT. 23. The meeting shall be called either in the manner prescribed in this chapter for calling meetings of tenants in common, or by personal notice served on each proprietor fourteen days at least before the time appointed for the meeting. Meetings, how notified. R. S. 43, § 22.

SECT. 24. Each proprietor may vote according to the relative amount or value of his interest, when known; and when not known, the proprietors shall vote equally. Absent proprietors may vote by proxy authorized in writing. Votes. Proxies. R. S. 43, § 23.

SECT. 25. The proprietors may from time to time choose a clerk, three or more assessors, a collector, and such other officers as they find necessary; all of whom shall continue in office until removed by the proprietors or until their successors are chosen and qualified; and the clerk and assessors shall be sworn. Choice of clerk, assessors, &c.; to be sworn. R. S. 43, § 24.

SECT. 26. They may choose one or more field drivers, who shall have and exercise the same powers with respect to the general fields that are exercised by field drivers chosen by a town. field drivers. R. S. 43, § 24.

SECT. 27. They may adopt such rules as to pasturing the lands and other matters in which they have a common interest as they think just and equitable and most for the general good; but in all other respects, each proprietor may manage and cultivate his land as he thinks best. Proprietor may make regulations, &c. R. S. 43, § 27.

SECT. 28. At meetings of proprietors for adopting rules or regulations as to pasturing, where a proprietor's land is enclosed for his exclusive benefit, it shall not be valued or reckoned in determining his right to vote on questions relating to pasturing his lands. of enclosed land not to vote. 1856, 216.

SECT. 29. If a proprietor puts into the general field any horses, trespassing,



&c., to be liable as strangers.  
R. S. 43, § 35.

cattle, or other beasts, contrary to the regulations of the proprietors, either by putting in more than the number allowed him, or before the day fixed for that purpose, or by keeping them therein longer than the time limited, he shall be considered a trespasser, and his beasts may be impounded as taken doing damage, in like manner as if he owned no land in the general field.

Proprietors may raise money.  
Remedy for over assessment.  
R. S. 43, § 25.

SECT. 30. The proprietors may raise money from time to time for defraying their common charges and managing their affairs, which money shall be assessed by the assessors upon the several proprietors in proportion to their respective interests; and any proprietor who thinks himself overrated in such assessment may apply for relief to the county commissioners, who shall hear and determine the case, and whose judgment thereon shall be final.

Clerk to issue warrant for collecting, &c.  
R. S. 43, § 26.  
See Ch. 12.

SECT. 31. The clerk shall issue his warrant to the collector, requiring him to collect all sums so assessed and to pay over the same to the clerk or other proper officer according to the orders of the proprietors. The collector shall collect said sums in the same manner as collectors of towns are authorized to collect town taxes.

Proprietor injured by beasts of stranger.  
R. S. 43, § 37.

SECT. 32. If a proprietor is injured in his lands by the beasts of a stranger, he shall have the same remedy therefor as if his land had been enclosed and used separately.

Apportionment of fence, &c.  
R. S. 43, § 28.

SECT. 33. The whole fence enclosing such general field shall, so far as it may be found convenient, be apportioned among the proprietors according to the number of acres held and cultivated or otherwise used by each one; and the part to be maintained by each proprietor shall be set out and assigned to him by any two or more fence-viewers, unless the proprietors agree on an apportionment of the fence among themselves. In all cases the proportion of fence so assigned to each proprietor shall be recorded by the clerk in the books of the proprietors; and where there is no clerk, the record shall be made by the clerk of the city or town in which the general field is situated.

Proprietors when not to maintain fence.  
R. S. 43, § 29.

SECT. 34. So long as a proprietor declines to cultivate his land, or to use it for pasturing, the growth of wood, or otherwise, he shall not be required to maintain any part of the fence, nor to pay any tax or assessment on account of his land.

Expense of apportioning fence, &c.  
R. S. 43, § 30.

SECT. 35. The expense of apportioning the fence and also of making and maintaining such part thereof as cannot be conveniently and justly assigned to any one proprietor, shall be borne by all the proprietors liable to be taxed, in proportion to their respective interests; and the part assigned to each proprietor shall be made and maintained by himself so long as he uses his part of the general field for pasturing, planting, mowing, or otherwise.

Proceedings when part of fence assigned is deficient.  
R. S. 43, § 31.

SECT. 36. If the part of the fence assigned to a proprietor becomes deficient and he does not repair it within three days after notice of such deficiency given him by a fence-viewer of the town, it may be repaired by any other proprietor; and such repairs may be examined by any two or more fence-viewers, and if adjudged by them to be sufficient, they shall ascertain and determine the cost of the repairs and make a statement thereof and of the amount of their fees in writing under their hands.

Party neglecting to repair, liable to double damages, &c.  
R. S. 43, § 32.  
1852, 312.

SECT. 37. The person making such repairs may demand of the proprietor bound to make them, or of the tenant holding under him, double the cost of the repairs and of the fees of the fence-viewers so ascertained; and if the same is not paid within one month after notice and demand, he may recover the same in an action of tort.

Liability to repair in case of sudden destruction, &c.  
R. S. 43, § 33.

SECT. 38. If a part of the fence is suddenly blown down or carried away by a flood or tempest at a time when the crops of grain or grass in the field are thereby exposed to immediate destruction or injury, the proprietor to whom that part of the fence was assigned shall be bound

to repair the same within twenty-four hours after notice thereof given him by a fence-viewer; and if he fails so to do, the fence may be repaired by any other proprietor, who may recover double the cost of the repairs and fees, in the manner provided in the preceding section.

SECT. 39. Any proprietor may enclose his land at his own expense; and so long as he keeps it enclosed with a sufficient fence, may cultivate and use it as he thinks fit; and during such period, so far as such enclosed land is concerned, he shall neither be assessed for any expenses incident to the common field, nor exercise any control over the portion thereof not enclosed.

Any proprietor may enclose his land.  
R. S. 43, § 36.  
1855, 418, § 1.

SECT. 40. Every proprietor of land lying unfenced in a general field shall once in every two years, if requested by the owner of the adjoining land, run lines with such owner between their lots, and shall make and keep up the boundaries between them by sufficient bound stones, at their joint expense. If he fails so to do after seven days' notice by the adjoining owner, he shall forfeit two dollars, to be recovered by such adjoining owner to his own use in an action of tort.

Proprietors to run lines once in two years, &c.  
R. S. 43, § 38.  
1852, 312.

SECT. 41. When five or more distinct lots or pieces of land are so situated as to render it for the interest of the proprietors to enclose them in one common field, the superior court for the county in which the land or any part of it lies may order it to be so enclosed, if upon a hearing of the parties it appears to the court to be for their common benefit.

Superior court may order proprietors to fence land as general field.  
R. S. 43, § 39.  
1859, 196.

SECT. 42. No such order shall be made unless upon the application of the greater part in interest of the proprietors, and after due notice to all other persons interested and a full hearing thereon.

Order not to be made unless, &c.  
R. S. 43, § 40.

SECT. 43. After a common or general field is so established by an order of the court, the further proceedings in relation thereto shall be the same as are provided when a field is so enclosed by the consent of the proprietors; and the proprietors shall be entitled to the privileges and subject to the duties before provided in this chapter with respect to the proprietors of fields enclosed by consent.

After order, proprietors to have powers as if enclosed by consent.  
R. S. 43, § 41.

SECT. 44. Three or more proprietors of lots in a general field lying within one general fence or enclosure may, by a petition in writing to the proprietors of such field at any meeting of said proprietors legally warned for the purpose, request to have their lots either alone or jointly with any other lots in such field divided from the remainder of the field in order to be enclosed in one common fence and occupied by them as an entire field separately from the other proprietors. If the majority of proprietors in interest present at such meeting withhold or refuse their assent to such division, the superior court may upon the like application appoint five disinterested and suitable persons within the county where the general field is situated, to be a committee to make the division, if they deem it expedient, and to assign to each field its proportion of the partition fence which becomes necessary by reason of such division, to be kept up and maintained by the proprietors of the said general fields respectively.

Division may be made of general field by petition, &c.  
R. S. 43, § 43.

SECT. 45. The committee shall as soon as may be after their appointment make return of their doings under their hands to the court; and after its acceptance by the court the fields so divided shall be deemed separate general fields, and the proprietors of the field set off and the remaining proprietors of the original field respectively shall be distinct and separate proprietary bodies, having like powers and privileges and subject to like duties and liabilities as the proprietors of the original general field before the division; but no order for such division shall be made, and no such committee shall be appointed, until the other proprietors have had notice of the petition for such division; which notice shall be given by serving the clerk of the proprietors with a copy of the petition thirty days at least before such order or appointment is made.

Same subject.  
R. S. 43, § 43.



Proprietors  
may discon-  
tinue general  
fields.  
R. S. 43, § 42.

SECT. 46. When the greater part in interest of the proprietors of a common field, whether established by consent or by an order of court, think best to discontinue it, they may do so at any legal meeting warned for the purpose; but the discontinuance shall not take place until the expiration of six months after the vote for that purpose.

## CHAPTER 68.

### OF THE POWERS, DUTIES, AND LIABILITIES, OF CORPORATIONS.

#### SECTION

1. Corporations, general powers of.
2. when to be organized.
3. first meeting of, under charters, how notified.
4. under general statutes.
5. In case of death, &c., of officers, justice may call meeting.
6. Officers may be elected, &c.
7. By-laws.
8. May convey lands.
9. Shares not to be issued for less than par.
10. Treasurer, &c., to keep, &c., list of stockholders, &c. Penalty.
11. Executors, &c., may vote.
12. Records of transfers to be made and kept in the state.
13. In transfers of stock as collateral security, debt to be described, &c.
14. Record of transfer to be exhibited to creditors upon request.
15. Property of foreign corporations subject to legal process. Mode of giving notices.
16. Stockholders liable individually for all debts due for labor within six months preceding demand, &c.
17. Remedy in equity against officers, &c., when liable for debts, &c.
18. Executor, &c., not liable as stockholder, &c.
19. List of unclaimed dividends, &c., to be published.
20. Certain corporations to make returns of stocks, &c., to assessors, and register names, &c.

#### SECTION

21. Banks and insurance companies to return collaterals.
22. Penalty for neglect or false return.
23. for transfer to avoid taxation, &c.
24. Warrants of distress against corporations for damages, &c.
25. Franchise, &c., how attached on mesne process.
26. may be sold on execution, &c.
27. Mode of sale, &c.
28. Sale may be adjourned.
29. Who shall be deemed highest bidder.
30. Officer's return to transfer the right of toll, &c.
31. Purchaser to have the same remedies for damages as corporation.
32. Liabilities to continue.
33. Corporation may redeem franchise.
34. Proceedings, where had.
35. Corporations may be dissolved upon petition, &c.
36. to continue three years after charter expires, to close concerns.
37. When corporations expire, &c., receivers to be appointed.
38. Equity jurisdiction of S. J. C.
39. Receivers to pay debts and distribute surplus.
40. Corporations now existing may act under charters, except, &c.
41. Certain charters to be subject to alteration or repeal.

Corporations,  
general powers  
of.  
R. S. 44, § 1.  
10 Mass. 91.  
7 Met. 592.

SECTION 1. All corporations where no other provision is specially made may in their corporate name sue and be sued, appear, prosecute, and defend to final judgment and execution; have a common seal, which they may alter at pleasure; elect in such manner as they determine all necessary officers, fix their compensation and define their duties and obligations; and make by-laws and regulations, consistent with the laws of the state, for their own government, the due and orderly conducting of their affairs, and the management of their property.

SECT. 2. Corporations created by charter, if no time is limited therein, shall be organized within two years from the passage of their respective acts of incorporation.

SECT. 3. The first meeting of such corporations, unless otherwise provided in their acts of incorporation, shall be called by a notice signed by the person or a majority of the persons named therein, setting forth the time, place, and purposes, of the meeting; and such notice shall seven days at least before the meeting be delivered to each member, or published in some newspaper of the county where the corporation is established, or if there is no such paper, then in some newspaper of an

when to be  
organized.  
1856, 264, § 1.

first meeting  
of, how notified.  
R. S. 44, § 3.  
1855, 140.  
16 Mass. 94.  
3 Met. 282.  
See Ch. 118,  
§ 117.



adjoining county. The persons so named and their associate subscribers to stock prior to the date of their act, shall be authorized to hold the franchise or privileges granted until the corporation is organized. The notice of the first meeting of incorporated religious societies may be affixed to the door or some other conspicuous part of their meeting-house.

SECT. 4. The first meeting of any corporation organized under general statutes authorizing the formation of such corporation, may be called in the manner set forth in the articles of association, or if they make no provision, by a notice signed by a majority of the associates and published in the manner prescribed in the preceding section.

First meeting of corporations organized under general statutes.

SECT. 5. When by reason of the death, absence, or other legal impediment, of the officers of a corporation, there is no person duly authorized to call or preside at a legal meeting, any justice of the peace in the county where the corporation is established may on a written application of three or more of the members issue a warrant to either of them, directing him to call a meeting by giving such notice as had been previously required by law; and the justice may in the same warrant direct such person to preside at the meeting until a clerk shall be duly chosen and qualified, if no officer is present legally authorized to preside.

In case of death, &c., of officers, justice may call meeting.  
R. S. 44, § 4.

SECT. 6. A corporation when so assembled may elect officers to fill all vacancies, and act upon such other business as may by law be transacted at a regular meeting.

Officers may be elected, &c.  
R. S. 44, § 5.

SECT. 7. Corporations may by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings; the number of members that shall constitute a quorum; the number of shares that shall entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the non-payment of assessments; and the tenure of office of the several officers. They may annex suitable penalties to such by-laws, not exceeding the sum of twenty dollars for one offence; but no by-law shall be made by a corporation repugnant to its charter, or the laws of the state.

By-laws.  
R. S. 44, § 2.  
8 Met. 321.

SECT. 8. Every corporation may convey lands to which it has a legal title.

May convey lands.  
R. S. 44, § 6.

SECT. 9. Corporations having a capital stock divided into shares, unless specially authorized, shall not issue any shares for a less amount to be actually paid in on each share than the par value of the shares first issued.

Shares not to be issued for less than par.  
1858, 167.  
1859, 104, §§ 1, 2.

1861 Ch. 128 § 1.

SECT. 10. The treasurer or cashier of every corporation shall keep an accurate list of its stockholders with the number of shares owned by each, which shall at all times, upon written application by any stockholder, be exhibited for his inspection. If such officer refuses so to exhibit such list, he shall forfeit fifty dollars for each offence.

Treasurer, &c., to keep, &c., list of stockholders, &c.  
Penalty.  
1858, 144, §§ 1, 2.

SECT. 11. An executor, administrator, guardian, or trustee, shall represent the shares or stock in his hands at all meetings of the corporation, and may vote as a stockholder.

Executors, &c., may vote.  
1838, 98, § 2.  
9 Cush. 192.

SECT. 12. All records of transfers of stock in companies incorporated by the sole authority of this state, shall be made and kept within the state. The officer of every company whose duty it is to record such transfers shall at the time of his appointment be a resident within the state; and when he ceases to be a resident the office shall become vacant.

Records of transfers to be made and kept in the state.  
1847, 107.

SECT. 13. In transfers of stock as collateral security, the debt or duty which such transfer is intended to secure shall be substantially described in the deed or instrument of transfer. A certificate of stock issued to a pledgee or holder of such collateral security shall express on the face of it that the same is so holden; and the name of the pledger shall be stated therein, who alone shall be responsible as a stockholder.

In transfers of stock as security, debt to be described, &c.  
1838, 98, § 3.  
9 Cush. 192.

SECT. 14. The treasurer, cashier, or other officer who has the lawful

Record of transfer to be exhib-

ited to creditors upon request.  
1838, 98, § 4.  
9 Cush. 192.

Property of foreign corporations subject to legal process.  
1839, 158.  
3 Met. 420, 564.

Stockholders liable for debts due for labor within six months preceding demand, &c.  
1851, 133, § 15.  
1851, 252.  
1852, 9.  
1855, 146, § 1.

Remedy in equity against officers, &c., when liable, &c.  
R. S. 38, §§ 31, 32.  
R. S. 44, § 22.  
8 Cush. 93.

Executor, &c., not liable as stockholder, &c.  
1838, 98, § 1.  
9 Cush. 192.

List of unclaimed dividends, &c., to be published.  
1837, 56.

1861 Ch. 120  
Certain corporations to make returns of stocks, &c., to assessors, and register names, &c.  
1843, 98, § 1.  
1850, 308, § 1.  
1851, 133, § 12.  
1853, 33, 78.  
1855, 466, § 1.  
1856, 252, § 17.  
1859, 227.

custody of the records of transfers of shares, upon the written request of a creditor of the general owner of stock pledged or transferred, shall exhibit to him the record of such transfer; and in case of refusal and of loss to the creditor by reason thereof, the corporation shall be liable for the amount of the loss.

SECT. 15. Corporations created by any other state, having property in this state, shall be liable to be sued and their property shall be subject to attachment in like manner as residents of other states having property in this state are liable to be sued and their property to be attached. The service of the writ shall be made in the manner provided in chapters one hundred and twenty-three and one hundred and twenty-six, with such further service as the court to which the writ is returnable may order.

SECT. 16. The stockholders of every corporation organized under an act of incorporation passed since the eleventh day of March in the year one thousand eight hundred and thirty-one, or which is hereafter organized under any special or general act, for manufacturing, mechanical, mining, or quarrying business, cutting and storing ice, or making of gas, shall be jointly and severally individually liable for all debts that may be due or owing to all the laborers, servants and apprentices, of the corporation for service performed by themselves, their wives, or minor children, as operatives for such corporation, within six months next preceding the demand made for such debt; and for the recovery thereof as well as to obtain contribution therefor in case of payment by any stockholder, the party entitled may have an action of contract against the party or parties liable to pay or contribute.

SECT. 17. When the officers, stockholders, or members, of a corporation, or any of them, are liable for any of its debts, or for their acts or omissions respecting its business, or when some of them are liable to contribute for money paid by others on account of such debts, acts, or omissions, the party entitled may, instead of any remedy otherwise provided, maintain a suit in equity in the supreme judicial court.

SECT. 18. Persons holding stock in a corporation as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in the trust fund, would be if they were respectively living and competent to act and held the stock in their own names.

SECT. 19. Each corporation in this state shall once in every five years publish in some newspaper in the city of Boston, and also in some newspaper, if there is any, in the county where the corporation is established, a list of all dividends and balances which have remained unclaimed for two years or more, with the names of the persons to whose credit the dividends or balances stand; which publication shall be continued in three successive papers.

SECT. 20. Banks, insurance companies, corporations mentioned in chapters sixty and sixty-one, railroad, bridge, turnpike, canal, and aqueduct corporations, shall register the names and residences of their stockholders, and all changes therein of which they are notified; shall issue no certificate to a purchaser until he informs the corporation of his actual place of residence, and shall annually between the first and tenth days of May return by mail or otherwise to the assessors of each city or town in the state in which any shareholder in the corporation resided on the first day of said month, the name of each shareholder so residing, with the number of shares belonging to him on said day, and the par and cash market value of such shares; and shall also state the whole amount of the capital stock of the corporation, and the amount, at the value at which it was last assessed, of its real estate subject to assess-



ment on the first day of May, and of machinery as last assessed to it in the city or town where its place of business is situated.

SECT. 21. Banks and insurance companies shall at the same time and in like manner make return to the assessors of each city and town in the state in which any borrower of money on collateral security resided on the first day of May in that year, of the number of shares of corporate stocks of all kinds then held by them as collateral security for the debt or liability of such person, giving the name of the person, the number of shares, the denomination of the stocks, and the par and cash market value thereof, if known.

Banks and insurance companies to return collaterals.  
1849, 110.  
1856, 252, § 17.

SECT. 22. If a corporation refuses or neglects to make the returns required by the two preceding sections or makes a false return, it shall forfeit for every offence a sum not less than fifty nor more than one thousand dollars, to the use of the city or town in which the shareholder resides, to be recovered in an action of tort.

Penalty for neglect, or false return.  
1850, 308, § 2.  
1855, 466, § 1.  
1856, 252, § 17.

SECT. 23. If a shareholder fraudulently transfers a share in either of the corporations mentioned in section twenty, to avoid taxation, he shall forfeit to the use of the city or town in which he resides one-half of the par value of the shares thus transferred to be recovered in an action of tort; and if he wilfully misinforms the corporation respecting his name or place of residence, or having changed his residence to another city or town in this state, wilfully omits to give immediate notice thereof to the corporation, he shall forfeit a sum not exceeding one hundred dollars.

for transfer to avoid taxation, &c.  
1843, 98, § 3.  
1851, 133, § 12.  
1853, 78.  
1859, 227.

SECT. 24. When damages have been assessed in favor of any person, either by an order of county commissioners or by the verdict of a jury, for an injury sustained in his property by the doings of any turnpike or other corporation (except railroads) authorized to receive toll, and the damages remain unpaid for thirty days after the order or verdict, such person may have a warrant of distress against the corporation for the damages assessed, together with interest thereon and his reasonable costs.

Warrants of distress against corporations for damages, &c.  
R. S. 44, § 20.  
1847, 259, § 5.

SECT. 25. The franchise of a turnpike or other corporation authorized to receive toll, and all the rights and privileges thereof, shall be liable to attachment on mesne process; and when such attachment or other service of mesne process is made on a corporation, the officer serving the same shall leave an attested copy of the process and his return thereon with the clerk, treasurer, or some one of the directors, of the corporation, fourteen days at least before the day of the sitting of the court to which the same is returnable.

Franchise, &c., how attached on mesne process.  
R. S. 44, § 11.  
5 Cush. 309.

SECT. 26. When a judgment is recovered against a turnpike or other corporation authorized to receive toll, its franchise, with all the rights and privileges thereof, so far as relates to the receiving of toll, and also all other corporate property, real and personal, may be taken on execution or warrant of distress and sold by public auction.

may be sold on execution, &c.  
R. S. 44, § 12.

SECT. 27. The officer having such execution or warrant of distress shall, thirty days at least before the day of sale of any franchise or other corporate personal property, give notice of the time and place of sale, by posting up a notification thereof in any city or town in which the clerk, treasurer, or any one of the directors, dwells, and also by causing an advertisement of the sale, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively in some newspaper published in any county in which either of said officers of the corporation dwells, if any such there is; the last of which publications shall be at least four days before the day of sale.

Mode of sale, &c.  
R. S. 44, § 13.

SECT. 28. The officer who levies an execution or warrant of distress may adjourn the sale for a time not exceeding seven days, and so from time to time until the sale is completed.

Sale may be adjourned.  
R. S. 44, § 14.



Who shall be deemed highest bidder.  
R. S. 44, § 15.

SECT. 29. In the sale of such franchise, the person who satisfies the execution or warrant of distress with all legal fees and expenses thereon, or who agrees to take such franchise for the shortest period of time, and to receive during that time all such toll as the corporation would by law be entitled to demand, shall be considered as the highest bidder.

Officer's return to transfer the right of toll, &c.  
R. S. 44, § 16.

SECT. 30. The officer's return on the execution or warrant of distress shall transfer to the purchaser all the privileges and immunities which by law belonged to the corporation so far as relates to the right of demanding toll; and the officer shall immediately after the sale deliver to the purchaser possession of all the toll-houses and gates belonging to the corporation, in whatever county the same are situated; and the purchaser may thereupon demand and receive to his own use all the toll which accrues within the time limited by the term of his purchase, in the same manner and under the same regulations as the corporation was before authorized to demand and receive the same.

Purchaser to have same remedies for damages as corporation.  
R. S. 44, § 17.  
1852, 312.

SECT. 31. A person who has purchased the franchise of any turnpike or other corporation under a sale upon execution or warrant of distress, and the assignee of such person, may recover in an action of tort any penalties imposed by law for an injury to the franchise or for other cause, and which such corporation would have been entitled to recover during the time limited in the purchase of the franchise; and during that time the corporation shall not be entitled to prosecute for such penalties.

Liabilities to continue.  
R. S. 44, § 18.

SECT. 32. The corporation whose franchise has been so sold shall in all other respects retain its powers, be bound to the discharge of its duties, and liable to the same penalties and forfeitures, as before the sale.

Corporation may redeem franchise.  
R. S. 44, § 19.

SECT. 33. The corporation may at any time within three months from the time of sale redeem the franchise by paying or tendering to the purchaser the sum that he paid with twelve per cent. interest thereon, but without any allowance for the toll which he has received; and upon such payment or tender the franchise and all the rights and privileges thereof shall revert and belong to the corporation as if no such sale had been made.

Proceedings, where had.  
R. S. 44, § 21.

SECT. 34. All proceedings respecting attachments and the levy of executions or warrants of distress may be had in any county in which the creditor, president, treasurer, clerk, or a director, of the corporation resides.

Corporations may be dissolved upon petition, &c.  
1852, 55, §§ 1, 3.  
7 Gray, 119, 406.

SECT. 35. When a majority in number or interest of the members of a corporation desire to close their concerns, they may apply by petition to the supreme judicial court, setting forth in substance the grounds of their application, and the court, after due notice to all parties interested, may proceed to hear the matter, and for reasonable cause decree a dissolution of the corporation. Corporations so dissolved shall be deemed and held extinct in all respects as if their charters had expired by their own limitation.

to continue three years after charter expires, to close concerns.  
R. S. 44, § 7.  
16 Mass. 245.  
1 Greenl. 79.  
See Ch. 57, § 106.

SECT. 36. Corporations whose charters expire by their own limitation or are annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which they were established.

When corporations expire, &c., receivers to be appointed.  
R. S. 44, § 8.  
1852, 55, § 2.  
7 Met. 595.

SECT. 37. When the charter of a corporation expires or is annulled, or the corporation is dissolved as provided in section thirty-five, the supreme judicial court on application of a creditor, stockholder, or member, at any time within said three years, may appoint one or more persons to be receivers or trustees to take charge of its estate and effects, and collect the debts and property due and belonging to it; with power

to prosecute and defend suits in the name of the corporation or otherwise, to appoint agents under them, and do all other acts, which might be done by such corporation if in being, that are necessary for the final settlement of the unfinished business of the corporation. The powers of such receivers may be continued as long as the court deems necessary for said purposes.

SECT. 38. The court shall have jurisdiction in equity of the application and of all questions arising in the proceedings thereon; and may make such orders, injunctions, and decrees, therein, as justice and equity require.

Equity jurisdiction of S. J. C. R. S. 44, § 9. 1852, 55, § 2. 7 Met. 341.

SECT. 39. The receivers shall pay all debts due from the corporation, if the funds in their hands are sufficient therefor, and if not, they shall distribute the same ratably among the creditors who prove their debts in the manner directed by any order or decree of the court for that purpose. If there is a balance remaining after the payment of the debts, the receivers shall distribute and pay it to and among those who are justly entitled thereto as having been stockholders or members of the corporation, or their legal representatives.

Receivers to pay debts and distribute surplus. R. S. 44, § 10. 1852, 55, § 2. 1 Gray, 387.

SECT. 40. Corporations now existing shall continue to exercise and enjoy their powers and privileges according to their respective charters and to the laws in force, and shall continue subject to all the liabilities to which they are now subject; except so far as said powers, privileges, and liabilities, are modified or controlled by the provisions of these statutes.

Corporations now existing may act under charters, except, &c. R. S. 38, § 36.

SECT. 41. Every act of incorporation passed after the eleventh day of March in the year one thousand eight hundred and thirty-one, shall be subject to amendment, alteration, or repeal, at the pleasure of the legislature: but the corporation, notwithstanding such repeal, shall be subject to the provisions of sections thirty-six and thirty-seven of this chapter; and such amendment, alteration, or repeal, shall not take away or impair any other remedy which may exist by law consistently with those sections against the corporation, its members or officers, for any liability previously incurred.

Certain charters to be subject to alteration or repeal. R. S. 38, § 36. R. S. 44, § 23. 6 Cush. 424. 4 Gray, 234.

## TITLE XV.

### OF THE INTERNAL POLICE OF THE COMMONWEALTH.

- CHAPTER 69. — Of the Settlement of Paupers.
- CHAPTER 70. — Of the Support of Paupers by Cities and Towns.
- CHAPTER 71. — Of Alien Passengers and State Paupers.
- CHAPTER 72. — Of the Maintenance of Bastard Children.
- CHAPTER 73. — Of the State Lunatic Hospitals.
- CHAPTER 74. — Of County Receptacles for Insane Persons.
- CHAPTER 75. — Of the State Industrial School for Girls.
- CHAPTER 76. — Of the State Reform School for Boys.
- CHAPTER 77. — Of the Law of the Road.
- CHAPTER 78. — Of Timber Afloat or Cast on Shore.

- CHAPTER 79.—Of Lost Goods and Stray Beasts.  
 CHAPTER 80.—Of Unclaimed Property Transported by Common Carriers.  
 CHAPTER 81.—Of Wrecks and Shipwrecked Goods.  
 CHAPTER 82.—Of the Preservation of Certain Birds and Animals.  
 CHAPTER 83.—Of Fisheries, Kelp and Seaweed.  
 CHAPTER 84.—Of the Observance of the Lord's Day.  
 CHAPTER 85.—Of Gaming.  
 CHAPTER 86.—Of the Manufacture, Sale, &c., of Intoxicating Liquors.  
 CHAPTER 87.—Of the Suppression of Common Nuisances.  
 CHAPTER 88.—Of Licenses, and Municipal Regulations of Police.

## CHAPTER 69.

### OF THE SETTLEMENT OF PAUPERS.

#### SECTION

1. Settlements, how acquired : 1. By married women. 2. By legitimate children. 3. By illegitimate children. 4. By living on freehold estate, &c. 5. By being assessed five successive years, &c. 6. By serving one year in certain town offices. 7. By settled and ordained ministers. 8. By persons admitted inhabitants by vote. 9. By incorpo-

#### SECTION

- ration of an unincorporated place. 10. Where to be upon division or incorporation of town. 11. Acquired by serving apprenticeship four years, &c. 12. By residence and paying taxes. 2. Provision for persons who have begun to acquire settlements. 3. Settlements to continue until, &c.

Settlements,  
how acquired.  
R. S. 45, § 1.

by married  
women.  
R. S. 45, § 1.  
9 Mass. 201.  
12 Mass. 353.  
1 Pick. 506.

by legitimate  
children.  
18 Pick. 264.  
8 Cush. 528.

by illegiti-  
mate children.  
13 Mass. 381.  
8 Cush. 75.

by living on  
freehold estate.  
14 Mass. 384.  
2 Pick. 29.  
3 Met. 165.  
5 Met. 350.  
13 Met. 192.  
4 Cush. 172.  
8 Cush. 525.  
1 Gray, 619.

by being as-  
sessed.  
11 Mass. 327.  
15 Mass. 160, 233.  
22 Pick. 385.  
24 Pick. 166.  
3 Met. 428.  
4 Met. 178.  
5 Met. 350.  
4 Cush. 537.  
11 Cush. 292.  
2 Gray, 482.  
4 Gray, 283.

by serving  
one year in

SECTION 1. Legal settlements may be acquired in any city or town, so as to oblige such place to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, in the manner following, and not otherwise, namely:—

First. A married woman shall follow and have the settlement of her husband, if he has any within the state; otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage.

Second. Legitimate children shall follow and have the settlement of their father, if he has any within the state, until they gain a settlement of their own; but if he has none, they shall in like manner follow and have the settlement of their mother, if she has any.

Third. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they may be born, if neither of their parents then has a settlement therein.

Fourth. Any person of the age of twenty-one years, being a citizen of this or any other of the United States, and having an estate of inheritance or freehold in any place within the state, and living on the same three years successively, shall thereby gain a settlement in such place.

Fifth. Any person of the age of twenty-one years, being a citizen of this or any other of the United States, and having an estate, the principal of which shall be set at two hundred dollars or the income at twelve dollars in the valuation of estates made by assessors, and being assessed for the same, to state, county, city, or town taxes, for five years successively in the place where he dwells and has his home, shall thereby gain a settlement therein.

Sixth. Any person being chosen and actually serving one whole year in the office of clerk, treasurer, selectman, overseer of the poor,



assessor, constable, or collector of taxes, in any place, shall thereby gain a settlement therein. For this purpose a year shall be considered as including the time between the choice of such officers at one annual meeting and the choice at the next annual meeting, whether more or less than a calendar year.

town offices.  
12 Mass. 262.  
1 Pick. 129.

Seventh. Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the place wherein he is or may be settled as a minister.

Settlement acquired by ministers.  
4 Cush. 553.

Eighth. Any person admitted an inhabitant by any place at a legal meeting, held under a warrant containing an article for that purpose, shall thereby acquire a legal settlement therein.

by persons admitted inhabitants by vote.

Ninth. Any citizen of this or any other of the United States, dwelling and having his home in any unincorporated place at the time it is incorporated into a town, shall thereby acquire a legal settlement therein.

by incorporation of an unincorporated place.  
6 Met. 484.

Tenth. Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of such division and not having acquired a legal settlement elsewhere, shall have his legal settlement in that place wherein his last dwelling place or home happens to fall upon such division; and when a new city or town is incorporated, composed of a part of one or more incorporated places, every person legally settled in the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, shall thereby acquire a legal settlement in such new place: *provided*, that no person residing in that part of a place which upon such division shall be incorporated into a new city or town, having then no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein, within the time and by the means by which he would have gained it there if no such division had been made.

where to be upon division or incorporation of town.  
6 Met. 484.  
4 Cush. 185.

Eleventh. A minor who serves an apprenticeship to a lawful trade for the space of four years in any place, and actually sets up such trade therein within one year after the expiration of said term, being then twenty-one years old, and continues there to carry on the same for five years, shall thereby gain a settlement in such place; but being hired as a journeyman shall not be considered as setting up a trade.

by serving apprenticeship four years, &c.

Twelfth. Any person of the age of twenty-one years, being a citizen of this or any other of the United States, who resides in any place within this state for ten years together, and pays all state, county, city, or town taxes, duly assessed on his poll or estate for any five years within said time, shall thereby gain a settlement in such place.

by residence and paying taxes.  
5 Mass. 430.  
10 Mass. 394.  
2 Pick. 535.  
3 Met. 428.  
10 Met. 115.  
12 Met. 35.  
4 Cush. 190, 557.

SECT. 2. No person who has begun to acquire a settlement by the laws in force at and before the time when this chapter takes effect, in any of the ways in which any time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions of this chapter; but he shall acquire a settlement by a continuance or succession of the same residence or other act in the same time and manner as if the former laws had continued in force.

Provisions for persons who have begun to acquire settlements.  
R. S. 45, § 2.

SECT. 3. Every legal settlement shall continue till it is lost or defeated by acquiring a new one within this state; and upon acquiring such new settlement all former settlements shall be defeated and lost.

Settlements to continue until, &c.  
R. S. 45, § 3.  
13 Met. 192.

CHAPTER 70.

OF THE SUPPORT OF PAUPERS BY CITIES AND TOWNS.

SECTION

1. Towns to support poor.
2. Powers and duties of overseers of the poor.
3. Same subject.
4. Certain kindred to support, &c.
5. Superior court may assess such kindred.
6. may also assess for future expenses.
7. Costs, how taxed.
8. Court may order with whom pauper shall live.
9. Proceedings on complaints.
10. Other kindred than those named may be summoned.
11. Court may make new orders.
12. Overseers to provide for immediate relief of strangers, &c.
13. Recovery to establish settlement.
14. Liability when pauper removed, &c.
15. Overseers shall support, and in case of de- cease bury, indigent strangers. Compensation therefor.
16. Towns liable to individuals.

SECTION

17. Paupers may be removed, &c.
18. Process in cases of removals; if a removal is not made or objected to by the town notified, then, &c.
19. Effect of notifications, &c., sent by mail.
20. Penalty for leaving paupers where not settled, &c.
21. Overseers of poor may sell estate of deceased paupers, and apply proceeds to reimburse expenses.
22. Overseers may prosecute, &c.

RETURNS TO BE MADE BY OVERSEERS OF THE POOR, &c.

23. Overseers &c., to return to secretary of commonwealth statement respecting paupers.
24. Penalty for not making return.
25. Secretary to prepare abstract of returns yearly for legislature.

Towns to support poor.  
R. S. 46, § 1.  
9 Met. 495.

Powers and duties of overseers of the poor.  
R. S. 46, § 2.  
1857, 153.  
See Ch. 111, § 4.

Same subject.  
R. S. 46, § 3.  
See Ch. 22.

Certain kindred to support, &c.  
R. S. 46, § 5.  
R. S. 78, § 1.  
10 Cush. 239.

Superior court may assess kindred.  
R. S. 46, § 6.  
1859, 196.  
10 Cush. 239.  
11 Cush. 24.

may also assess for future expenses.  
R. S. 46, § 7.

SECTION 1. Every city and town shall relieve and support all poor and indigent persons lawfully settled therein, whenever they stand in need thereof.

SECT. 2. The overseers of the poor shall have the care and oversight of all such poor and indigent persons so long as they remain at the charge of their respective cities or towns, and shall see that they are suitably relieved, supported, and employed, either in the workhouse or almshouse, or in such other manner as the city or town directs, or otherwise at the discretion of said overseers. They may remove to the almshouse such children as are suffering destitution from extreme neglect of dissolute or intemperate parents or guardians.

SECT. 3. The overseers of the poor shall have the same power and authority over persons placed under their care, which directors or masters of workhouses have over persons committed thereto.

SECT. 4. The kindred of such poor persons, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living in this state and of sufficient ability, shall be bound to support such paupers, in proportion to their respective ability.

SECT. 5. The superior court in the county where any one of such kindred to be charged resides, upon complaint of any city, town, or kindred who shall have been at expense for the relief and support of such pauper, may, on due hearing, assess and apportion upon such of the kindred as they shall find to be of sufficient ability, and, in proportion thereto, such sum as they shall deem reasonable for or towards the support of the pauper to the time of such assessment; and may enforce payment thereof by execution in common form: *provided*, that such assessment shall not extend to any expense for relief afforded more than six months previous to the filing of the complaint.

SECT. 6. The court may further assess and apportion upon said kindred such weekly sum as they shall deem sufficient for the future support of the pauper, to be paid quarter yearly until the further order of court; and upon application from time to time of the city, town, or kindred, to whom the same is ordered to be paid, the clerk of said court shall issue and may renew an execution for the arrears of any preceding quarter.

SECT. 7. When the court adjudges two or more of the kindred of a pauper to be of sufficient ability to contribute to his support, they shall tax no more costs against any one respondent than is occasioned by his default or separate defence.

Costs, how taxed.  
R. S. 46, § 8.

SECT. 8. The court may further order with whom of such kindred, that may desire it, such pauper shall live and be relieved, and such time with one, and such time with another, as they shall deem proper, having regard to the comfort of the pauper as well as the convenience of the kindred.

Court may order with whom pauper shall live.  
R. S. 46, § 9.

SECT. 9. The complaint made as provided in this chapter, shall be filed in the clerk's office, and a summons shall be thereupon issued requiring the kindred therein named to appear and answer thereto; which summons shall be directed to any officer qualified to serve civil process between the parties, and served like an original summons, fourteen days at least before the sitting of the court to which it is returnable.

Proceedings on complaints.  
R. S. 46, § 10.

SECT. 10. Upon suggestion that there are other kindred of ability, not summoned in the original process, they may be summoned, and after due notice, whether they appear or are defaulted, the court may proceed against them in the same manner as if they had been summoned upon the original complaint.

Other kindred than those named may be summoned.  
R. S. 46, § 11.

SECT. 11. The court may take further order from time to time in the premises, upon application of any party interested, and may alter such assessment and apportionment according to circumstances; and upon all such complaints they may award costs to either party as justice requires.

Court may make new orders.  
R. S. 46, § 12.

SECT. 12. Said overseers, in their respective places, shall provide for the immediate comfort and relief of all persons residing or found therein, having lawful settlements in other places, when they fall into distress and stand in need of immediate relief, and until they are removed to the places of their lawful settlements; the expenses whereof, incurred within three months next before notice given to the place to be charged, as also of their removal, or burial in case of their decease, may be recovered by the place incurring the same against the place liable therefor, in an action at law, to be instituted within two years after the cause of action arises, but not otherwise.

Overseers to provide for immediate relief of strangers, &c.  
R. S. 46, § 13.  
2 Pick. 341.  
13 Met. 192.

SECT. 13. A recovery in such action shall bar the place against which it shall be had from disputing the settlement of such pauper with the place so recovering, in any future action brought for his support.

Recovery to establish settlement.  
R. S. 46, § 14.

SECT. 14. When a person is supported in a place other than that in which he has his settlement, the place liable for his support shall not be required to pay therefor more than at the rate of one dollar a week: *provided*, that the place so liable shall cause the pauper to be removed within thirty days from the time of receiving legal notice that such support has been furnished.

Liability when pauper removed, &c.  
R. S. 46, § 15.  
4 Pick. 45.  
7 Pick. 155.  
21 Pick. 349.  
13 Met. 198.  
8 Cush. 371.

SECT. 15. The overseers of the poor of each place shall also relieve, support, and employ, all poor persons residing or found therein, having no lawful settlements within this state, until their removal to a state almshouse, and in case of their decease shall decently bury them; the expense whereof may be recovered of their kindred, if they have any chargeable by law for their support, in the manner herein before provided; and if in case of their burial the expense thereof is not paid by such kindred, there shall be paid from the treasury of the commonwealth, five dollars for the funeral expenses of each pauper over twelve years of age, and two dollars and fifty cents for the funeral expenses of each pauper under that age.

Overseers shall support, and in case of decease bury, indigent strangers. Compensation therefor.  
R. S. 46, §§ 16, 32.  
1852, 275.

SECT. 16. Every city and town shall be held to pay any expense necessarily incurred for the relief of a pauper therein by any person who is not liable by law for his support, after notice and request made to the overseers thereof, and until provision is made by them.

Towns liable to individuals.  
R. S. 46, § 18.  
7 Met. 216.  
9 Met. 492.  
4 Cush. 199.  
6 Cush. 399.



Paupers may be removed, &c.  
R. S. 46, § 19.  
23 Pick. 156.  
4 Met. 433.  
13 Met. 199.

SECT. 17. The overseers of any place may send a written notification, stating the facts relating to any person actually become chargeable thereto, to one or more of the overseers of the place where his settlement is supposed to be, and requesting them to remove him, which they may do by a written order directed to any person therein designated, who may execute the same.

Process in case of removals. If a removal is not made or objected to by the town notified, then, &c.  
R. S. 46, § 20.  
23 Pick. 156.

SECT. 18. If such removal is not effected by the last mentioned overseers within two months after receiving the notice, they shall within said two months send to one or more of the overseers requesting such removal, a written answer, signed by one or more of them, stating therein their objections to the removal; and if they fail so to do, the overseers who requested the removal may cause the pauper to be removed to the place of his supposed settlement, by a written order directed to any person therein designated, who may execute the same; and the overseers of the place to which the pauper is so sent shall receive and provide for him; and such place shall be liable for the expenses of his support and removal, to be recovered in an action by the place incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action.

Effect of notifications, &c., sent by mail.  
R. S. 46, § 21.

SECT. 19. The notification and answer mentioned in the two preceding sections may be sent by mail; and such notification or answer, directed to the overseers of the poor of the place intended to be notified or answered, postage prepaid, shall be deemed a sufficient notice or answer, and shall be considered as delivered to the overseers to whom it is directed, at the time when it is received in the post office of the place to which it is directed and in which the overseers reside.

Penalty for leaving paupers where not settled, &c.  
R. S. 46, § 24.  
1849, 66.  
2 Greenl. 5.  
16 Mass. 393.  
1 Pick. 465.  
21 Pick. 83.

SECT. 20. Whoever brings into and leaves any poor and indigent person in any place in this state, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such place with his relief or support, shall forfeit a sum not exceeding one hundred dollars for each offence, to be recovered in an action of tort to the use of such place.

*Allen 25*  
Overseers of poor may sell estate of deceased paupers, and apply proceeds to reimburse expenses.  
1837, 54.  
1858, 26.

SECT. 21. Upon the death of a pauper who at the time of his decease is actually chargeable to any place within this state, the overseers of the poor of such place may take possession of all his real and personal property; and if administration is not taken upon his estate within thirty days after his decease, the overseers may in their own names sell and convey so much thereof as may be necessary to repay the expenses incurred for the pauper. If any part of such property is withheld from said overseers, they may in their own names sue for and recover possession of the real estate, and shall have the same remedy for the recovery of the personal estate or its value, that an administrator might have in like case.

Overseers may prosecute, &c.  
R. S. 46, § 26.

SECT. 22. In all actions and prosecutions founded on the preceding provisions of this chapter, the overseers of the poor of any place or any person by writing under their hands appointed shall appear, prosecute, or defend, the same to final judgment and execution, in behalf of such place.

#### RETURNS TO BE MADE BY OVERSEERS OF THE POOR, &C.

Overseers, &c., to return to secretary of commonwealth statement respecting paupers.  
1837, 194, § 1.  
1841, 116, § 1.  
1844, 146.  
1848, 247, § 1.  
1857, 35, 40.  
1858, 46, § 1.

SECT. 23. The board of directors for public institutions of the city of Boston, and the overseers of the poor of all cities and towns, shall, on or before the fifteenth day of October of each year, make out and return to the secretary of the commonwealth a statement of the paupers in such city or town as they were during the year ending on the last day of the month preceding; which return shall contain true and correct answers to the following inquiries: —

What number of persons have been relieved or supported by your town during the year ending September 30? Of those, how many have a legal settlement in your

town? How many are foreign born? How many of the foreign born are from England and Ireland? How many state paupers have you sent to the state almshouses? How many of the poor assisted in your town or sent to state almshouses were foreigners? How many of your insane do you support in state lunatic hospitals? How many of your idiotic poor are in the state institution for educating idiots? Have you an almshouse? What number of acres of land is attached to your almshouse? What is the estimated present value of your almshouse establishment? Real estate? Personal? What number of persons have been supported in your almshouse during the whole or any part of the year? What is the average number supported in the almshouse? What is the average weekly cost of supporting each pauper in the almshouse? What number of persons have been inmates of your almshouse who are unable to perform any kind or amount of labor? What is the estimated value of all the labor performed by the poor in your almshouse? How many persons, including their families, have you supported out of the almshouse during the whole or a portion of the year? What is the average weekly cost of supporting each pauper out of the almshouse? How many have you aided out of the almshouse? How many have you supported or relieved who were insane? How many who were idiots? What number of persons, relieved or supported during the year, in your town, have become dependent by reason of insanity or idiocy? What number of your poor, supported at the public charge, have been made dependent by intemperance in themselves? What number by intemperance in those who ought to have been their supporters? What is the total net amount of expense of supporting or relieving the poor in your town during the year, including interest on your almshouse establishment? How many are supported in your almshouse at the present time? How many are supported out of the almshouse at the present time? How many are assisted out of the almshouse at the present time?

They shall, at the same time, make correct returns of all children in such city or town under fourteen years of age who are supported at the public charge, specifying therein the name, age, and sex of each. And the secretary of the commonwealth shall, in the month of September annually, furnish the board of directors for public institutions of the city of Boston, and the overseers of the poor of every other city and town, with blank forms of returns, which shall contain in substance the foregoing interrogatories.

SECT. 24. If the board of directors for public institutions of the city of Boston, or the overseers of the poor of any other city or town, refuse or neglect to make any of the returns as aforesaid, they shall forfeit a sum not less than fifty nor more than one hundred dollars for each offence; and the secretary of the commonwealth shall forthwith notify the district-attorney of the district in which such directors or overseers reside, of such refusal or neglect, and he shall immediately prosecute for the same.

Penalty for not making return. 1837, 194, § 3. 1857, 35.

SECT. 25. The secretary shall, as soon after the fifteenth day of October of each year as practicable, make out an abstract of the returns made to him, together with such explanatory remarks as he deems proper, and cause the same to be printed for the use of the legislature.

Secretary to prepare abstract of returns. 1837, 194, § 2. 1841, 116, § 2. 1848, 247, § 2. 1857, 40.

## CHAPTER 71.

### OF ALIEN PASSENGERS AND STATE PAUPERS.

#### BOARD OF COMMISSIONERS.

- SECTION
1. Board of alien commissioners, how constituted.
  2. Commissioner appointed by governor. Term of office.
  3. Commissioners may appoint persons to visit almshouses, to give directions in relation to pauper returns, &c.
  4. to appoint agents to procure information respecting foreigners arriving in this state.

#### SECTION

5. Commissioners to prescribe form of certificate to be used in sending paupers to state almshouses, &c.
6. powers of, in relation to paupers at hospitals.
7. may transfer inmates of state almshouses, &c.
8. may commute bonds.
9. to make annual report.
10. Compensation of commissioners, &c.

## ALIEN PASSENGERS.

## SECTION

11. Superintendents of alien passengers, how appointed, qualified, and paid.
- 12, 13. their duties.
14. to board vessels arriving with alien passengers, &c.
15. Certain passengers not to be landed until bond is given, &c. Superintendent may receive money in lieu of bond, &c. Sick and destitute passengers may in certain cases be landed without bond, &c.
16. Head money paid, to be refunded in certain cases.
17. Bond may be taken. How cancelled.
18. Party to whom head money is repaid, &c., liable if passenger returns.
19. Preceding provisions not to extend to consuls, &c., nor persons in distress.
20. Penalty for landing aliens at place other than port of destination.
21. or without complying with provisions of this chapter.
22. for landing convicts, &c., from other states.
23. Superintendents to make reports, render accounts, &c.
24. Overseers of poor when to perform duties of superintendents.
25. Persons bringing foreigners into state, liable for support, &c., in certain cases.

## HOSPITAL AT RAINSFORD ISLAND.

26. Inspectors, &c., at Rainsford Island. Superintendent to give bond.
27. Inspectors to establish rules and visit hospital.
28. to make report.
29. Foreign paupers arriving sick, to remain at hospital.
30. Commissioners may allow towns to send sick paupers to hospital.
31. Bills of expenditures at island.

## STATE ALMSHOUSES AND STATE PAUPERS.

32. Inspectors of state almshouses, appointment, duty and salary of.

## SECTION

33. Inspectors to have certain powers of overseers of poor, &c.
34. Superintendent, salary, bond, &c.
35. to receive paupers, &c.
36. Cities and towns may send state paupers to state almshouses, &c.
37. not to send lunatics who are dangerous. Inmates becoming furiously mad may be sent to state lunatic hospitals.
38. Idiots having no known settlement may be sent to state almshouse.
39. Fees allowed to officers, &c., in such cases.
40. Discharged convict paupers to be removed to almshouses in certain cases.
41. When settlement is discovered in this state, such paupers to be removed thereto, &c.
42. Convicts too sick to be removed, how to be provided for.
43. Husband and wife not to be separated.
44. Expense of supporting state pauper in such case, how paid, &c.
45. When either almshouse is full, inmates to be distributed, &c.
46. When all are full, towns, &c., to take charge of state paupers, at expense of state. Notice thereof.
47. Powers of inspectors as to inmates and property.
48. Superintendents may contract for employment of inmates, &c.
49. Towns liable for support of their paupers, who become inmates of state almshouses.
50. Liability of kindred for support of such paupers.
51. Punishment for leaving almshouses without consent, and found begging.
52. Foreign paupers may be conveyed to place where they belong.
53. State lunatic paupers may be conveyed to place where they belong.
54. Inspectors to audit superintendent's accounts, and make reports.
55. Accounts for maintenance of almshouses, how and when paid.
56. No allowance to county, &c., for state paupers, except, &c.
57. Accounts of counties, &c., how audited, &c.

## BOARD OF ALIEN COMMISSIONERS.

SECTION 1. There shall be a board of commissioners in relation to alien passengers and state paupers constituted as follows: One person appointed by the governor and council, the auditor of accounts of the commonwealth, and the superintendent of alien passengers for the city of Boston, which board shall superintend the execution of all laws in relation to the introduction of aliens into the commonwealth and the support of state paupers therein.

SECT. 2. The present appointed member of the board shall continue to hold his office according to the tenor of his commission, and at the expiration of his term of office, and whenever a vacancy occurs, the governor, with the advice and consent of the council, shall appoint some suitable person to hold the office for three years.

SECT. 3. The commissioners may appoint one or more persons, who shall at least once in every year visit all the almshouses or places where state paupers are supported, and ascertain from actual examination and inquiry whether the laws in respect to such paupers are properly regarded, particularly in relation to such as are able to labor; and if infractions of the laws are discovered, make immediate report thereof to the commissioners. The commissioners shall give such

Board of alien commissioners, how constituted, 1851, 342, § 1. 1856, 294, § 1.

Commissioner appointed by governor. Term of office. 1856, 294, § 2.

Commissioners may appoint persons to visit almshouses. to give directions in relation to pauper returns, &c. 1851, 342, § 2.



directions as will insure correctness in the returns required in relation to paupers, and may use such means as are necessary to collect all desired information in relation to their support.

SECT. 4. They shall appoint one or more persons, to be approved by the governor and council, who shall ascertain the names of all foreigners brought into this state by any conveyance by land, or by any lines of communication established for the regular transportation of passengers by water, not extending beyond or stopping at places without the United States, and also procure such further information in relation to such foreigners as is practicable in order to identify them if they should hereafter become a public charge. All officers and agents of railroad corporations, and proprietors or agents of other means of conveyance, shall furnish the agents of the commonwealth, when so required, with the information above named so far as in their power, by filling up blanks to be furnished them for that purpose. If any of said persons refuse or neglect to furnish such information when requested, they shall be punishable by fine not less than twenty dollars for each person in relation to whom the information is withheld.

Commissioners to appoint agents to procure information respecting foreigners arriving in this state.  
1851, 342, §§ 3, 4.  
See § 25.

SECT. 5. They shall prescribe to the superintendent of each state almshouse and of the hospital at Rainsford Island, the forms for statistical returns to be made by them in their annual report, in relation to the sex, age, and nativities of the inmates, and the places from whence they were sent. They shall also prescribe the form of certificates required of mayors of cities, or overseers of the poor of towns, when a pauper is sent therefrom to either of the state almshouses; which certificate shall contain such inquiries in relation to the age, parentage, birthplace, and former residence of, and other facts relating to, the pauper, as they may deem necessary, to which mayors and overseers of the poor shall render true answers as far as they are able, before the pauper is received into the almshouse. The several cities and towns shall be furnished with blank forms of said certificate by the commissioners.

to prescribe form of certificates to be used in sending paupers to state almshouses, &c.  
1856, 171, § 1.  
1861 Cl. 83

SECT. 6. They shall have the same powers to bind as apprentices minors who are inmates of the hospital at Rainsford Island, and in relation to state paupers who are inmates of the same, or of either of the lunatic hospitals in this state, and their property, as are by law vested in towns and overseers of the poor in reference to paupers supported or relieved by towns.

powers of, in relation to paupers at hospitals.  
1859, 294, § 3.  
See Ch. 70.  
Ch. 111, § 4.

SECT. 7. The inmates of a state almshouse, state lunatic hospital, or the hospital at Rainsford Island, may be transferred from one institution to another, or sent to any state or place where they belong, by the board or their order, when the public interest or the necessities of the inmates require such transfer; but no patient shall be transferred or discharged from a state lunatic hospital without the concurrence of the trustees thereof.

may transfer inmates of state almshouses, &c.  
1859, 255.  
1861 Cl. 83

SECT. 8. They may commute the bonds taken by superintendents of alien passengers, on such terms as in their judgment will best promote the interest of the state.

may commute bonds.  
1853, 366, § 1.

SECT. 9. They shall annually on or before the fifteenth day of October, make a report of their doings to the governor and council, to be laid before the legislature, and shall therein make such suggestions in relation to the present or other plans for the support of paupers as may occur to them.

to make annual report.  
1851, 342, § 6.  
1857, 40, § 1.

SECT. 10. They shall receive such compensation for their services as the governor and council may deem reasonable; and the agents appointed by them, such compensation as may be fixed by the commissioners, not exceeding four dollars for each day they are employed, together with their necessary expenses for board and travel, to be paid quarter-yearly.

compensation of, &c.  
1851, 342, § 7.  
1855, 486.

## ALIEN PASSENGERS.

Superintendents of alien passengers, how appointed, qualified, and paid.  
1848, 313, §§ 1, 2.  
1858, 132.

SECT. 11. The governor, with the advice and consent of the council, shall, when necessary, appoint and commission in each maritime place some suitable person to be superintendent of alien passengers therefor, who, before entering upon the duties of his office, shall be sworn, and give bond, with sufficient sureties for the performance thereof, to the treasurer of the commonwealth, in such sum as shall be specified in his commission, and he shall hold his office until another is appointed, commissioned, and qualified in his stead. The superintendent for the city of Boston shall receive a salary of two thousand dollars a year for his services as such superintendent and as a member of the board of alien commissioners; and the superintendent for any other place, such salary as the governor and council may determine, not exceeding the amount of alien passenger money received by him; and the salary of each shall be expressed in his commission.

duties of.  
1848, 313, § 1.

SECT. 12. Each superintendent shall from time to time designate places for the examination of vessels as hereinafter mentioned, and shall require the pilots of the ports of his city or town to anchor such vessels at the places so designated, there to remain until such examination is had. Any pilot who refuses or neglects to perform said duty, or who through negligence or design permits any alien passenger to land before such examination, shall forfeit not less than fifty nor more than two thousand dollars.

Same subject.  
1848, 313, § 3.  
1851, 342, § 4.

SECT. 13. The superintendents shall have the care and oversight of all matters arising under the four following sections in the cities or towns for which they are appointed; and when a breach of any provision thereof comes to their knowledge, they shall, with the advice of the district-attorney for their district, institute prosecutions for the forfeitures incurred.

to board vessels arriving with alien passengers, &c.  
1848, 313, § 4.  
1850, 105, § 1.  
1851, 342, § 4.  
1852, 279.

SECT. 14. When a vessel which does not belong to a line of communication established for the regular transportation of passengers by water and not extending beyond or stopping at places without the limits of the United States, arrives at any port or harbor within this state, with alien passengers on board who have never before been within the state, or who, if so, were a public charge as lunatics or paupers, the superintendent of the place where it is intended to land such passengers shall go on board such vessels and examine into the condition of such passengers; and the master or commanding officer of the vessel shall, within twenty-four hours after such arrival, make a report in writing under oath to said superintendent, of the name, age, sex, occupation, place of birth, last place of residence, and condition of every such passenger; and none of them shall be landed or permitted to land, except as is hereinafter provided, until such report is made.

Certain passengers not to be landed until bond is given, &c.  
1852, 279, § 1.  
1852, 312, § 1.  
11 Peters, 102.  
7 Howard, 253.  
4 Met. 282.

SECT. 15. No insane, idiotic, deaf and dumb, blind, deformed, or maimed person, among said passengers, or alien who has before been a public charge within this state, shall be permitted to land until the master, owner, consignee, or agent of such vessel makes and delivers to said superintendent a bond to the commonwealth for each of said persons, with satisfactory sureties in the sum of one thousand dollars, conditioned that such passengers shall not within ten years from the date thereof become a city, town, or state charge. And no other passenger shall be permitted to land until a bond is given as aforesaid, in the sum of three hundred dollars, conditioned that he shall not become a charge as aforesaid within five years from the date thereof; but in lieu of the bond last mentioned, the superintendent may receive from said master, owner, consignee, or agent, such sum, not less than two dollars, as in his judgment is sufficient to cover the risk incurred by the commonwealth in permitting such passenger to be landed; and the names

Superintendent may receive money in lieu of bond, &c.



of all such passengers shall be certified by the superintendent on the back of the report: *provided*, that if any passenger arriving as aforesaid is so sick or destitute as to require relief, and the master refuses to report him, or if said master, owner, consignee, or agent refuses to give such bond, the superintendent may permit such passenger to be landed; and if the commonwealth or any place is put to expense for his support, sickness, or burial, within ten years of the time he is so landed, the commonwealth or such place may in an action of contract recover the amount of all such expenses of said master, owner, consignee, or agent, who shall also severally forfeit the sum of five hundred dollars for every passenger so landed.

Sick and destitute passengers may be landed without bond, &c.

SECT. 16. When a master, owner, consignee, or agent, has paid to the superintendent the sum of two dollars for the landing of an alien passenger, the superintendent shall refund said sum upon receiving satisfactory evidence within thirty days that the passenger left the state within forty-eight hours after such payment; and he shall state the amounts so refunded in his quarterly accounts.

Head money paid, to be refunded in certain cases. 1853, 360, § 1.

SECT. 17. The superintendent of alien passengers, instead of receiving the payment of two dollars as aforesaid, may in any case take a bond, with sufficient sureties, for such payment; and on proof that the passenger left the state within forty-eight hours after giving such bond, the superintendent shall cancel it.

Bond may be taken, if how cancelled. 1853, 360, § 2.

SECT. 18. If an alien passenger on whose account the commutation money has been refunded or bond cancelled as provided in the two preceding sections, within five years thereafter returns into this state and becomes a public charge, the party who paid the commutation money or gave the bond, shall become liable to the commonwealth for the expenses of such passenger's support, to the same extent as if a bond in the penal sum of three hundred dollars had been taken upon the first landing of such alien.

Party to whom head money is repaid, &c., liable if passenger returns. 1854, 219.

SECT. 19. The preceding provisions shall not extend to seamen sent from foreign ports by consuls or vice consuls of the United States, nor to ambassadors, consuls, or public ministers, or other persons representing foreign states, nor to persons coming on shore from vessels in distress, nor to any alien passenger taken from a wreck where life is in danger.

Consuls, &c., and persons in distress not affected hereby. R. S. 46, § 28. 1848, 313, § 10. 1850, 105, § 1.

SECT. 20. If the master or commanding officer of a vessel lands an alien passenger at any place within this state other than that to which such vessel is destined, with intent to avoid the requirements of this chapter, he shall forfeit one hundred dollars for every passenger so landed.

Penalty for landing aliens except at port of destination. 1848, 313, § 9.

SECT. 21. If the master or commanding officer of a vessel lands, or permits to be landed, in this state, any alien passenger, without complying with the provisions of this chapter, he and the owner or consignee of the vessel shall severally forfeit five hundred dollars for every passenger so landed.

or without complying with provisions of this chapter. 1848, 313, § 10.

SECT. 22. If the master or other person having charge of a vessel, therein brings to and lands, or suffers to be landed, within this state, a person convicted in any other state or in a foreign country of an infamous crime, or a crime for which he has been sentenced to transportation, knowing of such conviction, or having reason to suspect it, or a person of a notoriously dissolute, infamous, and abandoned life and character, knowing him to be such, he shall for every such offence forfeit a sum not exceeding five hundred dollars.

for landing convicts, &c., from other states. R. S. 46, § 25.

SECT. 23. Every superintendent of alien passengers shall on the third Wednesdays of January, April, July, and October, of each year, render to the treasurer of the commonwealth, a detailed account of all the money received and expended by him and his assistants under the provisions of this chapter, up to the first days of said months; and after deducting therefrom the amount of salary due to him up to the time to

Superintendents to make reports, render accounts, &c. 1848, 313, § 6. 1850, 292.



which said quarterly accounts extend, shall pay the balance into the treasury.

Overseers of poor, when to perform duties of superintendent.  
1848, 313, § 8.

SECT. 24. The overseers of the poor in any place where there is no superintendent of alien passengers, or where such superintendent is unable to perform his duties by reason of absence or ill health, shall perform the duties and exercise the authority of superintendents; and shall in like manner render their accounts to the state treasurer, and pay over the money received, deducting therefrom a reasonable compensation for their services.

Persons bringing foreigners into state, liable for support, &c., in certain cases.  
1851, 342, § 5.

SECT. 25. If a foreigner brought into this state in the manner specified in section four, falls sick, or from any cause becomes a public charge within one year thereafter, the commonwealth or any place incurring expenses for his support, sickness, or burial, may in an action of contract recover the amount of such expenses of the corporation or party by whose means the person was brought into the state: *provided*, that the party so liable shall be notified of his liability in each case as soon as practicable, in order that such party may if so disposed provide means of support or removal.

#### THE HOSPITAL AT RAINSFORD ISLAND.

Inspectors, &c., at Rainsford Island. Superintendent to give bond.  
1852, 275, § 11.  
1854, 262, § 1.  
1859, 221, § 2.

SECT. 26. The governor, with the advice and consent of the council, shall appoint three inspectors of the hospital at Rainsford Island, subject to removal only for sufficient cause, and such other officers and attendants, and establish such compensation for said inspectors, officers, and attendants, as they shall deem proper. The superintendent shall give bond in like manner as superintendents of state almshouses.

Inspectors to establish rules and visit hospital.  
1854, 262, §§ 1, 2.  
1857, 248.

SECT. 27. The inspectors shall, subject to the approval of the governor, establish rules and regulations for the management and government of said hospital, and shall see that such rules and regulations are enforced; and one of the inspectors shall visit the hospital once at least in each month.

to make report.  
1859, 177, § 2.

SECT. 28. They shall annually on or before the fifteenth day of October, make a report to the governor and council, of the state of the institution, with a list of the salaried officers and their salaries, and, in a tabular form under the heads specified in section eleven of chapter five, the value of the stock and supplies.

Foreign paupers arriving sick, to remain at hospital.  
1852, 275, § 11.

SECT. 29. All foreign paupers arriving by water within the state, who cannot on account of sickness be removed to one of the state almshouses, shall during the continuance of such inability be supported at said hospital.

Commissioners may allow towns to send sick paupers to hospital.  
1853, 352, § 5.  
1854, 189, § 6.

SECT. 30. The board of alien commissioners may allow any city or town in the state to send sick state paupers to said hospital, and such paupers, their kindred, and the places of their settlement, shall be subject to the same liability as if they had been sent to a state almshouse, to be enforced in like manner.

Bills of expenditures at island.  
1854, 262, § 4.  
1859, 221, § 2.

SECT. 31. Bills for expenditures at said island, after approval by the inspectors, shall be presented to the auditor; for improvements, at the close of each quarter; for current expenses, once in each month.

#### STATE ALMSHOUSES AND STATE PAUPERS.

Inspectors of state almshouses, appointment, duty, and salary of.  
1852, 275, § 6.  
1854, 189, § 3.  
1854, 437, § 3.  
1859, 177, § 3.

SECT. 32. The governor, with the advice and consent of the council, shall appoint for each of the state almshouses, a board of three inspectors residing in the immediate vicinity thereof, subject to removal only for sufficient cause, and one member at least of each board shall be appointed annually. The inspectors shall, subject to the approval of the governor, establish rules and regulations for the proper management and government of said almshouses, and shall see that such rules and regulations are enforced; and each almshouse shall be visited by one inspector

at least, once in each week. They shall receive an annual salary of one hundred dollars each, together with their necessary travelling expenses.

SECT. 33. The inspectors shall have the same power to bind as apprentices, minors who are inmates of the institution under their charge, to cause the inmates of said institution to be returned to the place or country from which they came, and to remove insane persons to the state lunatic hospital, as is vested in overseers of the poor.

Inspectors to have certain powers of overseers of poor, &c. 1852, 275, § 7. See Ch. 70. Ch. 111, § 4. Superintendent. Salary, bond, &c. 1852, 275, § 5. 1854, 189, §§ 1, 2.

SECT. 34. The governor, with the advice and consent of the council, shall appoint a superintendent of each of said institutions, whose salary subject to the approval of the governor shall be fixed by the inspectors thereof, and who shall receive no other compensation or perquisite for his services, except the right to reside with his family in the building under his care. He shall give bond to the treasurer of the commonwealth for the faithful performance of his duties, in such sum as shall be designated by the rules and regulations of the inspectors, and with sufficient surety or sureties to the acceptance of said inspectors, and subject to the approval of the governor.

SECT. 35. Said superintendents shall receive all paupers sent with a proper certificate from the mayor of any city or one of the overseers of the poor of any town, and provide for them under the rules and regulations herein provided. 1855 Ch. 83.

to receive paupers, &c. 1852, 275, § 5.

SECT. 36. The several cities and towns may at their own expense send to said almshouses, to be maintained at the public charge, all paupers who may fall into distress therein, not having a settlement within the commonwealth; that is to say, the cities and towns in the counties of Suffolk, Middlesex, and Essex, may send such persons to the state almshouse at Tewksbury; the cities and towns in the counties of Norfolk, Bristol, Plymouth, Barnstable, Nantucket, and Dukes County, to the state almshouse at Bridgewater; and the remaining cities and towns, to the state almshouse at Monson: *provided*, that the alien commissioners may direct the mayor of any city or the overseers of the poor of any town, to send such paupers to either of the state almshouses; and if any place is so directed to send a pauper to a greater distance than would be required by the preceding provisions of this section, the necessary additional expense shall be paid by the state.

Cities and towns may send state paupers to state almshouses, &c. 1852, 275, § 3. 1856, 171, § 3.

SECT. 37. No city or town shall send to either almshouse any person who by reason of insanity would be dangerous if at large. And if an inmate of such establishment becomes so insane, the inspectors thereof may apply to the judge of a police court, or any two justices of the peace and of the quorum, in the county in which the institution is situated, who shall have the same power and authority in regard to such application and the commitment of such person to either of the state lunatic hospitals, as judges of probate courts have in regard to lunatics furiously mad: *provided*, that it shall not be necessary to give notice of such application to the officers of any place.

not to send lunatics who are dangerous. Inmates becoming furiously mad may be sent to state lunatic hospitals. 1854, 437, § 1.

SECT. 38. When it is made to appear on application in writing to any two justices of the peace, one of whom shall be of the quorum, or to a police court, that any person having no known settlement in this state is idiotic and ought to be confined, said justices or court shall send such person to the nearest state almshouse, there to be supported, governed, and employed, in the same manner as persons sent thereto by overseers of the poor.

Idiots having no known settlement may be sent to state almshouse. 1856, 108, § 3.

SECT. 39. In any case arising under the preceding section, all magistrates, officers, and witnesses, shall receive the same fees and compensation for services performed, and for travel and attendance, as are allowed by law for like services in criminal proceedings, to be taxed, allowed, and paid, in the same manner.

Fees allowed to officers, &c., in such cases. 1856, 108, § 6.

SECT. 40. When a convict discharged from the state prison or any jail or house of correction, having no settlement in this state known to

Discharged convict paupers to be removed to



almshouses in certain cases. 1853, 388, § 1.

the warden, keeper, or master thereof, is at the time of his discharge incompetent, by reason of age, infirmity, or disease, to support himself by labor, such warden, keeper, or master shall cause him to be removed to one of the state almshouses; the expense of which removal shall be certified to the auditor of the commonwealth, upon whose approval thereof the same shall be paid out of the treasury.

When settlement is discovered in this state, such paupers to be removed to the place, &c. 1853, 388, § 2.

SECT. 41. If after such removal it appears to the inspectors of the almshouse to which such discharged convict is removed, that he has a legal settlement in this state, they shall cause him to be removed to the place of his legal settlement, which shall be liable to refund to the commonwealth all expenses incurred in behalf of such convict from the time of his discharge from the state prison, jail, or house of correction; to be recovered by a suit to be instituted by the attorney-general in the name of the commonwealth.

Convicts too sick to be removed, how to be provided for. 1853, 388, § 3.

SECT. 42. Any convict who at the legal expiration of his imprisonment is in a condition, from bodily infirmity or disease, to render his removal as aforesaid impracticable, shall be provided for and receive such treatment, in the state prison, jail, or house of correction, as the exigency of the case may require, until he is in a condition to be removed according to the provisions of section forty.

Husband and wife not to be separated. R. S. 45, § 1. 1853, 172, § 1.

SECT. 43. When the operation of any provisions of law in relation to poor and indigent persons might cause a separation of husband and wife by reason of her having a legal settlement in some place in the commonwealth, he being a state pauper, both parties may be supported at the almshouse of the place where she has a legal settlement.

1861 *Ch. 92*  
Expense of supporting state pauper in such case, how paid, &c. 1855, 172, §§ 1, 2.

SECT. 44. The expense of thus supporting the person who is such state pauper shall be paid by the commonwealth, and the accounts therefor shall be audited and allowed by the inspectors of the state almshouse to which such pauper would otherwise belong, reference being had to the expense of supporting such person at the state almshouse, if there committed.

When either almshouse is full, inmates to be distributed, &c. 1853, 352, § 3. 1859, 235.

SECT. 45. When either of the state almshouses is full of inmates, the superintendent thereof shall report the fact to the alien commissioners, who shall distribute the paupers who cannot be provided for therein, among the other state pauper establishments, in such manner as shall be most convenient.

When all are full, towns, &c., to take charge of state paupers at expense of state. Notice thereof. 1854, 437, § 2. 1853, 352, § 4.

SECT. 46. When by reason of all the state almshouses being full, a city or town is unable to obtain admission for a state pauper, such place shall take charge of the pauper until notified by the superintendent to whom application for admission has been made, that the pauper can be received. The superintendent shall give notice by mail when the pauper can be received, having regard in so doing to the priority of applications; and until notice is given, the city or town shall receive payment for the support of the pauper from the treasury of the commonwealth.

Powers of inspectors as to inmates and property. 1855, 445, § 3. See Ch. 70. Ch. 111, § 4.

SECT. 47. The inspectors of the several state almshouses shall have the same powers in relation to the paupers who are inmates of the same, and their property, as are vested in towns and the overseers of the poor in reference to paupers supported or relieved by towns, to be exercised in the same manner.

Superintendents may contract for employment of inmates, &c. 1858, 168.

SECT. 48. The superintendent of each state almshouse, with the consent of the inspectors, may contract with any person, for the employment of any inmate thereof in any kind of lawful labor, for such wages or on such terms as the superintendent and inspectors approve. When a contract is so made, such inmate shall be discharged from the institution, and if he refuses to avail himself of the employment offered shall forfeit all claim to support as a state pauper.

Towns liable for support of

SECT. 49. If a pauper having a legal settlement in any place becomes an inmate of either of said almshouses, such place shall be liable to the



commonwealth for the expense incurred for him, in like manner as one town is liable to another in like cases; and the same measures shall be adopted by the inspectors, in regard to notifying towns so liable, the removal of the pauper, and the recovery from towns of expenses incurred for him, as are prescribed for towns in like cases.

SECT. 50. The kindred who are liable by law to towns for expenses in supporting such paupers, shall in like manner be liable to the commonwealth for any expense incurred for such paupers; and the inspectors may adopt the same measures and institute like legal proceedings for the recovery of such expenses of the kindred so liable, as are prescribed for towns in like cases.

SECT. 51. If an inmate of either of said almshouses, above the age of sixteen years, leaves the same without the consent of the inspectors thereof, and within one year thereafter is found within any city or town soliciting public or private charity, he shall be punished by confinement to hard labor in the house of correction for the county within which he is so found, for a term not exceeding three months.

SECT. 52. Any justice of the superior court, trial justice or police court, upon complaint of the overseers of the poor of any place or of a superintendent of alien passengers, in term time or vacation, may, by warrant directed to a constable or other person therein designated, cause any pauper not born, nor having a settlement, in this state who may conveniently be removed, to be conveyed, at the expense of the state, to any other state, or, if not a citizen of the United States, to any place beyond sea where he belongs.

SECT. 53. Upon complaint of the trustees of any state lunatic hospital, the county commissioners of a county, the inspectors of a state pauper establishment, or the overseers of the poor of a place, a judge of the probate court shall have the same powers as are given by the preceding section, to cause the removal of state lunatic paupers under their charge to any other state, or beyond sea, where they belong.

SECT. 54. The inspectors of the several state almshouses shall audit all the accounts of the superintendents of their respective institutions; and shall report to the governor and council on or before the fifteenth day of October annually, the state of the institution under their charge, and the expenses in detail of said institution for the year ending on the last day of the preceding month, with a list of the salaried officers and their salaries, and, in a tabular form under the heads specified in section eleven of chapter five, the value of the stock and supplies.

SECT. 55. All accounts for the maintenance of the state almshouses, and the support of their inmates, shall, after they have been approved by the inspectors, be presented to the state auditor at the close of each month and paid from the treasury of the commonwealth: *provided*, that if the inspectors deem it necessary, a warrant may be drawn by the governor on the treasurer of the commonwealth in favor of the superintendent for a sum not exceeding five hundred dollars, to enable him to make purchases during the month; said sum to be accounted for to the auditor prior to the advance of any further amount.

SECT. 56. Nothing shall be allowed from the treasury of the commonwealth to any county, city, or town, for expenses incurred on account of any state pauper, except in cases expressly provided by law.

SECT. 57. All accounts against the commonwealth for allowance to counties, cities, and towns, on account of state paupers, shall be rendered to the board of alien commissioners on or before the third Wednesday of January annually; and shall be so made as to include all claims for such charges up to the first day of said January, and if approved by said board, and certified by the auditor of accounts, shall be paid from the treasury of the commonwealth. The commissioners may require such accounts to be accompanied with such statement of particulars and facts, and substantiated by such affidavits, as may seem to them proper.

their paupers in state almshouses.  
1855, 445, § 4.  
1856, 108, § 5.

Liability of kindred for support of such paupers.  
1855, 445, § 5.  
1856, 108, § 6.  
See Ch. 70.

Punishment for leaving almshouses without consent, and found begging.  
1852, 275, § 9.

Foreign paupers may be carried where they belong.  
R. S. 46, § 17.  
1850, 105, § 4.

so may state lunatic paupers.  
1854, 437, § 4.

Inspectors to audit superintendent's accounts, and make reports.  
1852, 275, § 10.  
1857, 40, § 1.  
1859, 177, § 2.

Accounts for maintenance of almshouses, how and when paid.  
1854, 189, § 5.

Allowance for state paupers.  
1852, 275, § 4.

Accounts of counties, &c.; how audited, &c.  
R. S. 46, § 31,  
32, 33.  
1841, 116, § 3.  
1849, 151, 207.  
1851, 42; 1852,  
275, § 4; 1853,  
306, § 2; 1855,  
172, § 2.  
Resolves,  
1844, 119.  
1845, 111.

## CHAPTER 72.

## OF THE MAINTENANCE OF BASTARD CHILDREN.

## SECTION

1. Complaint, how to be made.
2. Who may complain, &c., if woman refuses.
3. If woman is in state almshouse, complaint where made.
4. Accused may be held to answer, &c.
5. For what reasons the cause may be continued, &c.
6. Defendant committed, &c., how discharged.
7. Trial by jury, and order of court thereon.
8. Mother of child may testify, &c.

## SECTION

9. Complaint not to be withdrawn, without consent, &c.
10. Liability for support.
11. Party charged as father may take poor debtor's oath.
12. Mother, &c., to have remedy against property of father.
13. Proceedings as in civil cases.
14. Complainant not required to support defendant in prison.

Complaint how to be made.

- R. S. 49, § 1.  
1859, 239, § 1.  
1 Greenl. 304.  
6 Greenl. 460.  
3 N. H. R. 135.  
2 Mass. 441.  
3 Met. 209.  
6 Cush. 111.

SECTION 1. When a woman who has been delivered of a bastard child, or is pregnant with a child which if born alive may be a bastard, makes a complaint to a justice of the peace or police court, and desires to institute a prosecution against the person whom she accuses of being the father of the child, the justice or court shall take her accusation and examination, in writing under oath, respecting the person accused, the time when and place where the complainant was begotten with child, and such other circumstances as the justice or court deems necessary for the discovery of the truth of such accusation. The justice or court may issue a warrant against the party accused, returnable before the same or any other justice or court having jurisdiction thereof in the county. The warrant shall run throughout the state, and any officer to whom it is directed may serve it and apprehend the defendant in any county.

Who may complain, &c., if woman refuses.

- 1859, 239, § 3.

SECT. 2. If a woman entitled to make a complaint refuses or neglects so to do when requested by an overseer of the poor of the place where she resides or has her settlement, or one of the alien commissioners, the superintendent of a state almshouse or of the hospital at Rainsford Island, or a person authorized by either of them to make the request, or either of her parents, or her guardian, the person so requesting may make the complaint; and when already made, if she refuses or neglects to prosecute the same, either of said persons, may prosecute the case to final judgment, for the benefit of the parent, guardian, city, town, or state. In such cases the bond shall be made to the party for whose benefit the complaint is made or prosecuted.

If woman is in state almshouse, complaint where made.

- 1859, 239, §§ 2, 6.

SECT. 3. When a woman is an inmate of either of the state almshouses, a complaint by her or in her behalf may be made either in the county where she then is, or where she last had her usual place of abode before becoming such inmate, and the warrant shall be returnable in the latter county or the county where the defendant resides. When a complaint is made in the county of Suffolk, by or in behalf of an inmate of the hospital at Rainsford Island or the house of industry at Deer Island, the warrant shall be returnable before the police court of the city of Boston.

Accused held to answer, &c.

- R. S. 49, § 1.  
1851, 96, § 2.  
1859, 196.  
3 Greenl. 433.  
7 Mass. 340, 396.  
13 Met. 246, 372.  
8 Cush. 294.  
2 Gray, 199.

SECT. 4. The court or justice before whom the warrant is returnable, may after due hearing require the accused to give bond with sufficient sureties to appear and answer to the complaint at the next term of the superior court holden for the transaction of civil business, and abide the order of court thereon; and may order him to be committed until such bond is given.

SECT. 5. If at said next court such woman is not delivered, or is not able personally to attend, or if there is any other sufficient reason therefor, the court may order a continuance of the cause from term to term, as it deems necessary; and the bond shall remain in force until final



judgment: *provided*, that if the sureties in the bond at any term of said court object to being longer held liable, or if the court for any cause deems it proper, the court may order a new bond to be taken; and the defendant shall stand committed until he gives such new bond.

12 Pick. 196.  
3 Cush. 452.

SECT. 6. When a person is committed on account of inability to give bond, he shall be discharged from prison on giving at any time thereafter the bond required, approved in the same manner as bail bonds.

Defendant committed, &c., how discharged.  
1856, 34, § 2.

SECT. 7. Upon the trial of the cause, the issue to the jury shall be whether the defendant is guilty or not guilty; and if the jury find him guilty, or if he is defaulted, he shall be adjudged by the court to be the father of such child, and shall stand charged with the maintenance thereof, with the assistance of the mother, in such manner as the court shall order; and shall give bond with sufficient sureties to perform said order, and also to indemnify and save harmless against all charges of maintenance her parents and any city or town or the state chargeable with the maintenance of such child; and he may be committed to prison until he gives such bond; but if on the trial he is found not guilty, the court shall order that he be discharged; and the verdict in either case shall be final.

Trial by jury, and order of court thereon.  
R. S. 49, § 4.  
1859, 239.  
2 Greenl. 165.  
2 Mass. 156.  
5 Mass. 517.  
14 Mass. 386.  
4 Gray, 69.

SECT. 8. The mother of the child shall be admitted as a witness in support of the complaint, and may be compelled to testify; but her admissions shall not be used against her in any criminal prosecution, except for perjury committed while so testifying. If upon examination under section one, she accuses any man of being the father of such bastard child, and being put upon the discovery of the truth respecting the same accusation in the time of her travail, she accuses the same man of being the father of the child of which she is about to be delivered, and has continued constant in such accusation, the fact of such accusation in time of travail may be put in evidence upon trial to corroborate her testimony.

Mother of child may testify, &c.  
R. S. 49, § 3.  
1859, 239, § 4.  
8 Greenl. 163.  
5 Pick. 63.  
8 Pick. 560.  
3 Cush. 537.  
10 Cush. 285, 492.

SECT. 9. No complaint shall be withdrawn, dismissed, or settled, by agreement of the mother and the putative father, without the consent of the overseers of the poor of the city or town in which she has her settlement or residence, or of one of the other officers named in section two, or of her parent or guardian, unless provision is made to the satisfaction of the court, to relieve and indemnify any parent, guardian, city, town, or the state, from all charges that have accrued or may accrue for the maintenance of the child, and for the costs of complaint and prosecution thereof.

Complaint not to be withdrawn, without consent, &c.  
1859, 239, § 5.

SECT. 10. No settlement made by the mother and father, before or after complaint is made, shall relieve the father from liability to any city or town, or the state, for the support of a bastard child.

Liability for support.  
1859, 239, § 5.

SECT. 11. Whoever has been imprisoned ninety days for having failed to comply with any order of the court, as provided in this chapter, shall have the benefit of the laws for the relief of poor prisoners committed on execution: *provided*, that he procures like notification of his intention to take the oath prescribed to poor debtors, to be served upon the clerk of the city or town where the child of which he is the reputed father has its legal settlement, if there is such place in this state, and also upon the complainant, if living, thirty days at least before the time appointed for taking the oath.

Party charged as father may take poor debtor's oath.  
R. S. 49, § 5.  
See Ch. 124.

SECT. 12. The mother of such child and said city or town, or the state, respectively, may at all times after the liberation of such prisoner, or taking said oath, recover by action of contract any sum of money which ought to have been paid to them respectively by him, in pursuance of such order of court.

Mother, &c., to have remedy, &c.  
R. S. 49, § 6.  
1859, 239.

SECT. 13. Prosecutions under this chapter, except as herein otherwise expressly provided, shall be according to the course of proceedings

Proceedings as in civil cases.



1851, 96, §§ 1, 2.  
13 Met. 246.

Complainant not required to support defendant in prison. 1852, 187.

in civil cases, and shall not be entertained at any term of the superior court held exclusively for the transaction of criminal business.

SECT. 14. Nothing herein contained shall be so construed as to require the complainant to pay or give security for the support of the defendant when he is committed to prison by virtue of the provisions of this chapter; nor shall such defendant be discharged from imprisonment by reason of payment or security not being made or given for his support.

CHAPTER 73.

OF THE STATE LUNATIC HOSPITALS.

SECTION

1. Government of each hospital vested in five trustees. Appointment and term of office of trustees.
2. Trustees to be corporation to take and hold grants, &c., and invest proceeds.
3. powers and duties of.
4. to make by-laws, appoint officers, fix salaries, &c.
5. Salaries, how paid.
6. Visitation of hospitals, annual meeting, reports.
7. Treasurer's books.
8. Judges may commit lunatics furiously mad; shall certify where lunatic resided, &c.
9. Person applying for commitment to give notice, &c.
10. to file a statement, &c.
11. Judge may hear applications at any time, and shall convene jury in certain cases.
12. How jury to be selected and impannelled.
13. Judge to preside; verdict.
14. How deficiency in jury supplied.
15. Fees of jurors, &c.
16. Expenses of trial.
17. Fees of judges for committing and discharging lunatics.
18. Fees of officers for committing to be al-

SECTION

- lowed by court, and made up in the general bill.
19. Lunatics having no settlement may be committed to state hospital.
20. Fees of magistrates, &c.
21. Presence of lunatic may be required, &c.
22. Town paupers, &c., at what rates to be admitted.
23. Expenses of lunatics having known settlements, by whom paid and how recovered.
24. Expenses of lunatics having no known settlement, by whom paid and how recovered.
25. Remedy of towns for expenses of lunatics committed to hospitals.
26. Removal from one hospital to another.
27. When hospitals are full, trustees may remove inmates to jails, &c. Selections for removal, how made.
28. Remedies for Boston, Nantucket, and any county for support of persons so removed. Rates of pay.
29. Lunatics, how discharged or removed.
30. Removal of incurable lunatics. A jury may be had on request, &c.
31. After removal, if not comfortably supported, &c., may be recommitted.
32. Trustees may furnish clothing, &c.

Government of each hospital vested in five trustees. Appointment and term of office of trustees. R. S. 48, § 17. 1856, 247, § 1. 1859, 177, § 3.

SECTION 1. The government of each of the state lunatic hospitals at Worcester, Taunton, and Northampton, shall be vested in a board of five trustees, appointed and commissioned by the governor with the advice and consent of the council, subject to removal only for sufficient cause. The trustees now in office shall continue to hold their offices until the terms thereof expire according to the provisions of this section. On the first Wednesday of February in each year the term of office of the senior member in each board, as they stand arranged on the list of their appointments, shall terminate, and the name of the person appointed to fill the vacancy shall be placed at the bottom of the list, and other vacancies may at any time be filled, and the names of the persons appointed substituted in the list for the remainder of the vacant terms.

Trustees may take and hold grants, &c., and invest proceeds. R. S. 48, § 2. 1842, 96, § 1. 1853, 318, § 1. 1856, 247, § 3.

SECT. 2. The trustees of each hospital shall be a corporation for the purpose of taking and holding, to them and their successors, in trust for the commonwealth, any grant or devise of lands, and any donation or bequest of money, or other personal property, made for the use of the institution of which they are trustees, and for the purpose of preserving and investing the proceeds thereof in notes or bonds secured by good and sufficient mortgages or other securities, with all the powers necessary to carry said purposes into effect.

SECT. 3. They shall take charge of the general interests of the institution and see that its affairs are conducted according to the requirements of the legislature and the by-laws and regulations which the board shall establish for the internal government and economy thereof; and they shall be reimbursed all expenses incurred in the discharge of their official duties.

Trustees, powers and duties of.  
R. S. 48, § 2.  
1853, 318, § 1.  
1856, 247, § 3.

SECT. 4. They shall establish by-laws and regulations, with suitable penalties, for the internal government and economy of the institution; shall appoint a superintendent who shall be a physician and constantly reside at the hospital; and a treasurer who shall give bonds for the faithful discharge of his duties; and shall appoint, or make provision in the by-laws for appointing, such officers as in their opinion may be necessary for conducting efficiently and economically the business of the institution; and shall determine, subject to the approval of the governor and council, the salaries of all the officers. All their appointments shall be made in such manner, with such restrictions, and for such terms of time, as the by-laws may prescribe.

to make by-laws, appoint officers, fix salaries, &c.  
R. S. 48, § 3.  
1853, 318, § 1.  
1856, 247, § 3.

SECT. 5. The salaries of the superintendents, assistant-physicians, stewards, and matrons of the state lunatic hospitals, shall be paid quarterly from the current receipts of the several hospitals.

Salaries, how paid.  
1859, 107, § 1.

SECT. 6. There shall be thorough monthly visitations of each hospital by two of the trustees thereof, and quarterly by a majority of them, and semi-annually by the whole board, at each of which a written account of the state of the institution shall be drawn up, which shall be presented at the annual meeting to be held between the first and fifteenth days of October. At the annual meeting a full and detailed report shall be made, exhibiting a particular statement of the condition of the hospital and all its concerns, with a list of the salaried officers and their salaries, and in a tabular form, under the heads specified in section eleven of chapter five, the value of the stock and supplies, to be laid before the governor and council on or before the fifteenth day of October, for the use of the government; and at the same meeting the treasurer shall present to the trustees his annual report on the finances of the institution; both of which reports shall be made up to the thirtieth day of September inclusive. The trustees shall audit the report of the treasurer, and transmit it with their annual report to the governor and council.

Visitations of hospitals, annual meeting, reports.  
R. S. 48, § 5.  
1852, 269, § 1.  
1856, 247, § 2.  
1857, 40.  
1858, 12.  
1859, 177, § 2.

SECT. 7. The accounts and books of the treasurer shall at all times be open to the inspection of the trustees.

Treasurer's books.  
1852, 269, § 2.

SECT. 8. In the county of Suffolk any judge of the superior court, and in any other county the judge of the probate court, or if he is sick or absent or there is a vacancy in the office, any judge of the supreme judicial court or superior court, may commit to either of said hospitals any lunatic Indian, or other lunatic person, who in his opinion is so furiously mad as to render it manifestly dangerous to the peace and safety of the community that he should be at large; and all lunatics ordered to be confined by any court according to the provisions of chapters one hundred and seventy-one and one hundred and seventy-two shall be committed to one of said hospitals. In all cases the judge shall certify in what place the lunatic resided at the time of his commitment, or if ordered to be confined by any court, the judge of such court shall certify in what place the lunatic resided at the time of the arrest in pursuance of which he was held to answer before such court; and such certificate shall for the purposes of this chapter be conclusive evidence of his residence.

Judges may commit lunatics furiously mad; shall certify where lunatic resided, &c.  
R. S. 48, § 6.  
1839, 149, § 3.  
1852, 44.  
1859, 196.

SECT. 9. Any person applying for the commitment of a lunatic under the provisions of the preceding section, shall first give notice in writing to the mayor or one or more of the selectmen of the place where the lunatic resides, of his intention to make such application; and satisfactory evidence that such notice has been given shall be produced to the judge.

Persons applying for commitment, to give notice, &c.  
R. S. 48, § 7.



Person applying for commitment of a lunatic to file a statement, &c. 1858, 64, §§ 1, 2.

SECT. 10. He shall file with his application a statement, as near as can be ascertained, of the civil condition and birthplace of the lunatic; the duration and supposed cause of disease; the previous existence of insanity, or otherwise, in the person or family; the habits of the lunatic in regard to temperance; his disposition, whether suicidal or not; together with any facts showing whether he has or has not a settlement; the name and address of some one of the nearest relatives; and if the lunatic is a woman, whether she has children, and if so, what time has elapsed since the birth of the youngest; and if he is unable to state any of the above particulars, he shall state his inability to do so. The statement, or a copy thereof, shall be transmitted to the superintendent of the hospital with the order for commitment.

Judge may hear applications at any time, and shall convene jury in certain cases. 1837, 228, § 1.

SECT. 11. The judge may hear and determine such applications or complaints against persons charged as being lunatics, at such times and places as he may appoint; and when requested by the person complained against, he shall issue a warrant to the sheriff or his deputy directing him to summon a jury of six lawful men, to hear and determine the question whether the person complained against is so furiously mad as to render it manifestly dangerous to the peace and safety of the community that he should be at large.

How jury to be selected, and impanelled. 1837, 228, § 2.

SECT. 12. The jurors shall be selected in equal numbers from the place in which the trial is had, and one or two adjoining places, as the judge shall direct; and the same proceedings shall be had in selecting and impanelling the jury as are prescribed in chapter forty-three: *provided*, that in the counties of Suffolk and Nantucket all the jurors may be taken from the same place.

Judge to preside. Verdict. 1837, 228, § 3.

SECT. 13. The judge shall preside at such trial, and administer to the jury an oath faithfully and impartially to try the issue, and the verdict of the jury shall be final on the complaint.

How deficiency in jury supplied. 1837, 228, § 4.

SECT. 14. If by reason of challenges or otherwise there is not a full jury of the persons summoned, the judge shall cause the officer who served the summons, or in his absence the officer attending the jury, to return suitable persons to supply the deficiency; and shall have the same authority as the supreme judicial court to enforce the attendance of jurors and witnesses, and inflict fines for non-attendance.

Fees of jurors, &c. R. S. 24, § 29. 1837, 228, § 2. 1848, 271. 1855, 120, § 1.

SECT. 15. The officer who summons and attends the jury shall receive therefor four cents a mile for all necessary travel, and one dollar and fifty cents for each day that he attends upon them; and the jurors and witnesses shall be entitled to such compensation as is prescribed for jurors and witnesses in the supreme judicial court.

Expenses of trial. 1837, 228, § 5.

SECT. 16. The expenses of the trial, including the fees of all necessary witnesses, shall be allowed and certified by the judge, and paid out of the county treasury.

Fees of judges for committing and discharging lunatics. 1850, 235.

SECT. 17. There shall be allowed to each judge of the probate court, for receiving, hearing, and determining, every application made to him for the commitment of a lunatic, a fee of two dollars, to be paid out of the county treasury. The judges shall present their accounts for such fees as often as once in each year, to the county commissioners, who shall audit and allow them if found correct. There shall be allowed to the judge of the probate court for receiving, hearing, and determining, an application for the discharge of a lunatic from either hospital, two dollars, to be paid by the party making the application.

of officers for committing to be allowed by court and made up in the general bill. 1838, 31.

SECT. 18. The superior court may allow to any sheriff, constable, or other person to whom a precept is directed by name, who may commit any person to either hospital, the same fees as are allowed to officers upon the commitment of persons to prison, and such further sums for expenses incurred in said commitments as to the court may seem reasonable; and the sums so allowed shall be made up in the general bill of costs for the term of the court at which the allowance is made.



SECT. 19. When it appears on application in writing to any two justices of the peace, one of whom shall be of the quorum, or to a police court, that a person having no known settlement within this state is insane, such justices or court shall commit such person to one of the state lunatic hospitals.

Lunatics having no settlement may be sent to state hospital. 1856, 108, § 1.

SECT. 20. In cases under the preceding section, magistrates, officers, and witnesses, shall receive the same fees and compensation for services, attendance, and travel, as are allowed by law for like services in criminal proceedings, to be taxed, allowed, and paid in the same manner.

Fees of magistrates, &c. 1856, 108, § 6.

SECT. 21. Upon every application for the commitment of a person as a lunatic to any hospital, the provisions of section ten shall be complied with, and the presence of the lunatic at the hearing may be required or dispensed with, in the discretion of the court, judge, or justices.

Presence of lunatic may be required, &c. 1855, 464. 1858, 64.

SECT. 22. Any lunatic who is supported as a pauper by any place, may be committed by the overseers of the poor thereof to either of said hospitals, with the consent of the trustees, and shall be kept for a sum not exceeding the actual expense of his support; and the trustees may in their discretion receive into the hospital, for a less sum, any poor persons suffering under recent insanity, whether supported or not by any city or town.

Town paupers, &c., at what rates to be admitted. R. S. 48, § 8. 1 Gray, 514.

SECT. 23. The expenses of said hospitals for the support of lunatics, committed by any of the judicial officers mentioned in this chapter, or by virtue of a proclamation of the governor, or by a resolve of the legislature, shall be paid by the place in which such lunatics had their residence at the time of their commitment, unless other sufficient security to the satisfaction of the trustees is taken for such support. If any place neglects or refuses to pay whatever sum may be charged and due according to the by-laws of the hospital on account of the support of any such patient therein, or for the removal of any patient whom the trustees are authorized by law to remove, for thirty days after the same has been demanded by the treasurer in writing of the mayor and aldermen or selectmen of the city or town liable therefor, the same, with interest from the time of such demand, may be recovered for the use of the hospital in an action in the name of the treasurer against such delinquent city or town; but if it is made to appear that the lunatic for whom payment is demanded has no settlement within this state, the city or town of his residence shall not be liable for the expense incurred on his account.

Expenses of lunatics having known settlements, by whom paid and how recovered. R. S. 48, § 9. 1837, 228, § 7. 1857, 209. 3 Met. 1. 9 Cush. 585. 5 Gray, 390.

SECT. 24. The expenses of the hospitals for the support of lunatics not having known settlements in this state committed thereto, shall be paid by the commonwealth at the same rates charged for other lunatics residing therein not exceeding two dollars and fifty cents a week for each lunatic, and the same may afterwards be recovered by the treasurer of the commonwealth of the lunatics themselves, if of sufficient ability to pay the same, or of any kindred obligated by law to maintain them, or of the place of their settlement, if any such within the state is ascertained; and the district-attorneys or other prosecuting officers shall institute suits therefor when requested. But this section shall not apply to cases where support was furnished to persons before the twenty-third day of June in the year eighteen hundred and fifty-seven.

Expenses of lunatics having no known settlement, by whom paid and how recovered. R. S. 48, § 11. 1856, 108, § 4. 1857, 209. 1858, 161. 1859, 107, § 2.

SECT. 25. Every city and town paying expenses for the support or removal of a lunatic committed to either hospital, shall have like rights and remedies to recover the full amount thereof, with interest and cost, of the place of his settlement, as if such expenses had been incurred in the ordinary support of the lunatic; and the lunatic, if of sufficient ability to pay the same, and any kindred obligated by law to maintain him, shall be liable for all such expenses paid by any city or town in either case.

Remedy of towns for expenses of lunatics committed to hospitals. R. S. 48, § 10. 1841, 77. 18 Pick. 379. 9 Cush. 555.

Removal from one hospital to another.  
1856, 247, § 5.

When hospitals are full, trustees may remove inmates to jails, &c. Selections for removal, how made.  
R. S. 48, § 15.

Remedies for Boston, Nantucket, and any county for support of persons so removed.  
Rates of pay.  
R. S. 48, § 16.  
1852, 312, § 1.  
Resolves, 1845, 114.

Lunatics, how discharged or removed.  
R. S. 48, § 14.

Removal of incurable lunatics.  
A jury may be had on request, &c.  
1839, 149, § 1.

SECT. 26. The governor may at any time cause to be removed from one of said hospitals to either of the others, such of the inmates thereof as circumstances or the necessities of the case may in his judgment require.

SECT. 27. If at any time all said hospitals are so full that the inmates cannot all be suitably accommodated therein, and in the opinion of the trustees of either hospital it is proper that some should be removed, the trustees may remove to the jails or houses of correction in the respective counties from which such lunatics were sent, so many as may be necessary to afford suitable accommodation for the remainder. In making selections for such removal the trustees shall, when other circumstances are equal, select foreigners before citizens, and among citizens those who in their opinion are least susceptible of improvement at the hospital; and the lunatics so removed shall be subject to the order and direction of the commissioners of said counties respectively.

SECT. 28. The city of Boston, town of Nantucket, or any county, may recover expenses incurred for the support of lunatics removed under the preceding section, of the lunatic or any kindred obligated by law to maintain him, and shall have like rights and remedies to recover the full amount of such expenses against the place of his settlement as towns have against each other to recover the expenses of supporting paupers. If the lunatic has no settlement in this state, and such expenses are not paid by himself or his kindred, said city, town, or county, shall be indemnified by the commonwealth: *provided*, that the sum to be paid by the commonwealth shall in no case exceed two dollars and fifty cents per week for a term less than thirteen weeks; two dollars and twenty-five cents per week for any term exceeding thirteen weeks and less than twenty-six weeks; two dollars per week for any term exceeding twenty-six weeks and less than one year; nor be more than at the rate of one hundred dollars per year for any term of one year and upwards; nor more in any case than the amount actually paid out and expended for the support of such state lunatic pauper.

SECT. 29. Any two trustees of either hospital, or either of the justices of the supreme judicial court or superior court, at any term held within and for the county in which the hospital is located, may, on application in writing for that purpose, discharge from confinement, after the cause of such confinement has ceased, any lunatic committed thereto. The trustees may also remove any idiot or other patient to the place where the judge or court committing him shall certify that he resided, when in their opinion he ceases to be dangerous and is not susceptible of mental improvement by remedial treatment at the hospital, if such place shall not remove him after reasonable notice in writing from the trustees.

SECT. 30. Any justice of the supreme judicial court or superior court, at any term held within and for the county in which either hospital is located, or the judge of the probate court of such county, may on application in writing for the discharge from such hospital of any lunatic who has remained there a sufficient time to make it appear that he is incurable, cause him to be delivered to the agents of any place in which he has his legal settlement, or to his friends when it appears that it would not be to his injury, and that he would be comfortably and safely provided for by any parent, kindred, friend, master, or guardian, or by the place of his legal settlement. When request for the purpose is made in writing by any person interested in such discharge, the judge before whom the trial is to be held shall issue a warrant to the sheriff of the county or his deputy, directing him to summon a jury of six lawful men to hear and determine the question whether such lunatic is incurable, and may be comfortably and safely provided for according to the terms of this section; the proceedings shall be the same in selecting the



jurors, conducting the trial, and allowing the costs, as are provided in sections twelve, thirteen, fourteen, fifteen, and sixteen.

SECT. 31. If after the discharge of an incurable lunatic under the preceding section, it is made to appear on complaint by any person under oath to the judge of the probate court for the county in which the lunatic has his legal settlement or is placed, that he is not comfortably supported, or that the public safety is endangered by him, said judge shall order his recommitment to said hospital. And the same proceedings may be had in determining these questions by a jury, upon the request of any person interested therein made in writing to said judge, as are provided in the preceding section.

After removal, if not comfortably supported, &c., may be re-committed. 1839, 149, § 2.

SECT. 32. No pauper shall be discharged from either hospital without suitable clothing; and the trustees may furnish the same at their discretion, together with such sum of money, not exceeding twenty dollars, as they may deem necessary.

Trustees may furnish clothing, &c. R. S. 48, § 13.

## CHAPTER 74.

### OF COUNTY RECEPTACLES FOR INSANE PERSONS.

SECTION

1. County receptacles for insane persons, &c., to be provided, &c.
2. Special provisions for the county of Essex.
3. Persons removed from state hospitals to jails, &c., where to be confined.
4. Who may commit insane persons not furiously mad, &c.
5. Party entitled to a jury.
6. Support of persons confined.
7. Insane persons confined in jails, &c., may be removed by order of governor.

SECTION

8. How insane persons not furiously mad may be discharged.
  9. Persons committed by order of trustees of state hospitals, how discharged or removed.
  10. Jailers, &c., not to contract for support of insane paupers, &c.
  11. Fees of magistrates, &c.
- BOSTON LUNATIC HOSPITAL.
12. Boston Lunatic Hospital.

### OF COUNTY RECEPTACLES FOR INSANE PERSONS.

SECTION 1. There shall be in each county within the precincts of the house of correction, or if in the judgment of the county commissioners it cannot be conveniently provided within the same, then in some other building or buildings to be deemed a part of the house of correction, a convenient apartment or receptacle for the confinement of insane persons not furiously mad.

County receptacles for insane persons, &c., to be provided, &c. 1836, 223, § 1. 1842, 100, §§ 1, 2. 5 Met. 54.

SECT. 2. The county commissioners of the county of Essex shall appoint a superintendent and matron for the receptacle in that county, and all persons confined therein shall be under the care and custody of said superintendent; who shall keep a record of all commitments and discharges, and receive a reasonable compensation for his services. Said county shall have the same remedies for the expenses of the care and support of such persons, as are provided for keepers and masters of houses of correction for the maintenance of prisoners committed to houses of correction.

Special provisions for the county of Essex. R. S. 143, § 16. 1846, 154, § 2.

SECT. 3. All insane persons removed from either state lunatic hospital by order of the trustees thereof, pursuant to any provisions of law which require persons so removed to be confined in the jails or houses of correction of any county, shall be confined in said receptacles when established.

Persons removed from state hospitals to jails, &c., where to be confined. 1846, 154, § 5.

SECT. 4. When it appears on representation in writing to two justices of the peace, one of whom shall be of the quorum, or to a police court, that any person having a known settlement in this state is an

Who may commit insane persons not furiously mad, &c.



1836, 223, § 2.  
1855, 464.  
1856, 108.

insane person not furiously mad, said justices or court may order him to be committed to the county receptacle aforesaid; and at the hearing upon such representation the presence of the insane person may be required or dispensed with in the discretion of the justices or court.

Party entitled to a jury.  
1838, 73, §§ 1, 2.

SECT. 5. When any representation is made under the provisions of the preceding section, said justices or court shall upon the request of the person complained against issue a warrant to the sheriff of the county or his deputy, to summon a jury of six lawful men, to hear and determine the matter of such representation. The provisions of sections twelve, thirteen, fourteen, fifteen, and sixteen, of chapter seventy-three, shall apply to trials by jury herein provided for; and the justices or court aforesaid shall have the same powers and perform the same duties as are therein given to or required of the judges named in said sections.

Support of persons confined.  
R. S. 14, §§ 29, 30.  
1836, 223, § 2.  
5 Met. 54.

SECT. 6. Provision shall be made for the comfortable support of all persons confined in said receptacles, and they shall be governed or employed in such manner as the county commissioners may in the exercise of their discretion deem best. Such sum a week shall be allowed and paid for the support of persons so confined as the commissioners shall direct, and the same may be recovered of such person, or of any parent, kindred, master, guardian, city, or town, obligated by law to maintain him.

Insane persons confined in jails, &c., may be removed by order of governor.  
1854, 95, §§ 1, 2.

SECT. 7. Any insane person confined by legal authority in a jail, house of correction, or such county receptacle, may be removed therefrom to either of the state lunatic hospitals, or to any other jail, house of correction, or other suitable place, by order of the governor, when it appears to him that such removal would be expedient and just; and the sheriff of the county in which such person is confined shall execute such order and convey the insane person to the place therein designated.

How insane persons not furiously mad may be discharged.  
1836, 223, § 3.

SECT. 8. Any person confined by virtue of section four may be discharged, when in the opinion of any two justices of the peace, one of whom is of the quorum, or of a police court, such discharge would be for the benefit of such person, or when in their opinion such person would be comfortably supported by any parent, kindred, friend, master, or guardian, or by any place in which he has a legal settlement.

Persons committed by order of trustees of state hospitals, how discharged or removed.  
1838, 73, § 3.

SECT. 9. Any insane person confined in a jail, house of correction, or county receptacle, by authority of a certificate of the trustees of either of the state lunatic hospitals, may be discharged by the county commissioners when the cause of confinement has ceased to exist. And the commissioners, when in their opinion such insane person can in such manner be more comfortably provided for without danger to the safety of the public, may provide for his custody and support in some other place than such receptacle, jail, or house of correction, or may deliver him to the custody and care of any place in which he has a legal settlement; such person still continuing subject to the order and direction of said commissioners. The expense shall be reimbursed in the same manner and recovered by the same remedies as are provided in section twenty-eight of chapter seventy-three: but in no case shall the sum charged for such support exceed two dollars and fifty cents a week.

Jailers, &c., not to contract for support of insane paupers, &c.  
R. S. 48, § 12.

SECT. 10. The keeper of a jail, house of correction, or county receptacle shall not contract for supporting within the county buildings any lunatic who is a town pauper, without first obtaining the approbation in writing of the commissioners; and for every offence against this provision such keeper shall forfeit a sum not less than one hundred dollars.

Fees of magistrates, &c.  
1836, 223, § 4.

SECT. 11. In cases arising under sections four and eight, all magistrates, officers, and witnesses shall receive the same fees as are allowed by law for like services in criminal proceedings, to be taxed, allowed, and paid, in like manner.

BOSTON LUNATIC HOSPITAL.

SECT. 12. Nothing contained in this chapter or in chapter seventy-three shall repeal any provisions of law specially relating to the Boston lunatic hospital, or the confinement, care, and support of insane persons therein.

Boston lunatic hospital.  
1839, 131.  
1840, 50.  
1851, 243.  
1857, 281, 302.

CHAPTER 75.

OF THE STATE INDUSTRIAL SCHOOL FOR GIRLS.

SECTION

1. Government of school vested in seven trustees. How appointed; tenure of office; compensation.
2. Duty of trustees, &c.; by-laws.
3. Treasurer, appointment and bond of.
4. to hold and invest legacies.
5. Commissioners to be appointed, who, with judges of probate, shall have jurisdiction under this chapter.
6. Girls between seven and sixteen may be committed; arrest; summons to parents, &c.
7. Examination, trial, commitment; form of warrant; variance from form, when not material.
8. Service of summons.
9. Courts may transfer girls held for criminal offences to judges or commissioners.
10. Second commitment may be made without summons to parents.
11. Fees of judges and officers.
12. Appeal allowed.
13. Girls to be kept until bound out, &c.

SECTION

14. Trustees may discharge girls.
15. may bind them out, &c.
16. Indenture of apprenticeship not to be assigned, except, &c.; may be cancelled.
17. Discharge of girl when master is guilty of cruelty, &c.
18. Assignment of indenture upon death of master.
19. Trustees to be guardians of girls so bound out.
20. Instruction, &c., of girls; selection of masters when binding out girls.
21. Duties of superintendent.
22. bond, accounts, &c., of; register of girls to be kept.
23. contracts of, to be made in writing. Suits on.
24. Support of persons committed.
25. Examinations of school. Records; reports; treasurer's accounts.
26. Trustees may expend money for houses, &c.; number not to exceed six.

SECTION 1. The government of the state industrial school for girls shall be vested in a board of seven trustees appointed and commissioned by the governor with the advice and consent of the council, subject to removal only for sufficient cause. The trustees now in office shall continue to hold their offices until the terms thereof expire according to the provisions of this section. On the first Wednesday of February in each year the terms of office of the two senior members as they stand arranged on the list of their appointments shall terminate, and the names of the persons appointed to fill the vacancies shall be placed at the bottom of the list. Other vacancies may at any time be filled, and the names of the persons appointed shall be substituted in the list for the remainder of the vacant terms. The trustees shall receive no compensation for their services, but shall be allowed all expenses incurred by them in the discharge of their duties.

Government of school vested in seven trustees.  
How appointed; tenure of office; compensation.  
1855, 442, §§ 1, 24.  
1856, 60.  
1859, 177, § 3.

SECT. 2. The board shall take charge of the general interests of the institution, see that its affairs are conducted in accordance with the requirements of the legislature, and such by-laws as the board may adopt, and that strict discipline is maintained therein; provide employment for the inmates, and bind out, discharge, or remand them, as is hereinafter provided; exercise a vigilant supervision over the institution, its officers, and inmates; appoint a superintendent and chaplain, and such matrons, assistants, teachers, and other officers, as in its judgment the wants of the institution may require, and prescribe their duties; remove them at pleasure and appoint others in their stead; and determine the salaries to be paid to the officers, subject in all cases to the approval of the governor and council. The by-laws may be amended by the con-

Duty of trustees, &c.  
By-laws.  
1855, 442, §§ 2, 24.



sent of five members of the board at a legal meeting; but no alteration shall be valid until approved by the governor and council.

Treasurer, appointment and bond of.  
1855, 442, § 23.

SECT. 3. There shall be a treasurer appointed by the governor and council, who shall before he enters upon the discharge of his duties give a bond to the commonwealth, with sureties satisfactory to the governor and council, in the sum of three thousand dollars, conditioned that he shall faithfully account for all money received by him as treasurer; which bond when approved shall be filed in the office of the treasurer of the commonwealth.

to hold and invest legacies, &c.  
1856, 63.

SECT. 4. The treasurer shall receive, hold, and invest, for the benefit of the school, all legacies, devises, and donations, to or on account of the school, subject to such regulations as may be established from time to time by the trustees.

Commissioners to be appointed, who, with judges of probate, shall have jurisdiction under this chapter.  
1855, 442, § 9.

SECT. 5. The governor with the advice and consent of the council upon request of the mayor and aldermen, selectmen, or overseers of the poor of any city or town, shall appoint and commission in the same manner as justices of the peace are appointed and commissioned one or more suitable persons residing in such city or town, who shall have authority therein to hear and determine complaints and make commitments under this chapter; and judges of the probate courts shall have like authority within their respective counties.

Girls between seven and sixteen may be committed; arrest; summons to parents, &c.  
1855, 442, § 4.  
1851 Ch. 200

SECT. 6. When a girl between the ages of seven and sixteen years is brought by a constable, police officer, or other inhabitant of this state, before such judge or commissioner, upon complaint that she has committed an offence punishable by fine or imprisonment other than by imprisonment for life, or that she is leading an idle, vagrant, or vicious life, or has been found in any street, highway, or public place, in circumstances of want and suffering, or of neglect, exposure, or abandonment, or of beggary, the judge or commissioner shall issue a summons to the father of said girl, if he is living and resident within the place where she was found, and if not, then to her mother if she is living and so resident; and if there is no such father or mother, to the lawful guardian of said girl, if any there is so resident, or if not, to the person with whom according to her own statement and such testimony as shall be received she resides; and if there is no person with whom she stably resides, the judge or commissioner may appoint some suitable person to act in her behalf; requiring him or her to appear at a time and place stated in the summons, to show cause, if any there is, why said girl shall not be committed to said institution.

Examination, trial, commitment.  
1855, 442, § 4.

SECT. 7. At the time mentioned in the summons, the judge or commissioner shall proceed to examine the girl and any party appearing in answer to the summons, and to take such testimony in relation to the case as may be produced. If the allegations are proved, and it appears that the girl is a suitable subject for said institution, and that her moral welfare and the good of society require that she should be sent thereto for instruction, employment, or reformation, he shall commit her by a warrant in substance as follows:—

Form of warrant.

To (A B) one of the constables (or police officers) of the city (or town) of . . . . . You are hereby commanded to take charge of C D, a girl between the ages of seven and sixteen years, who has been proved to me to be a suitable subject for the state industrial school for girls, and a proper object for its care, discipline, and instruction, and deliver said girl, without delay, to the superintendent of said school, or other person in charge thereof, at the place where the same is established. And for so doing this shall be your sufficient warrant.

Dated this        day of        18    , at        , (in the county of        , in the commonwealth of Massachusetts.)

Variance from form, when not material.

But no variance from said form shall be deemed material if it sufficiently appears upon the face thereof, that the girl is committed by the magistrate in the exercise of the powers given to him by this chapter. The warrant shall be executed by a constable or police officer of the place



where the case is heard. Accompanying the warrant, the magistrate shall transmit to the superintendent, by the officer serving it, a statement of the substance of the complaint and testimony given in the case.

SECT. 8. Summonses to appear before a judge or commissioner as aforesaid, shall be served by a constable or police officer, by delivering the same personally to the party to whom it is addressed, or leaving it with some person of sufficient age at the place of residence or business of such party; and said constable or police officer shall immediately make return to the same magistrate of the time and manner of such service.

Service of summonses.  
1855, 442, § 5.

SECT. 9. When a girl between seven and sixteen years of age is brought for trial before a trial justice or court of criminal jurisdiction, charged with an offence which may be punished by fine or imprisonment, and the justice or court is of opinion that if found guilty she would be a fit and proper subject for said school, a decree to that effect shall be entered of record; and thereupon such justice or court shall by a warrant cause such girl to be brought forthwith before some judge or commissioner authorized to commit girls to the school, and transmit to him the complaint or indictment and warrant by virtue of which she has been arrested, and he shall thereupon have the same jurisdiction and powers as if she had been brought before him upon an original complaint.

Courts may transfer girls held for criminal offences to judges or commissioners.  
1855, 442, § 8.

SECT. 10. If a girl previously committed to the school is brought before a judge or commissioner upon any allegation set forth in section six, he may examine the case and issue his warrant for committing her to the school without having issued the summons required in said section.

Second commitment may be made without summons to parents.  
1855, 442, § 6.

SECT. 11. The fees and compensation allowed to judges and commissioners under this chapter, shall be the same as by law are allowed to trial justices; and all officers serving process shall be allowed the same fees as they are entitled to for serving process in criminal proceedings.

Fees of judges and officers.  
1855, 442, § 10.

SECT. 12. Any girl ordered to be committed to the school may appeal from such order in the manner provided in respect to appeals from trial justices. And the case shall be entered, tried, and finally determined, in the court to which the appeal is made.

Appeal allowed.  
1855, 442, § 7.

SECT. 13. Any girl committed to the school shall there be kept, disciplined, instructed, employed, and governed, under the direction of the trustees, until she is bound out, or arrives at the age of eighteen years, or is otherwise legally discharged.

Girls to be kept until bound out, &c.  
1855, 442, §§ 5, 11, 13.

SECT. 14. The trustees shall discharge and return to her parents, guardian, or protector, any girl who, in their judgment, ought for any cause to be removed from the school. And in such case the trustees shall make an entry upon their records of her name, the party to whom she was returned, and the date when she left the school, together with a statement of the reasons for her discharge; a copy of which record signed by their secretary they shall forthwith transmit to the judge or commissioner by whom the girl was committed.

Trustees may discharge girls.  
1855, 442, § 12.

SECT. 15. The trustees may bind out as an apprentice or servant any girl committed to their charge, for a term not longer than until she arrives at the age of eighteen years; and the master to whom the girl is bound shall by the terms of the indenture be required to report to the trustees as often as once in every six months, her conduct and behavior, and whether she is still living under his care, and if not where she is. And the trustees, and master or mistress, apprentice or servant, shall respectively have all the rights and privileges and be subject to all the duties set forth in chapter one hundred and eleven in the same manner as if said binding or apprenticing were made by overseers of the poor.

may bind them out, &c.  
1855, 442, § 18.  
1858, 110.

SECT. 16. A person receiving an apprentice under the provisions of this chapter, shall not assign or transfer the indenture of apprenticeship, nor let out her services for any period, without the consent in writing of the trustees. If the master for any cause desires to be relieved from the

Indenture of apprenticeship not to be assigned, except, &c.; may be cancelled.

1855, 442, § 15.

contract, the trustees upon application may in their discretion cancel the indenture and resume the charge and management of the girl, and shall have the same power and authority in regard to her as before the indenture was made.

Discharge of girl, when master is guilty of cruelty, &c. 1855, 442, § 16.

SECT. 17. If a master is guilty of cruelty or misusage towards a girl so bound to service, or of any violation of the terms of the indenture, the girl or trustees may make complaint to a judge or commissioner aforesaid, who shall summon the parties before him and examine into the complaint; and if it appears to be well founded, he shall by certificate under his hand discharge the girl from all obligations of future service, and restore her to the school to be managed as before her indenture.

Assignment of indenture upon death of master. 1855, 442, § 17.

SECT. 18. Upon the death of the master to whom a girl is so bound to service, his executor or administrator, with the consent of the girl in writing, acknowledged by her and approved by the trustees, may assign the indenture to some other person; which assignment shall transfer to and vest in the assignee all rights and subject him to all responsibilities of the original master.

Trustees to be guardians of girls so bound out. 1855, 442, § 18.

SECT. 19. The trustees shall be the guardians of every girl so bound or held for service, shall take care that the terms of the contract are faithfully fulfilled, and that she is properly treated; and they shall especially inquire into the treatment of every such girl and cause any grievance to be redressed.

Instruction, &c., of girls; selection of masters when binding out girls. 1855, 442, § 19.

SECT. 20. They shall cause the girls under their charge to be instructed in piety and morality, and in such branches of useful knowledge as are adapted to their age and capacity, and in some regular course of labor, either mechanical, manufacturing, or horticultural, or a combination of these, and especially in such domestic and household labor and duties as are best suited to their age, strength, disposition, and capacity; and in such other arts, trades, and employments, as may seem to the trustees best adapted to secure their reformation, amendment, and future benefit. In binding out girls they shall have scrupulous regard to the religious and moral character of those to whom it is proposed to bind them, that they may secure to the girls the benefits of good example and wholesome instruction, and the best means of improvement in virtue and knowledge, and the opportunity of becoming intelligent, moral, useful, and happy women.

Duties of superintendent. 1855, 442, § 20.

SECT. 21. The superintendent, with such subordinate officers as the trustees may appoint, shall have the general charge and custody of the girls. He shall be a constant resident at the school, and under the direction of the trustees shall discipline, govern, instruct, and employ, and use his best endeavors to reform, the inmates in such manner as shall, while preserving their health and promoting the proper development of their physical system, secure the formation as far as possible of moral, religious, and industrious habits, and regular thorough progress and improvement in their studies, trades, and employments.

bond, accounts, &c., of. 1855, 442, §§ 21, 23. 1857, 215.

SECT. 22. He shall before he enters upon the duties of his office give a bond to the commonwealth, with sureties satisfactory to the governor and council, in the sum of two thousand dollars, conditioned that he shall faithfully perform all his duties and account for all moneys received by him as superintendent; which bond when approved shall be filed in the office of the treasurer of the commonwealth. He shall have charge of all the property pertaining to the school within the precincts thereof, and under the direction of the trustees shall make purchases of books with the income and profits, and according to the terms of the donation of Henry B. Rogers. He shall keep in suitable books complete accounts of all his receipts and expenditures, and of all property intrusted to him, showing the income and expenses of the institution; and shall account to the treasurer in such manner as the trustees may require for all money received by him. His books, accounts, and documents, relat-



ing to the school, shall at all times be open to the inspection of the trustees, who shall at least once in every six months carefully examine the same, and the vouchers and documents connected therewith, and make a record of the result of such examination. He shall keep a register containing the name and age of each girl, and as far as practicable the circumstances connected with her history to the time of her admission to the school; and he shall add thereto such facts as may come to his knowledge, relating to her history while at the institution and after leaving it.

Register of girls is to be kept.

SECT. 23. All contracts on account of the institution shall be made by the superintendent in writing and approved by the trustees if their by-laws require it; and the superintendent or his successor may sue or be sued thereon to final judgment and execution. No suit shall abate by reason of the office of superintendent becoming vacant, but any successor in office may take upon himself the prosecution or defence thereof; and upon motion of the adverse party and notice, he shall be required to do so.

Superintendent to make all contracts in writing. Suits on. 1855, 442, § 22.

SECT. 24. The city or town in which any girl sentenced to the school has her legal settlement, shall, upon notice and demand by the treasurer of the school, pay to such treasurer fifty cents a week towards the support of such girl while she remains there; and such city or town may recover any sum so paid, of the parent, kindred, or guardian, liable to maintain the girl.

Support of persons committed. 1856, 150.

SECT. 25. One or more of the trustees shall visit the school at least once in every two weeks; at which time the girls shall be examined in the school-rooms and workshops, and the register inspected. A record shall be kept of these visits in the books of the superintendent. Once in every three months, the school in all its departments shall be thoroughly examined by a majority of the trustees, and a report thereof made to the board. On or before the fifteenth day of October in each year an abstract of the quarterly reports shall be prepared, which, together with a full report by the superintendent, and a list of the salaried officers and their salaries, and, in a tabular form, under the heads specified in section eleven of chapter five, the value of the stock and supplies, shall be laid before the governor and council for the information of the legislature. The treasurer shall also submit at the same time an accurate detailed account of the receipts and expenditures for the year terminating on the last day of the preceding month.

Examination of school. Records; reports; treasurer's accounts. 1855, 442, § 25. 1857, 40, § 1. 1859, 177, § 2.

SECT. 26. The trustees may expend any money given for the purpose, in erecting houses or other buildings on the lands of the state at Lancaster, for increasing the accommodation of the school, plans therefor being first approved by the governor and council; but the whole number of such houses shall not exceed six.

Trustees may expend money for houses, &c.; number not to exceed six. 1859, 214, § 1.

## CHAPTER 76.

### OF THE STATE REFORM SCHOOL FOR BOYS.

STATE REFORM SCHOOL AT WESTBOROUGH.

*Trustees.*

SECTION

5. Trustees, duties of, as to instruction, discipline, &c.

6. may bind out boys, &c.

7. to visit school. Reports to be made; treasurer's account.

*Superintendent.*

8. Superintendent, powers and duties of.

9. to have charge of property, give bond, keep books, &c.

SECTION

1. Government of school vested in seven trustees; appointment, tenure of office, compensation.

2. Trustees to be a corporation.

3. to control buildings, &c.

4. general powers and duties of.



## SECTION

10. Superintendent to make contracts, &c. Suits.

*Treasurer.*

11. Treasurer, appointment and bond of.

## NAUTICAL BRANCH OF THE STATE REFORM SCHOOL.

12. Nautical branch; number of trustees; separate officers.

13. Trustees, appointment and tenure of office of.

14. to be a corporation, &c.

15. to have control of school-ship, &c.

16. Superintendent, master of ship.

## COMMITMENTS.

17. Commitments to school. Proceedings.

18. Same subject. Form of warrant.

19. Judge to certify residence, age, &c.

## SECTION

20. Service of warrant, &c.

21. Duties of justice before whom boy is brought for trial, &c.

22. Second commitment.

23. Unfit subjects may be held for trial in superior court.

24. Appeal, &c.

25. Fees of judges, &c.

26. Courts may sentence boys to school, &c. Notice before sentence.

## CONFINEMENT AND DISCHARGE.

27. Term of commitment. Discharge, &c.

## TRANSFER OF INMATES.

28. Boys may be transferred, &c.

## SUPPORT OF INMATES BY CITIES AND TOWNS.

29. Support by towns. Liability of kindred.

## STATE REFORM SCHOOL AT WESTBOROUGH.

*Trustees.*

Government of school vested in seven trustees; appointment, tenure of office, compensation. 1847, 165, §§ 1, 14. 1850, 112, § 2. 1859, 177, § 3.

SECTION 1. The government of the state reform school at Westborough shall be vested in a board of seven trustees appointed and commissioned by the governor with the advice and consent of the council, subject to removal only for sufficient cause. The trustees now in office shall continue to hold their offices until the terms thereof expire according to the provisions of this section. On the first Wednesday of February in each year the terms of office of the two senior members as they stand arranged on the list of their appointments shall terminate, and the names of the persons appointed to fill the vacancies shall be placed at the bottom of the list. Other vacancies may at any time be filled, and the names of the persons appointed shall be substituted in the list for the remainder of the vacant terms. Any person whose term of office expires may be reappointed. The trustees shall receive no compensation for their services, but shall be allowed all expenses incurred by them in the discharge of their duties.

Trustees to be a corporation. 1848, 305.

SECT. 2. The trustees shall be a corporation by the name of the Trustees of the State Reform School, for the purpose of taking and holding, to themselves and their successors in trust for the commonwealth, any grant or devise of lands and any donation or bequest of money or other personal property made for the use of said institution, and for the purpose of preserving and investing the proceeds thereof in good securities, with all powers necessary to carry said purposes into effect.

to control buildings, &c. 1847, 165, § 14.

SECT. 3. They shall have the control of the buildings erected for the purposes of the institution at Westborough, and the lands connected therewith.

general powers and duties of. 1847, 165, § 2.

SECT. 4. They shall take charge of the general interests of the institution; see that its affairs are conducted in accordance with the requirements of the legislature and such by-laws as the board may from time to time adopt, and that strict discipline is maintained therein; provide employment for the inmates and bind them out, discharge, or remand them, as herein provided; appoint a superintendent, a steward, teacher or teachers, and such other officers as in their judgment the wants of the institution may require, and prescribe their duties; exercise a vigilant supervision over the institution, its officers, and inmates; remove such officers at pleasure and appoint others in their stead; and determine the salaries to be paid to the officers, subject in all cases to the approval of the governor and council. The by-laws may be amended by the assent of five trustees at a legal meeting; but no alteration shall be valid until approved by the governor and council.

SECT. 5. They shall cause the boys under their charge to be instructed in piety and morality, and in such branches of useful knowledge as are adapted to their age and capacity; and in some regular course of labor, either mechanical, manufacturing, agricultural, or horticultural, or a combination of these, as is best suited to their age, strength, disposition, and capacity; and in such other arts and trades as may seem best adapted to secure the reformation, amendment, and future benefit of the boys.

Trustees, duties of, as to instruction, discipline, &c. 1847, 165, § 9.

SECT. 6. They may bind out boys committed to the school, as apprentices or servants until they become twenty-one years of age, or for any less term; and the trustees, and master or mistress, apprentice or servant, shall respectively have the rights and privileges and be subject to the duties set forth in chapter one hundred and eleven, in the same manner as if such binding or apprenticing were made by overseers of the poor. In binding out boys, they shall have scrupulous regard to the religious and moral character of those to whom they are to be bound, that they may secure to the boys the benefit of a good example and wholesome instruction, and the sure means of improvement in virtue and knowledge, and thus the opportunity of becoming intelligent, moral, useful, and happy citizens.

may bind out boys, &c. 1847, 165, § 9. 1850, 112, § 1.

SECT. 7. One or more of the trustees shall visit the school at least once in every two weeks, at which time the boys shall be examined in the school-room and workshop, and the register shall be inspected. A record shall be kept of these visits in the books of the superintendent. Once in every three months the school in all its departments shall be thoroughly examined by a majority of the trustees, and a report thereof made to the board on or before the fifteenth day of October in each year. An abstract of these quarterly reports shall be prepared, which, together with a full report by the superintendent, and a list of the salaried officers and their salaries, and in a tabular form under the heads specified in section eleven of chapter five, the value of the stock and supplies shall be laid before the governor and council for the information of the legislature. The treasurer shall also submit at the same time an accurate detailed account of the receipts and expenditures for the year terminating on the last day of the preceding month.

to visit school. Reports to be made; treasurer's account. 1847, 165, § 16. 1857, 40, § 1. 1859, 177, § 2.

*Superintendent.*

SECT. 8. The superintendent, with such subordinate officers as the trustees may appoint, shall have the charge and custody of the boys. He shall be a constant resident at the institution, and shall discipline, govern, instruct, employ, and use his best endeavors to reform, the inmates, in such manner as while preserving their health will secure the formation as far as possible of moral, religious, and industrious habits, and regular thorough progress and improvement in their studies, trades, and employments.

Superintendent, powers and duties of. 1847, 165, § 10.

SECT. 9. He shall before entering upon his duties give a bond to the commonwealth, with sureties satisfactory to the governor and council in the sum of two thousand dollars, conditioned that he shall faithfully perform all his duties and account for all money received by him as superintendent, which bond shall be filed in the office of the treasurer of the commonwealth. He shall have charge of all the property of the institution within the precincts thereof. He shall keep in suitable books complete accounts of all his receipts and expenditures, and of all property intrusted to him, showing the income and expenses of the institution; and he shall account to the treasurer in such manner as the trustees may require for all money received by him. His books and all documents relating to the school shall at all times be open to the inspection of the trustees, who shall at least once in every six months

to have charge of property, give bond, keep books, &c. 1847, 165, §§ 11, 13.

carefully examine the books and accounts and the vouchers and documents connected therewith and make a record thereof. He shall keep a register, containing the name, age, and circumstances connected with the early history of each boy, and shall add such facts as come to his knowledge relating to his history while at the institution, and after leaving it.

Superintendent  
to make con-  
tracts, &c.  
Suits.  
1847, 165, § 12.

SECT. 10. He shall in writing make all contracts on account of the institution, with the approval of the trustees if their by-laws require it; and he or his successor may sue or be sued thereon to final judgment and execution. No suit shall abate by reason of the office of superintendent becoming vacant, but any successor in office may take upon himself the prosecution or defence thereof, and upon motion of the adverse party and notice he shall be required so to do.

#### *Treasurer.*

Treasurer, ap-  
pointment and  
bond of.  
1847, 165, § 13.  
1859, 285, § 4.  
See § 7.

SECT. 11. There shall be a treasurer appointed by the governor and council for three years, unless sooner removed for sufficient cause, who shall before entering upon the discharge of his duties give a bond to the commonwealth with sureties satisfactory to the governor and council in the sum of three thousand dollars, conditioned that he shall faithfully account for all money received by him as treasurer; which bond shall be filed in the office of the treasurer of the commonwealth.

#### NAUTICAL BRANCH OF THE STATE REFORM SCHOOL.

Nautical  
branch. Sepa-  
rate officers, &c.  
1859, 285, 286.

SECT. 12. The nautical branch of the state reform school shall be vested in a board of five trustees; it shall have separate officers appointed in like manner, with like powers and duties, and subject to like obligations as similar officers of said school; and the foregoing provisions shall so far as applicable apply to said branch, except as is hereinafter otherwise provided.

Trustees, ap-  
pointment and  
tenure of office  
of.  
1859, 285, § 1.

SECT. 13. The trustees now in office shall continue to hold their offices according to the tenor of their commissions. The governor, with the advice and consent of the council, shall annually appoint one trustee for the term of three years from the first Wednesday in February, and the Boston Board of Trade and the Boston Marine Society shall each annually appoint one trustee for the term of one year from said date. Appointments to fill vacancies for unexpired terms shall be made in the same manner as the original appointments. Any person whose term expires may be reappointed. The trustees shall receive no compensation for their services, but shall be allowed all expenses incurred by them in the discharge of their duties. They shall be removable only for sufficient cause.

to be a corpo-  
ration, &c.  
1859, 285, § 2.

SECT. 14. The trustees shall be a corporation by the name of the Trustees of the Nautical Branch of the State Reform School for the purpose of taking and holding, to themselves and their successors, in trust for the commonwealth, any grant or devise of lands, and any donation and bequest of money or other personal property, made for the use of said institution, and for the purpose of preserving and investing the proceeds thereof in good securities, with all powers necessary to carry said purposes into effect.

to have con-  
trol of school-  
ship, &c.  
1859, 285, § 3.

SECT. 15. The trustees shall have the control of the school-ship and other vessels procured for the institution, and shall cause the boys under their charge to be instructed in navigation and the duties of seamen. They may send any boy upon a voyage at sea, and in his behalf, enter into any contract necessary therefor; and such action shall operate as a discharge of the boy from the institution.

Superintendent,  
to be master of

SECT. 16. The superintendent shall be master of the school-ship, and



may navigate the ship and any tender thereof, and transport the same into and upon any of the ports and waters of the commonwealth.

school-ship.  
1859, 285, § 6.

COMMITMENTS.

SECT. 17. When a boy under the age of sixteen years is brought by a constable, police officer, or other inhabitant of this state, before a judge of the probate court, or superior court, upon complaint that he has committed an offence which may be punished by imprisonment other than imprisonment for life, the judge shall issue a summons to the father of the boy, if he is living and resident within the place where the boy was found, and if not, then to his mother if she is living and so resident; and if there is no such father or mother, to the lawful guardian of said boy, if any there is so resident, or if not, to the person with whom, according to his own statement and such testimony as shall be received, he resides; and if there is no person with whom he statedly resides, the judge may appoint some suitable person to act in his behalf; requiring him or her to appear at a time and place stated in the summons, to show cause, if any there is, why said boy shall not be committed to the state reform school, or the nautical branch thereof. And the judge shall also cause notice of the pendency of the complaint to be given to the mayor of the city, or to one of the selectmen of the town, where the boy resides.

Commitments to school.  
Proceedings.  
1847, 165, § 4.  
1858, 25.  
1859, 286, § 1.  
§ 1 C. 100

SECT. 18. At the time mentioned in the summons, the judge shall proceed to examine the boy and any party appearing in answer to the summons, and to take such testimony in relation to the case as may be produced. If the allegations are proved, and it appears that the boy is a suitable subject for said school, and that his moral welfare and the good of society require that he should be sent thereto for instruction, employment, or reformation, he shall commit the boy, if below the age of fourteen years, to the state reform school or the nautical branch thereof, as he deems best, and if above that age to the nautical branch of said school, by a warrant in substance as follows: —

Same subject.  
1859, 286, § 1.

To (A B) one of the constables (or police officers) of the city (or town) of . . . . . You are hereby commanded to take charge of C D, a boy under the age of sixteen years, to wit, of the age of . . . . . as near as can be ascertained, who at the time of his arrest resided in . . . . . and who has been proved to me to be a suitable subject for the state reform school (or the nautical branch of the state reform school) and a proper object for its care, discipline, and instruction, and deliver said boy without delay to the superintendent of said school, or other person in charge thereof, at the place where the same is established. And for so doing this shall be your sufficient warrant.

Form of warrant.

Dated this . . . . . day of . . . . . 18 . . . . . , at . . . . . , (in the county of . . . . . in the commonwealth of Massachusetts.)

But no variance from said form shall be deemed material if it sufficiently appears upon the face thereof, that the boy is committed by the judge in the exercise of the powers given to him by this chapter.

SECT. 19. The judge shall certify in the warrant the place in which the boy resided at the time of his arrest, and such certificate for the purposes of this chapter shall be conclusive evidence of his residence. He shall also state therein the age of the boy, as near as he can ascertain. Accompanying the warrant, the judge shall transmit to the superintendent, by the officer serving it, a statement of the substance of the complaint and testimony given in the case, together with such other particulars concerning the boy as the judge is able to ascertain.

Judge to certify residence, age, &c.  
1858, 25.  
1859, 170, § 3.  
1859, 286, § 1.

SECT. 20. The warrant shall be executed by a constable or police officer of the place where the case was heard. Any summons to appear before a judge as aforesaid shall be served by a constable or police officer, by delivering an attested copy of the same personally to the party to whom it is addressed, or leaving it with some person of

Service of warrant, &c.  
1847, 165, § 6.  
1859, 286, § 1

sufficient age at the place of residence or business of such party; and said constable or police officer shall immediately make return to the same judge of the time and manner of such service.

Duties of justice before whom boy is brought for trial, &c. 1859, 286, § 1.

SECT. 21. When a boy under sixteen years of age is brought for trial before a trial justice or police court, charged with an offence which may be punished by imprisonment other than imprisonment for life, and the justice or court is of opinion, or any person makes affidavit, that if found guilty he would be a fit and proper subject for the state reform school or the nautical branch thereof, a decree to that effect shall be entered of record, and thereupon such justice or court shall cause notice of the proceedings to be given to the mayor of the city or one of the selectmen of the town where the boy resided at the time of his arrest, and shall by a warrant cause the boy to be brought forthwith before the judge of the probate court, or a judge of the superior court if within the county, and transmit to him the complaint and warrant by virtue of which he was arrested. The judge shall thereupon have the same jurisdiction and powers as if the boy had been brought before him upon an original complaint.

Second commitment. 1859, 286, § 1.

SECT. 22. If a boy previously committed to the school is again brought before any judge under the provisions of this chapter, the judge may examine the case and issue his warrant for committing him to either branch of the school without issuing the summons required by section seventeen.

Unfit subjects may be held for trial in superior court. 1859, 286, § 3.

SECT. 23. If the judge is of opinion that a boy brought before him is guilty, and is not a fit subject for either branch of the school, he shall, if the offence charged is one within the jurisdiction of police courts, sentence him to such punishment as is provided by law for the offence; otherwise he shall bind him over to appear before the superior court for the same county, as police courts may do in like cases.

Appeal, &c. 1859, 286, §§ 2, 3.

SECT. 24. Any boy ordered to be committed to either branch of the school, or convicted and sentenced as aforesaid, may appeal to the superior court; and the appeal shall be had, entered, tried, and determined, in like manner and subject to like provisions as appeals from justices of the peace in criminal cases.

Fees of judges, &c. 1859, 286, § 2.

SECT. 25. The fees and compensation allowed to judges under this chapter shall be the same as by law are allowed to justices of the peace; and all officers serving process shall be allowed the same fees as they are entitled to for serving process in criminal proceedings.

Courts may sentence boys to school, &c. Notice before sentence. 1859, 170, § 3. 1859, 286, §§ 1, 4.

SECT. 26. When a boy under the age of sixteen years is convicted in the supreme judicial or superior court of any offence which may be punished by imprisonment other than imprisonment for life, the court may sentence him, if below the age of fourteen years, to the state reform school or the nautical branch thereof, as it deems best, and if above that age to the nautical branch of said school, or in either case to such punishment as is otherwise provided by law. Before passing such sentence the court shall cause notice of the pendency of the case to be given to the mayor of the city or one of the selectmen of the town where the boy resided at the time of his arrest. The provisions of section nineteen shall apply to commitments under this section.

#### CONFINEMENT AND DISCHARGE.

Term of commitment. Discharge, &c. 1847, 165, § 7. 1859, 170, § 2. 1859, 285, §§ 3, 5. 1859, 286, § 4.

SECT. 27. Any boy committed to the state reform school or the nautical branch thereof shall be there kept, disciplined, instructed, employed, and governed, under the direction of the trustees, until he arrives at the age of twenty-one years, or is bound out, or discharged as reformed, or otherwise legally discharged. The discharge of a boy as reformed, or his being sent on a voyage at sea, or arriving at the age of twenty-one years, shall be a complete release from all penalties and disabilities created by the sentence.

TRANSFER OF INMATES.

SECT. 28. By consent of the trustees of the state reform school and the nautical branch thereof, or by direction of the governor, any boy may be transferred by the superintendent from one institution to the other; but no boy who was an inmate of the school on the twenty-sixth day of November in the year eighteen hundred and fifty-nine shall be transferred without his consent.

Boys may be transferred, &c. 1859, 286, § 5.

SUPPORT OF INMATES BY CITIES AND TOWNS.

SECT. 29. When a boy is committed to either of said institutions, the city or town wherein he resided at the time of his arrest shall quarterly on the first days of January, April, July, and October, pay to the treasurer of the school fifty cents a week during the time he remains therein. And any sum so paid may be recovered by such city or town of any parent, kindred, or guardian liable by law to maintain him, or of the city or town in which he has his lawful settlement.

Support by towns. Liability of kindred. 1859, 286, § 6.

CHAPTER 77.

OF THE LAW OF THE ROAD.

SECTION

1. Persons meeting to turn to right.
2. passing carriage going same way, to turn to left.
3. Bells to be used with sleighs.

SECTION

4. Penalties. Complaints to be made within three months.
5. Horse railroads exempt.

SECTION 1. When persons meet each other on a bridge or road, travelling with carriages, wagons, carts, sleds, sleighs, or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the travelled part of such bridge or road, so that their respective carriages or other vehicles may pass each other without interference.

Persons meeting to turn to right. R. S. 51, § 1. 1 Pick. 345. 4 Pick. 125. 23 Pick. 201. 8 Met. 213. 11 Met. 404. 12 Met. 415. 10 Cush. 495. 2 Gray, 181.

SECT. 2. The driver of a carriage or other vehicle passing a carriage or other vehicle travelling in the same direction shall drive to the left of the middle of the travelled part of a bridge or road; and if the bridge or road is of sufficient width for the two vehicles to pass, the driver of the leading one shall not wilfully obstruct the same.

passing carriage going same way, to turn to left, &c.

SECT. 3. No person shall travel on a bridge or road, with a sleigh or sled drawn by one or more horses, unless there are at least three bells attached to some part of the harness.

Bells to be used with sleighs. R. S. 51, § 2.

SECT. 4. Whoever offends against the provisions of the preceding sections shall for each offence forfeit a sum not exceeding twenty dollars, and be further liable to any party for all damages sustained by reason of such offence: *provided*, that every complaint therefor shall be made within three months after the offence is committed, and that every action for damages shall be commenced within twelve months after the cause of action has accrued.

Penalties. Complaints to be made within three months. R. S. 51, § 3.

SECT. 5. The provisions of this chapter shall not apply to horse railroads.

Horse railroads exempt.



## CHAPTER 78.

## OF TIMBER AFLOAT OR CAST ON SHORE.

## SECTION

1. Timber carried away by floods may be taken by owners, &c.
2. Penalty for cutting out or altering marks of owners.
3. on timber of unknown owners.

## SECTION

4. Possession, &c., presumptive evidence of guilt.
5. Provision regulating timber in Connecticut River. Liability of owner.
6. Penalty for unlawful conversion of timber in rivers, &c.

Timber carried away by floods may be taken by owners, &c.  
R. S. 52, § 1.  
1841, 26.

SECTION 1. When any log, mast, spar, or other timber, is carried by floods into lands adjoining any rivers, streams, or ponds, the owner of such logs or other timber may at any time within six months remove the same from said land on paying or tendering to the owner or occupant thereof such reasonable damages as may be caused by such removal; and if the owner of such logs or other timber does not take the same from such lands within said six months, or otherwise agree with the owner or occupant of such lands, then such logs and other timber shall be deemed the property of such owner or occupant.

Penalty for cutting out or altering marks of owners.  
R. S. 52, § 2.  
1852, 312.

SECT. 2. Whoever unlawfully cuts out, alters, or destroys, a mark of the owner, made on any log or other timber put into a river, stream, or pond, shall forfeit a sum not exceeding ten dollars for each log or other piece of timber the mark of which he so alters, cuts out, or destroys; and shall be further liable in damages to the owner thereof for treble the value of the same, to be recovered together with said forfeiture in an action of tort.

on timber of unknown owners.  
R. S. 52, § 3.

SECT. 3. Whoever unlawfully cuts out, alters, or destroys any marks of such logs or other timber, the owner whereof is not known, shall forfeit a sum not exceeding ten dollars for every log or other piece of timber the mark whereof he so cuts out, alters, or destroys, to be recovered to the use of any person suing for the same.

Possession, &c., presumptive evidence of guilt.  
R. S. 52, § 4.

SECT. 4. In suits under the two preceding sections, if the logs or other timber are found in the possession of the defendant, with the marks cut out, altered, or destroyed, it shall be presumptive evidence of his guilt, and the burden of proof shall be upon him to discharge himself.

Provisions regulating timber in Connecticut River. Liability of owner.  
R. S. 52, § 5.

SECT. 5. No person shall cause or permit to be driven or floated down Connecticut River, any masts, spars, logs, or other timber, unless the same are formed and bound into rafts and placed under the care of a sufficient number of persons to govern and manage the same so as to prevent damage thereby. If damage is done to a bridge or dam upon or over said river, by any timber so driven or floated in any manner not herein allowed, the owner of the timber, and every person who causes or permits the same to be so driven or floated, shall be jointly and severally liable for all such damage, to be recovered by the party injured in an action of tort.

Penalty for unlawful conversion of timber in rivers, &c.  
1854, 339, § 1.

SECT. 6. Whoever unlawfully takes, carries away, or otherwise converts to his own use, without the consent of the owner, any log suitable to be sawed or cut into boards, clapboards, shingles, joists, or other timber, or any mast or spar, the property of another, lying or being in a river, pond, canal, lake, bay, stream, or inlet, within this state, shall for every such log, mast, or spar, be punished by fine of not less than five nor more than twenty dollars, or by confinement in the house of correction or jail not less than thirty days nor more than six months.

CHAPTER 79.

OF LOST GOODS AND STRAY BEASTS.

SECTION

1. Finder of lost money or goods to give notice, &c.
2. When stray beasts are taken up, notice to be given.
3. Strays taken up within ten miles of agricultural hall in Brighton.
4. Lost goods of value of \$10 or more to be appraised.
5. Conditional right of owner to receive his goods or value thereof.

SECTION

6. Conditional right of finder, if no owner appears.
7. If owner of strays proves his right within three months.
8. If such owner does not prove his right, &c.
9. If such owner appears within one year. If no owner appears.
10. Penalty if finder neglects to give notice, &c.
11. for taking away strays without paying charges.

SECTION 1. Whoever finds lost money or goods of the value of three dollars or more, the owner whereof is unknown, shall within two days cause notice thereof to be posted up in two public places within the city or town where the same was found, and shall also within seven days give notice thereof in writing to the city or town clerk, and pay him twenty-five cents for making an entry thereof in a book to be kept for that purpose; and if the money or goods be of the value of ten dollars or more, the finder shall within one month after such finding cause the same to be advertised in some newspaper or publicly cried, if there is a crier in the place, and notice thereof to be posted up in like manner in two adjoining places.

Finder of lost money or goods to give notice, &c.  
R. S. 56, § 1.

SECT. 2. Whoever takes up a stray beast shall cause to be entered with the city or town clerk, in a book to be kept for the purpose, a notice thereof, containing a description of the color and natural and artificial marks of the beast; and cause the same to be cried, and notifications thereof containing a like description of the beast to be posted up in the manner provided in the preceding section; otherwise he shall not be entitled to compensation for any expenses which he may incur in relation thereto.

When stray beasts are taken up, notice to be given.  
R. S. 56, § 2.

SECT. 3. If such stray beasts are taken up within ten miles of the agricultural hall in Brighton, the finder within ten days thereafter shall, in addition to the notice before required, post up a similar notice in Brighton, at such public place as shall have been designated therefor by the selectmen of that town; and the finder shall be entitled to receive therefor fifty cents, together with eight cents for every mile travelled for the purpose.

Strays taken up within ten miles of agricultural hall in Brighton.  
R. S. 56, § 3.

SECT. 4. Every finder of lost goods or stray beasts of the value of ten dollars or more, shall also within two months, and before any use is made of the same, procure from the city or town clerk, or from a justice of the peace, a warrant directed to two disinterested persons, to be appointed by the clerk or justice, and returnable into said clerk's office in seven days from the date, to appraise the same at their true value, upon oath to be administered by the clerk or justice.

Lost goods of value of \$10 or more to be appraised.  
R. S. 56, § 4.

SECT. 5. If the owner of such money or goods, other than stray beasts, appears within one year after such entry with the clerk, and makes out his right thereto, he shall have restitution of the same or the full value thereof; he paying for entering the same, together with all reasonable charges for keeping, notifying, crying, and appraising, as aforesaid, and for necessary travel in the case; which charges shall in case of disagreement between the owner and finder be determined by some justice of the peace.

Conditional right of owner to receive his goods or value thereof.  
R. S. 56, § 5.

SECT. 6. If no owner appears within one year, the lost money or goods shall remain to the finder, he paying to the treasurer of the city or town one-half of the value thereof according to said appraisement,

of finder, if no owner appear.  
R. S. 56, § 6.

(all lawful charges being first deducted,) and upon his neglect or refusal to pay the same, it shall be recovered by the city or town treasurer.

If owner of strays proves his right within three months. R. S. 56, § 7.

SECT. 7. If the owner of such stray beasts appears within three months after such entry with the clerk, and makes out his right thereto, he shall have restitution of the same upon paying the charges as provided in the case of lost goods.

If such owner does not prove his right, &c. R. S. 56, § 8.

SECT. 8. If such owner does not appear and make out his title to the beasts within said three months, the finder may sell them by public auction, first giving notice of such sale at least four days before the time of sale, in two public places in the city or town where the beasts were taken up; and the money arising from the sale, after deducting all lawful charges, shall be deposited in the city or town treasury.

If such owner appears in one year. If no owner appears. R. S. 56, § 9.

SECT. 9. If such owner appears within one year after said entry and makes out his title to the beasts, he shall, if they have not been sold, have restitution of the same upon paying the charges arising thereon as provided in the case of lost goods; and if the beasts have been sold he shall be entitled to receive the money so deposited in the treasury from the proceeds of the sale. If no owner appears within said year, the beasts, or the value or price thereof after deducting said charges, shall remain one-half to the use of the finder and the other half to the use of the town, in like manner as is before provided with respect to lost money or goods.

Penalty, if finder neglects to give notice, &c. R. S. 56, § 10. 1839, 135.

SECT. 10. The finder of lost goods, money, or stray beasts, who neglects to cause the same to be entered and cried and notice thereof to be posted up as before directed, shall forfeit the value of such goods, money, or beasts, unless he delivers the same or otherwise accounts therefor to the owner thereof, in which case he shall forfeit a sum not exceeding twenty dollars.

for taking away strays without paying charges. R. S. 56, § 11.

SECT. 11. Whoever takes away a beast taken up as a stray without paying all lawful charges incurred in relation to the same, shall forfeit to the finder the value thereof, to be recovered in an action of tort.

## CHAPTER 80.

### OF UNCLAIMED PROPERTY TRANSPORTED BY COMMON CARRIERS.

#### SECTION

1. Railroads and proprietors of steamboats to publish lists of unclaimed effects of passengers.
2. Advertised articles unclaimed, to be examined by mayor, &c., and ordered sold, &c.

#### SECTION

3. Proceeds of sale over expenses, to be paid into state treasury
4. Penalty for neglect to advertise, &c.
5. Perishable articles transported by common carriers may be sold.

Railroads and proprietors of steamboats to publish lists of unclaimed effects of passengers. 1851, 147, § 1.

SECTION 1. Every railroad corporation and the proprietors of every steamboat engaged in the transportation of passengers, shall on the first Monday of January and July in each year, publish in one newspaper at least in every county of this state in which such railroad corporation or steamboat proprietors have a passenger station or office, a descriptive list of all trunks, carpet bags, valises, parcels, and passengers' effects, left and then remaining unclaimed at any passenger station or office, or in the possession of such corporation or proprietors, or their agents, and the list shall indicate all such specific marks as may serve to identify the same.

Advertised articles unclaimed to be examined by mayor, &c.,

SECT. 2. If at the expiration of six months after such advertisement any of the articles so advertised still remain unclaimed, the railroad corporation or steamboat proprietors in whose possession they are shall



give notice to the mayor and aldermen or selectmen of the city or town in which the articles may be; and said mayor and aldermen or selectmen shall cause the articles to be examined, and may order them to be sold at public auction upon notice given of the time and place of sale by publishing as aforesaid, or may order any of them to be again advertised and to remain another six months before being sold.

and ordered sold, &c. 1851, 147, § 2.

SECT. 3. The proceeds of all articles thus sold, after deducting costs of storage, advertising, and other expenses due to such railroad corporation or steamboat proprietors, and the costs of said examination and sale, shall be paid over to the treasurer of the commonwealth for the use of the same.

Proceeds of sale over expenses to be paid into state treasury. 1851, 147, § 3.

SECT. 4. If any railroad corporation or steamboat proprietors neglect or omit so to advertise and cause to be examined any such effects, the corporation or proprietors shall be liable for all damages on account thereof, to be recovered by the person injured, in an action of tort; and shall also forfeit one hundred dollars for each case of neglect or omission.

Penalty for neglect to advertise, &c. 1851, 147, § 4. 1852, 312.

SECT. 5. When a common carrier has transported property consisting of fresh meats, fresh fish, shell fish, fruit, or vegetables, to their place of destination, and has notified the owner or consignee of the arrival of the same, and the owner or consignee after such notice has refused or omitted to receive and take away the same and pay the freight and proper charges thereon, said carrier may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds after deducting the amount of said freight and charges, and expenses of sale, shall be paid to the owner or consignee: *provided*, that if the owner or consignee cannot be found on reasonable inquiry, the sale may be made without such notice.

Perishable articles transported by common carriers may be sold. 1857, 237.

CHAPTER 81.

OF WRECKS AND SHIPWRECKED GOODS.

SECTION

1. Commissioners of wrecks; appointment; removal; bond; remedy on bond.
2. duty of, on hearing of wreck, &c.
3. may employ assistants, &c.; penalty for disobeying order of.
4. shall take an inventory of property, &c.
5. Arbitration between commissioner and owner.
6. If not agreed to, case to be decided at law.
7. No person held to pay for services rendered except to commissioners, unless, &c. Appeal from commissioner; power of court.

SECTION

8. Penalty for intermeddling with wrecked property.
9. Commissioners to advertise wrecked property.
10. may dispose of enough to pay duties, &c.
11. may sell perishable property.
12. to return inventory to treasurer if owner does not appear within one year.
13. compensation of.
14. liability of, for neglecting to account, &c.

SECTION 1. The governor, with the advice and consent of the council, may appoint in any county one or more commissioners of wrecks and shipwrecked goods, who shall be removable at pleasure. Each of said commissioners shall be sworn and shall give bond to the judge of the probate court for the county in which he resides, with sufficient sureties to the acceptance of said judge, for the faithful discharge of his duty. Every person having a claim against such commissioner for a breach or neglect of his official duty, may have a remedy therefor by a suit on his bond, to be prosecuted in the name of the judge of the probate court in like manner as on official bonds given by administrators of the estates of deceased persons.

Commissioners of wrecks; appointment; removal; bond; remedy on bond. R. S. 57, § 1.

Commissioners, duty of on hearing of wreck, &c.  
R. S. 57, § 2.

SECT. 2. Every commissioner, on receiving information of a shipwreck, or of the finding of any shipwrecked goods or property of any kind to the amount of one hundred dollars or more, on any of the shores or waters within his county, or that may be brought within said county, shall immediately repair to the place where the property may be, and if the same is not in the custody of an owner or agent, shall take charge thereof and preserve and secure the same for the owner.

may employ assistants, &c. penalty for disobeying order of.  
R. S. 57, § 3.  
1852, 312.

SECT. 3. The commissioner in such case may employ as many persons as he deems necessary to assist in preserving the property, may appoint guards to secure the same, and suppress all tumults and disorders. Whoever disobeys a lawful order of the commissioner shall forfeit for every such offence a sum not exceeding ten dollars, to be recovered in an action of tort in the name of the commissioner, to the use of the city or town.

shall take an inventory of property, &c.  
R. S. 57, § 4.

SECT. 4. The commissioner shall on every such occasion take an inventory of all the property that comes to his possession; and when required by the owner thereof or his agent, or by any insurance company, or underwriter, or other person interested therein, shall make oath to the truth of such inventory, and deliver a copy thereof if required, together with all said property, to the owner, agent, or other person lawfully authorized to receive it: *provided*, that there shall be first paid, or secured to be paid, to the commissioner a reasonable compensation for his services and expenses, and such custom house duties and other charges as he has paid or become liable to pay upon or for the property in question.

Arbitration between commissioner and owner.  
R. S. 57, § 5.

SECT. 5. If the commissioner and other party do not agree on the sum so due to the commissioner, the case may be submitted to arbitrators in the manner provided in chapter one hundred and forty-seven; and all the proceedings therein shall be conducted as provided in that chapter.

if not agreed to, case to be decided at law.  
R. S. 57, § 6.

SECT. 6. If the parties do not agree to submit the case to arbitrators, it may be decided in an action at common law; to be commenced and prosecuted as the circumstances may require, unless the same is a matter within the exclusive jurisdiction of the courts of the United States.

No person held to pay for services rendered except to commissioners, unless, &c.

SECT. 7. No owner or other person interested in such property shall be held to pay to any person, other than one of said commissioners, any charge for services or expenses in taking or securing the same, unless for property taken or secured before the arrival of a commissioner; in which case, the commissioner shall, upon hearing all parties interested, determine the compensation to be received as aforesaid, and from his award in writing there shall be no appeal, unless the whole sum so demanded exceeds fifty dollars, in which case an appeal shall lie to the superior court, by either party aggrieved by the doings of the commissioner; and the court shall in a summary manner hear and determine the case, and may issue all processes necessary or proper to carry into effect their decrees and orders therein.

Appeal from commissioner; power of court.  
R. S. 57, § 7.  
1859, 196.

SECT. 8. Whoever, after the arrival of the commissioner, takes, detains, or intermeddles with any property shipwrecked or found as aforesaid, except under the directions of the commissioner, or of the owner, agent, or other person interested, shall forfeit a sum not exceeding one thousand dollars for each offence, to be recovered in an action of tort by the commissioner, owner, agent, or other person interested, to his own use.

Penalty for intermeddling with wrecked property.  
R. S. 57, § 8.  
1852, 312.

Commissioners to advertise wrecked property.  
R. S. 57, § 9.  
1852, 312.

SECT. 9. The commissioner, as soon as may be after his arrival at the place where any wreck or goods are found, shall publish the particulars of the shipwreck and goods, with such other material facts as he ascertains, in order that knowledge thereof may be given as soon as possible to the owner, agent, or persons interested; and if he neglects

so to do, he shall forfeit fifty dollars, to be recovered in an action of tort by the owner, agent, or other person interested, to his own use.

SECT. 10. He may, within thirty days after taking the same into his custody, dispose of so much of the property by public auction as shall be sufficient to pay all duties which he has paid thereon or for which he has become liable to the custom house.

Commissioners may dispose of enough to pay duties, &c. R. S. 57, § 10.

SECT. 11. When such property is of a perishable nature and may be much reduced in value by keeping for one year, and no owner, agent, or other person interested therein, appears to claim the same within sixty days after it is taken into the custody of the commissioner, he shall advertise it in the public newspapers and sell it by auction to the best advantage.

may sell perishable property. R. S. 57, § 11.

SECT. 12. If no owner, agent, or other person interested in such property, appears within one year after it has been taken into the custody of the commissioner, and establishes his claim thereto, the commissioner shall present to the treasurer of the commonwealth an inventory of the property, or, if sold, an account of the sales, with an account of all moneys paid by him for duties thereon and for the expenses of securing and preserving it; and he shall make oath to the truth of such inventory and accounts, and shall pay and deliver to the treasurer the balance of such accounts, with all the property remaining in his hands, for the use of the commonwealth.

to return inventory to treasurer if owner does not appear within one year. R. S. 57, § 12.

SECT. 13. The treasurer may make the commissioner such compensation for services and expenses as shall be just; to be ascertained, in case of disagreement between them, in the manner before provided for the adjustment of the like question between the commissioner and the owner of property.

compensation of. R. S. 57, § 13.

SECT. 14. If a commissioner, for the space of sixty days after the expiration of the year herein before limited for his accounting with the treasurer, neglects to present the inventory and accounts before mentioned, and to pay and deliver the balance due thereon, together with all the property remaining in his hands, the treasurer shall cause a suit to be commenced therefor for the use of the commonwealth, and shall prosecute the same to final judgment and execution.

liability of, for neglecting to account, &c. R. S. 57, § 14.

## CHAPTER 82.

### OF THE PRESERVATION OF CERTAIN BIRDS AND ANIMALS.

SECTION

1. Penalty for taking, killing, or having in possession, certain birds at certain seasons.
2. for taking such birds by traps, &c.
3. Selectmen, &c., to enforce provisions.
4. Penalty for shooting birds on lands of others without license.
5. for killing birds on salt marshes, except, &c.
6. Penalty for taking, selling or buying grouse, &c.,

SECTION

7. Penalty for killing grouse, &c., except by owner, &c., of land.
8. Search warrant. Proceedings.
9. Penalties may be suspended.
10. Penalty for killing plover, &c., between certain times;
11. or with unusual implements, &c.
12. for hunting deer within certain times.
13. with dogs in Plymouth or Barnstable.

SECTION 1. Whoever between the first day of March and the first day of September takes, kills, or destroys, any of the birds called partridges or quails; or between the first day of March and the fourth day of July takes, kills, or destroys, any of the birds called woodcock; or at any season of the year takes, kills, or destroys, any of the birds called robins, thrushes, linnets, sparrows, bluebirds, bobolinks, yellow-birds,

Penalty for taking, killing, or having in possession, certain birds at certain seasons. 1855, 197, § 1.



woodpeckers, or warblers; or within the respective times aforesaid sells, buys, or has in his possession, any of said birds taken or killed in this state or elsewhere, shall forfeit for every such partridge, quail, or woodcock, five dollars, and for every other of said birds, two dollars.

Penalty for taking certain birds by traps, &c.  
1856, 197, § 2.

SECT. 2. Whoever at any season of the year takes, kills, or destroys, by means of traps or snares, any of the birds mentioned in the preceding section, except partridges, shall forfeit for every such bird so taken, killed, or destroyed, five dollars.

Selectmen, &c., to enforce provisions.  
1855, 197, § 3.

SECT. 3. The mayor and aldermen and selectmen of the several cities and towns shall cause the provisions of the preceding sections to be enforced in their respective places.

Penalty for shooting birds on lands of others without, &c.  
R. S. 53, § 2.  
1852, 312.

SECT. 4. Whoever between the first day of March and the fourth day of July shoots at or kills any birds upon lands not owned or occupied by himself, and without license from the owner or occupant thereof, shall forfeit to the owner or occupant ten dollars, in addition to the actual damages sustained, to be recovered in an action of tort.

for killing birds on salt marshes, except, &c.  
R. S. 53, § 3.  
1849, 158, § 3.

SECT. 5. Whoever between the first day of March and the first day of July takes or kills any birds on any salt marshes, or sells any birds so taken or killed, shall forfeit two dollars for every offence: *provided*, that nothing contained in this section shall prevent the owner or occupant of such lands from taking or killing birds on the land so owned or held by him.

for killing, &c., grouse.  
1839, 135.  
1844, 156, § 1.

SECT. 6. Whoever within this state takes, kills, or destroys, any of the birds called grouse or heath hens, or sells, buys, or has in his possession, any of said birds so killed or taken, shall forfeit for every such bird twenty dollars.

except by owner, &c., of land.  
1844, 156, § 2.

SECT. 7. Whoever kills any grouse or heath hen as aforesaid, upon lands not owned or occupied by himself, and without license from the owner or occupant thereof, shall for each bird so killed forfeit to such occupant or owner ten dollars, in addition to the actual damage sustained, to be recovered in an action of tort.

Search warrant. Proceedings.  
1844, 156, § 3.

SECT. 8. When a person is suspected of having in his possession grouse or heath hen taken or killed contrary to the provisions of this chapter, a justice of the peace, or police court, on complaint on oath before him, may issue his warrant directed to the proper officer to search for the same, and the same proceedings may be had as are provided in chapter one hundred and seventy relating to searches and seizures.

Penalties may be suspended.  
R. S. 53, § 4.  
1844, 156, § 4.  
1855, 197, § 6.

SECT. 9. The provisions of the preceding sections shall not extend to any city in which the city council, nor to any town in which the inhabitants at their annual meeting, in any year vote to suspend the operation thereof, in whole or in part, and for such term of time not exceeding one year as they deem expedient.

Penalty for killing plover, &c., within certain times.  
R. S. 53, § 5.  
1839, 135.  
1849, 158, § 4.

SECT. 10. Whoever between the hour of sunset and one hour before the sun's rising, on any day between the twentieth day of April and the first day of July, takes, confines, kills, or destroys, any of the birds called plover, curlew, dough bird, or chicken bird, shall for every such bird so taken, confined, killed, or destroyed, forfeit one dollar.

or with unusual implements, &c.  
R. S. 53, § 6.

SECT. 11. Whoever at any time kills or destroys any of the birds mentioned in the preceding section, by the use of any other means or implements than such as are usually employed in fowling or killing wild game, shall for every such offence be liable to the penalty mentioned in said section.

for hunting deer within certain times.  
R. S. 53, § 7.

SECT. 12. Whoever between the first day of January and the first day of August kills or hunts any deer, except his own tame deer or deer kept in his park or on his own land, shall for every such offence forfeit twenty dollars.

with dogs in Plymouth, &c.  
R. S. 53, § 8.

SECT. 13. Whoever at any time of the year hunts, chases, or kills, with hounds or dogs, any deer within the counties of Plymouth or Barnstable, shall for every such offence forfeit twenty dollars.

CHAPTER 83.

OF FISHERIES, KELP AND SEAWEED.

<p>SECTION</p> <p>1. Penalty for poisoning fish with Indian cockle, &amp;c.</p> <p>2. for unlawfully catching pickerel and trout.</p> <p>3. Prosecutions limited.</p> <p style="text-align: center;">LOBSTERS, TAUTOG, BASS, &amp;c.</p> <p>4. Penalty for unlawfully taking lobsters, &amp;c., in Fairhaven, &amp;c.</p> <p>5. Boundaries of shores, &amp;c., in preceding section.</p> <p>6. Lobsters, &amp;c., within certain towns, not to be carried off by inhabitants of other states, nor by persons of this state in vessels of over 15 tons; penalty.</p> <p>7. Lobster fishery on shores, &amp;c., of Provincetown.</p> <p>8. Penalty.</p> <p>9. Waters and shores of Provincetown defined.</p>	<p>FISHERIES.</p>	<p>SECTION</p> <p>10. Penalty for taking lobsters, &amp;c., in Sandwich and Warcham, between March and July.</p> <p style="text-align: center;">OYSTERS AND OTHER SHELL FISH.</p> <p>11. Penalty for unlawfully taking oysters, &amp;c.</p> <p>12. Selectmen, &amp;c., may give permits.</p> <p>13. Penalty for taking, &amp;c., any other shell fish in certain towns.</p> <p>14. When vessels with oysters, &amp;c., on board may be seized.</p> <p>15. Prohibitions not to extend to Indians, &amp;c.</p> <p>16. Selectmen, &amp;c., may grant licenses to plant oysters, &amp;c.</p> <p>17. License to describe flats, be recorded, &amp;c.</p> <p>18. Rights of persons licensed. Penalties for trespassing.</p> <p>19. No shell fish except clams, &amp;c., to be taken in Chatham, &amp;c.</p> <p style="text-align: center;">KELP AND SEAWEED.</p> <p>20. Kelp, &amp;c., adrift, may be taken away.</p>
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FISHERIES.

SECTION 1. Whoever puts or throws into any waters within this state, for the purpose of taking or destroying fish therein, any of the *cocculus indicus*, otherwise called Indian berry or Indian cockle, or any other poisonous substance, whether the same is mixed with any other substance or not, shall forfeit ten dollars for every such offence.

Penalty for poisoning fish with Indian cockle, &c.  
R. S. 55, § 1.

SECT. 2. Whoever takes or catches any pickerel or trout in any rivers, streams, or ponds, in any other manner than by hooks and lines, or takes or catches any pickerel, from the first day of December to the first day of May, shall forfeit one dollar for every pickerel or trout so taken, and if he is a minor, his guardian shall be liable to said forfeiture; but this section shall not extend to any town unless adopted thereby, nor shall it affect the statutes specially relating to the district of Marshpee.

for unlawfully catching pickerel and trout.  
R. S. 55, § 3.  
1857, 30.  
1858, 94.  
1858, 94.  
1859, 106.

SECT. 3. All prosecutions under the preceding section shall be instituted within thirty days from the time of committing the offence.

Prosecutions limited.  
R. S. 55, § 4.

LOBSTERS, TAUTOG, BASS, &c.

SECT. 4. No person living without this state shall take any lobsters, tautog, bass, or other fish, within the harbors, streams, or waters, of the towns of Fairhaven, New Bedford, Dartmouth, and Westport, for the purpose of carrying them thence in vessels or smaeks of any size whatever owned without this state, nor in any of more than fifteen tons' burden owned within this state, under a penalty of ten dollars for every offence, and a forfeiture of all fish and lobsters so taken.

Penalty for unlawfully taking lobsters, &c., in Fairhaven, &c.  
R. S. 55, § 5.

SECT. 5. For the purposes of the preceding section, the waters and shores of the towns therein mentioned shall be deemed to extend from the line of the state of Rhode Island to the line of the county of Plymouth, and to include all the waters, islands, and rocks, lying within one mile of the main land.

Boundaries of shores, &c., in preceding section.  
R. S. 55, § 6.

SECT. 6. If, within the harbors, streams, or waters, of any place on the sea-coast in this state which has adopted chapter eighty-five of the statutes of the year eighteen hundred and thirty-nine, according to the provisions of that act, or which shall have adopted this section, any person living without the state takes, for the purpose of carrying thence,

Lobsters, &c., in certain towns not to be carried off by inhabitants of other states, nor by persons



of this state in vessels of over 15 tons.  
1839, 85.

any lobsters, tautog, bass, blue fish, or scuppaug, or if any person living within this state takes and carries away from such place any such fish or lobsters in vessels or smacks of more than fifteen tons' burden, he shall forfeit for each offence a sum not exceeding twenty dollars and all the fish and lobsters so taken.

Lobster fishery on shores, &c., of Provincetown.  
R. S. 55, § 7.

SECT. 7. No person shall take lobsters within the waters and shores of the town of Provincetown, for the purpose of carrying them from said waters in any vessel or smack of more than fifteen tons' burden, or for the purpose of putting the same on board of such vessel or smack to be transported to any place, unless a permit is first obtained therefor from the selectmen of said town, who may grant the same for such sum to be paid to the use of the town as they shall deem proper.

Penalty.  
R. S. 55, § 8.

SECT. 8. Whoever offends against the provisions of the preceding section shall for each offence forfeit ten dollars; and if the number of lobsters so unlawfully taken or found on board of any such vessel or smack exceeds one hundred, he shall in addition to said penalty forfeit a further sum of ten dollars for every hundred lobsters so taken or found, and in that proportion for any number over the first hundred.

Waters and shores of Provincetown, defined.  
R. S. 55, § 9.

SECT. 9. For the purposes of the two preceding sections the waters and shores of Provincetown shall be deemed to be as follows, viz.: beginning at Race Point, one-half mile from the shore, by said shore to the end of Long Point which forms the harbor of Provincetown, and from the end of Long Point one-half mile and including the harbor within the town of Provincetown.

Penalty for taking lobsters, &c., in Sandwich and Wareham between March and July.  
1856, 176, §§ 2, 3, 4.

SECT. 10. Whoever, between the first day of April and the first day of July inclusive, takes more than one hundred pounds per week of lobsters, tautog, bass, or scuppaug, in the bays, harbors, ponds, rivers, or creeks, of the waters of Buzzard's Bay, within one mile from the shore and within the jurisdiction of the towns of Sandwich and Wareham, shall forfeit a sum not exceeding fifty dollars, to be recovered in an action of tort by the selectmen or any legal voter of the towns of Sandwich or Wareham, to the use of the party suing therefor.

#### OYSTERS AND OTHER SHELL FISH.

Penalty for unlawfully taking oysters, &c.  
R. S. 55, § 11.

SECT. 11. Whoever takes oysters from their beds, or destroys them, or wilfully obstructs their growth therein, in any part of this state, except as is provided in the following sections, shall forfeit for every bushel of oysters (including the shells) so taken or destroyed the sum of two dollars.

Selectmen, &c., may give permits.  
R. S. 55, § 12.  
7 Met. 446.

SECT. 12. The mayor and aldermen or selectmen of any city or town in which there are oyster beds may give permits in writing to any person to take oysters from their beds at such times, in such quantities, and for such uses, as they shall express in their permits; and every inhabitant of such city or town may, without such permit, take oysters from the beds therein for the use of his family, from the first day of September to the first day of June annually.

Penalty for taking, &c., any other shell fish.  
R. S. 55, § 13.  
1838, 110, 113.  
1839, 84.  
1840, 9.  
1842, 10.  
1846, 127.  
1852, 53.  
7 Met. 446.

SECT. 13. Whoever takes any other shell fish from their beds, or destroys them, or wilfully obstructs their growth therein, in any city or town, except as is hereinafter provided, shall forfeit for every bushel of such other shell fish (including the shells) one dollar. But the mayor and aldermen or selectmen of each of said places may at all times give permits in writing to any person to take such other shell fish from their beds therein, at such times, in such quantities, and for such uses, as they shall express in their permit; and every inhabitant of each of said places may, without such permit, take such other shell fish from the beds therein, for the use of his family.

When vessels, with oysters,

SECT. 14. If a vessel, boat, or craft is found within the limits of any place, and not owned therein, with oysters on board taken in such place



without such permit, or a license granted as hereinafter provided; or within the limits of any place, and not owned therein, with other shell fish on board taken in such place without a permit; any inhabitant of the place wherein the vessel, boat, or craft is so found trespassing, may seize and detain the same not exceeding forty-eight hours, in order that it may in that time be attached or arrested by due process of law to satisfy said fines and forfeitures with costs: *provided*, that if before the prosecution is instituted the owner or master of the vessel, boat, or craft pays such forfeiture to the treasurer of the city or town in which the same is incurred, the vessel, boat, or craft, with the effects therein, shall be discharged.

&c., on board, may be seized. R. S. 55, § 14. 1848, 152.

SECT. 15. Nothing contained in the four preceding sections shall be construed to deprive native Indians of the privilege of digging shell fish for their own consumption, or to prevent any fisherman from taking any quantity of shell fish which he may want for bait, not exceeding at any one time seven bushels including their shells.

Prohibitions not to extend to Indians, &c. R. S. 55, § 15.

SECT. 16. The mayor and aldermen or selectmen of any city or town may, by writing under their hands, grant a license for a term not exceeding twenty years to any inhabitant thereof, to plant, grow, and dig oysters, at all times of the year, upon and in any flats and creeks therein, at any place where there is no natural oyster bed; not, however, impairing the private rights of any person, nor materially obstructing the navigable waters of any creek or bay.

Selectmen, &c., may grant licenses to plant oysters, &c. 1848, 152, §§ 1, 3.

SECT. 17. Such license shall describe by metes and bounds the flats and creeks so appropriated, and shall be recorded by the city or town clerk before it shall have any force; and the person licensed shall pay to the mayor and aldermen or selectmen, for their use, two dollars, and to the clerk fifty cents.

License to describe flats, be recorded, &c. 1848, 152, §§ 2, 5.

SECT. 18. The person so licensed, his heirs and assigns, shall for the purposes aforesaid have the exclusive use of the flats and creeks described in the license, during the time therein specified; and may in an action of tort recover treble damages of any person who, without his or their consent, digs or takes oysters from such flats or creeks during the continuance of the license; and whoever digs or takes oysters therefrom without such consent shall also forfeit twenty dollars for each offence.

Rights of persons licensed. Penalties for trespassing. 1839, 135. 1848, 152, § 3.

SECT. 19. No person shall take from the towns of Chatham or Nantucket, or from the south shore of the town of Barnstable and district of Marshpee, any shell fish for bait or other use, except clams and a shell fish commonly known by the name of horsefeet; and no quantity exceeding seven bushels of clams including the shells, or one hundred horsefeet, shall be taken in one week for each vessel or craft, nor in any case without a permit being first obtained from the selectmen of the town.

No shell fish except clams, &c., to be taken in Chatham, &c. R. S. 55, § 16. 1850, 6, § 2. 1856, 214, § 2.

KELP AND SEAWEED.

SECT. 20. Any person may take and carry away kelp or other seaweed between high and low-water mark, whilst the same is actually adrift in tide waters; but for such purpose no person shall enter on upland or on lawfully enclosed flats without the consent of the owner or lawful occupant thereof. The provisions of this section shall not apply to any city or town in which the subject matter is regulated by special act of the legislature.

Kelp, &c., adrift, may be taken away. 1859, 247.

CHAPTER 84.

OF THE OBSERVANCE OF THE LORD'S DAY

*Allen 208.*

SECTION

1. Prohibition of labor, &c., except works of necessity and charity.
2. of travelling, except, &c.
3. Persons keeping places of entertainment, &c., not to entertain any other than travellers, &c.
4. Prohibitions as to Saturday and Sunday evenings, &c.
5. Innholders not to entertain persons on Saturday or Sunday evenings, except, &c.

SECTION

6. Writs, &c., not to be served on Lord's day.
7. Penalty for rude behavior in churches.
8. Sheriffs, &c., to inform of offences.
9. Provisions for persons who observe Saturday as the Sabbath.
10. Prosecutions when to be instituted.
11. Penalty on innholders, &c., who permit to be used implements of gaming on Lord's day, &c.
12. "Lord's day," what it includes.

Prohibition of labor, &c.  
R. S. 50, § 1.  
13 Mass. 324.  
12 Met. 24.  
13 Met. 284.  
2 Cush. 556.  
4 Cush. 243.  
10 Cush. 257.  
7 Gray, 164.

of travelling.  
R. S. 50, § 2.  
6 Mass. 75.  
13 Mass. 324.  
10 Met. 363.  
4 Cush. 322.

Persons keeping places of entertainment, &c., not to entertain any other than travellers, &c.  
R. S. 50, § 3.  
1844, 160, § 1.  
2 Pick. 139.

Prohibitions as to Saturday and Sunday evenings, &c.  
1858, 151.

Innholders not to entertain persons on Saturday or Sunday evenings, except, &c.  
R. S. 50, § 6.

Writs, &c, not to be served on Lord's day.  
R. S. 50, § 7.

Penalty for rude behavior in churches.  
R. S. 50, § 8.

Sheriffs, &c., to inform of offences.  
R. S. 50, § 9.

SECTION 1. Whoever keeps open his shop, warehouse, or workhouse, or does any manner of labor, business, or work, except works of necessity and charity, or is present at any dancing or public diversion, show, or entertainment, or takes part in any sport, game, or play, on the Lord's day, shall be punished by a fine not exceeding ten dollars for every offence.

SECT. 2. Whoever travels on the Lord's day, except from necessity or charity, shall be punished by fine not exceeding ten dollars for every offence.

SECT. 3. Whoever keeping a house, shop, cellar, or place of public entertainment, or refreshment, entertains therein on the Lord's day any persons not being travellers, strangers, or lodgers, or suffers such persons on said day to abide or remain therein, or in the yards, orchards, or fields, appertaining to the same, drinking, or spending their time idly or at play, or in doing any secular business, shall be punished by fine not exceeding five dollars for each person so entertained or suffered so to abide and remain; and upon any conviction after the first, by fine not exceeding ten dollars; and if convicted three times, he shall thereafter be incapable of holding a license; and every person so abiding or drinking shall be punished by fine not exceeding five dollars.

SECT. 4. Whoever is present at a game, sport, play, or public diversion, except a concert of sacred music, upon the evening of the Lord's day, or upon the evening next preceding the Lord's day, unless such game, sport, play, or public diversion, is licensed by the persons or board authorized by law to grant licenses in such cases, shall be punished by fine not exceeding five dollars for each offence.

SECT. 5. No person licensed to keep a place of public entertainment shall entertain or suffer to remain or be in his house, yard, or other places appurtenant, any persons, not being travellers, strangers, or lodgers, in such house, drinking and spending their time there, on the Lord's day, or the evening preceding the same; and every such innholder or other person so offending shall be punished by fine not exceeding five dollars for each offence.

SECT. 6. No person shall serve or execute any civil process on the Lord's day; but such service shall be void, and the person serving or executing such process shall be liable in damages to the party aggrieved in like manner as if he had no such process.

SECT. 7. Whoever on the Lord's day, within the walls of any house of public worship, behaves rudely or indecently, shall be punished by fine not exceeding ten dollars.

SECT. 8. All sheriffs, grand jurors, and constables, shall inquire into and inform of all offences against the preceding provisions of this chapter, and cause the same to be carried into effect.

SECT. 9. Whoever conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business, travel, and labor, on that day, shall not be liable to the penalties of this chapter for performing secular business, travel, or labor, on the Lord's day, or first day of the week: *provided*, that he disturbs no other person.

Provision for persons who observe Saturday as the Sabbath.  
R. S. 50, § 10.  
3 S. & R. 48.

SECT. 10. Prosecutions for penalties incurred under the preceding provisions of this chapter shall be instituted within six months after the offence is committed.

Prosecutions when to be instituted.  
R. S. 50, § 11.

SECT. 11. Any innholder, common victualler, or person, keeping or suffering to be kept in any place occupied by him, implements such as are used in gaming, in order that the same may for hire, gain, or reward, be used for purposes of amusement, who on the Lord's day uses or suffers to be used any implements of that kind upon any part of his premises, shall for the first offence forfeit a sum not exceeding one hundred dollars, or be imprisoned in the house of correction not exceeding three months; and for every subsequent offence shall be imprisoned in the house of correction for a term not exceeding one year; and in either case shall further recognize, with sufficient sureties, in a reasonable sum for his good behavior, and especially that he will not be guilty of any offence against the provisions of this section, for the space of three months then next ensuing.

Penalty on innholders, &c., who permit implements of gaming to be used on Lord's day, &c.  
R. S. 47, § 9.  
R. S. 50, § 17.  
1845, 211.  
1854, 450, § 1.  
See Ch. 85, § 5.

SECT. 12. The Lord's day shall include the time from midnight to midnight.

"Lord's day," what it includes.  
1844, 160, § 2.

## CHAPTER 85.

### OF GAMING.

SECTION

1. Persons losing money by gaming may recover it back.
2. Owner of gaming house liable for money lost in certain cases.
3. Penalty for winning, &c., \$5 or more. Limitation of prosecutions.
4. Notes, conveyances, &c., for gaming void.
5. Penalty on innholders, &c., for keeping, &c., implements for gaming for money, &c.

SECTION

6. Penalty for gaming in such places, and in places licensed for bowling alleys, &c.
7. Punishment for keeping common gaming house.
8. Common gaming houses to be entered and parties arrested.
9. Gaming at cattle-shows, musters, &c.

SECTION 1. Whoever by playing at cards, dice, or other game, or by betting on the sides or hands of such as are gaming, loses to any person so playing or betting any sum of money, or any goods whatever, and pays or delivers the same or any part thereof to the winner, may sue for and recover such money and goods in an action of contract; and if the loser does not within three months after such loss, without covin or collusion, prosecute with effect for such money or goods, any other person may sue for and recover treble the value thereof in an action of tort.

Persons losing money by gaming may recover it back.  
R. S. 50, § 12.  
1852, 312.  
17 Mass. 560.  
3 Pick. 446.  
3 Cush. 448.

SECT. 2. The owner, tenant, or occupant, of any house or building in which money or goods are lost by gaming, or by betting on the sides or hands of such as are gaming, with the knowledge or consent of said owner, occupant, or tenant, shall be liable to an action in the same manner and to the same extent as the winner thereof is liable by the provisions of the preceding section.

Owner of gaming house liable for money lost in certain cases.  
1837, 179.  
3 Cush. 448.

SECT. 3. Whoever, on a prosecution commenced within eighteen months after the commission of the offence, is convicted of winning at one time or sitting, by gaming or betting on the sides or hands of such as are gaming, any money or goods to the value of five dollars or more,

Penalty for winning, &c., \$5 or more.  
R. S. 50, § 14.  
1839, 135.  
1858, 45.



and of receiving the same or any security therefor, shall forfeit double the value of the money or goods so won and received.

Notes, conveyances, &c., for gaming void.  
R. S. 50, § 15.

SECT. 4. All notes, bills, bonds, mortgages, or other securities or conveyances, in which the whole or part of the consideration is money or goods won by gaming or playing at cards, dice, or any other game, or by betting on the sides or hands of persons gaming, or for reimbursing or repaying money knowingly lent or advanced for gaming or betting, or lent and advanced at the time and place of such gaming or betting to a person so gaming or betting, shall be void and of no effect as between the parties to the same, and as to all persons except such as hold or claim under them in good faith and without notice of the illegality of the consideration. When a mortgage or other conveyance of lands is adjudged void under the provisions of this section, the lands shall inure to the sole use and benefit of such person as would be then entitled thereto if the mortgagor or grantor were naturally dead; and all grants or conveyances for preventing such lands from coming to or devolving upon the person to whose use and benefit said lands would so inure, shall be deemed fraudulent and of no effect.

Penalty on innholders, &c., for keeping, &c., implements for gaming for money, &c.  
R. S. 47, § 9.  
R. S. 50, § 17.  
1845, 211.  
1854, 450.  
3 Pick. 281, 300.  
3 Met. 130.  
8 Met. 232.  
9 Met. 572.  
3 Cush. 279.  
See Ch. 84, § 11.

SECT. 5. Every innholder, common victualler, or person, keeping or suffering to be kept, in any place occupied by him, any implements such as are used in gaming, in order that the same may for hire, gain, or reward, be used for purposes of amusement, who suffers any implements of that kind to be used upon any part of his premises for the purpose of gaming for money or other property, or who suffers a person to play at an unlawful game or sport therein, shall for the first offence forfeit a sum not exceeding one hundred dollars, or be imprisoned in the house of correction for a term not exceeding three months; and for every subsequent offence shall be imprisoned in the house of correction for a term not exceeding one year; and in either case shall further recognize, with sufficient sureties in a reasonable sum, for his good behavior, and especially that he will not be guilty of any offence against the provisions of this chapter, for three years then next ensuing.

Penalty for gaming in such places, and in places licensed for bowling alleys, &c.  
R. S. 47, § 10.  
R. S. 50, § 18.  
1857, 194, § 3.

SECT. 6. Whoever in any place mentioned in the preceding section for the purpose of gaming for money or other property, uses or takes part in using any billiard table, bowling alley, or other implements of gaming, or there plays at an unlawful game or sport, or, for the purpose of such gaming, uses or takes part in using a billiard table or bowling alley kept by a person licensed as provided in chapter eighty-eight, shall forfeit a sum not exceeding fifty dollars for each offence.

Punishment for keeping common gaming house.  
1848, 315, § 1.

SECT. 7. Whoever keeps a common gaming house, or in a building, booth, yard, or garden, by him actually used and occupied, commonly keeps or suffers to be kept any tables or other apparatus for the purpose of playing at any unlawful game or sport for money or any other valuable thing, shall for every such offence forfeit a sum not exceeding one hundred dollars, and be committed to the house of correction for a term not exceeding six months and not less than thirty days; and shall also recognize with sufficient sureties in a reasonable sum for his good behavior, and especially that he will not be guilty of any offence against the provisions of this chapter for three years next ensuing.

Common gaming houses to be entered and parties arrested.  
R. S. 50, § 19.  
1857, 194, § 4.  
11 Met. 79.

SECT. 8. If a person makes oath before a justice of the peace or police court that he suspects, or has probable cause to suspect, that a house or other building is unlawfully used as and for a common gaming house for the purpose of gaming for money or other property, and that idle and dissolute persons resort to the same for that purpose, such justice or court, whether the names of the persons last mentioned are known to the complainant or not, shall issue a warrant commanding the sheriff, or his deputy, or any constable, to enter into such house or building, and there to arrest all persons who are there found playing for money or otherwise, and also the keepers of the same, and to take into

their custody all the implements of gaming as aforesaid, and to keep said persons and implements so that they may be forthcoming before some court or magistrate to be dealt with according to law; and whoever is there found so playing, shall forfeit for every such offence a sum not exceeding fifty dollars.

SECT. 9. Whoever during, or within twelve hours of the time of holding, a cattle-show, military muster, or public gathering, within one mile of the place thereof, practises or engages in any gambling or unlawful game, shall forfeit for each offence a sum not exceeding twenty dollars. If he is discovered in the act, he may be arrested by any sheriff, deputy-sheriff, constable, or other civil officer, and lawfully detained, by imprisonment in jail or otherwise, not exceeding twenty-four hours, until a complaint is made against him for the offence.

Gaming at muster, &c.  
1853, 27, §§ 1, 2.

CHAPTER 86.

OF THE MANUFACTURE, SALE, &c., OF INTOXICATING LIQUORS.

- SECTION
- COMMISSIONER.
1. Commissioner, how appointed, &c.
  2. to give bond.
  3. to keep place of business in Boston, sell to agents, &c. Liquors to be analyzed.
  4. to keep record of all purchases, sales, &c., seal all packages, &c.
  5. penalty for adulterating liquors, or selling to persons not agents, &c.
  6. for selling adulterated liquors.
  7. to have no claim on state, &c.
  8. to report annually, &c.
  9. to appoint agents in Boston.
  10. successor of, to purchase his stock.
  11. Value of stock, how determined.
- AUTHORITY TO MANUFACTURE AND SELL FOR EXPORTATION, &c.
12. Manufacturers of liquor, how authorized.
  13. to receive certificate, &c., and give bonds.
  14. certificate of, to be void, and bond to be put in suit, &c., if they commit breach of bond.
  15. to keep books open to inspection, &c., in which sales shall be recorded.
  16. record of, to be kept, and names furnished, &c.
- CITY AND TOWN AGENTS.
17. Agents for selling to be appointed annually, &c. Salary. Penalty on town for not appointing.
  18. certificates and bonds of; form of bond; record of appointment.
  19. bond of, may be put in suit, authority revoked, &c.
  20. to keep books of sales open to inspection, and accounts of purchases, &c.
  21. to purchase only of commissioner, under penalty, &c.
  22. may be restrained by S. J. C. from purchasing, &c., contrary to law.
  23. to make returns annually, &c.
  24. penalty on purchaser for making false statements to.
- SALES, &c., SPECIALLY AUTHORIZED.
25. Foreign liquors imported under laws of U. S. may be sold in original packages.

- SECTION
26. Pure alcohol may be sold by druggists to physicians, &c., for medicinal purposes.
  27. Chemists may keep intoxicating liquor for use in their art. Sales of cider and unadulterated wine.
- UNLAWFUL SALES, &c., REMEDIES, PUNISHMENTS, &c.
28. No person to manufacture or sell intoxicating liquor, without being authorized, &c.
  29. No person to own or keep liquors with intent to sell, &c.
  30. Penalties for unlawful sales.
  31. for being manufacturer or common seller.
  32. Several parties and offences may be included in same complaint; and several offences may be tried at same time, &c.
  33. Delivery *prima facie* evidence of sale, except, &c.
  34. Penalty for owning or keeping liquor with intent to sell, &c.
  35. for receiving liquor unlawfully sold to be conveyed to another person.
  36. on railroad corporations, their servants, &c.
  37. for bringing liquor into the state, &c.
  38. for selling to certain persons after notice in writing, &c.
  39. Persons unlawfully furnishing liquor, liable for damages done by persons intoxicated thereby.
  40. Persons found intoxicated in certain cases may be arrested without warrant, &c.
  41. to be discharged if they disclose person of whom they procured liquor, &c.
  42. Search warrants may be issued upon complaint under oath, &c.
  43. not to issue to search dwelling-house, unless, &c.
  44. Place to be searched to be designated, &c.
  45. Officer to search premises, seize liquors, &c.
  46. If liquor and vessels seized do not exceed \$20 in value, written notice to issue, &c.
  47. Notice what to contain, how served, &c.
  48. New notice may issue in certain cases, &c.



SECTION

- 49. Claimant of liquor may appear. Trial, forfeiture, &c.
- 50. Certain liquors forfeited, to be delivered to town agents for sale, &c., and others to be destroyed, &c.
- 51. Liquors seized, if not kept for sale, to be returned, &c.
- 52. Costs in such cases, and executions thereon.
- 53. Persons claiming, &c., to have right of appeal. To recognize in sum of \$200, &c.
- 54. Proceedings when value of liquor and vessels exceeds \$20.
- 55. Persons illegally selling may be arrested without warrant.
- 56. Public officers to arrest persons illegally selling liquor at public gatherings, &c.

SECTION

- 57. Persons convicted under this chapter to recognize, &c.
- 58. Cases under this chapter to take precedence in courts, &c. *Nolle prosequi* not to be entered, nor continuance granted, except, &c.
- 59. Recognizances to be put in suit within sixty days.
- 60. Liquors, &c., unlawfully kept, common nuisances.
- 61. Payment for liquor illegally sold to be without consideration, &c. Action for price of liquor so sold not maintainable, &c.
- 62. Officers executing warrants protected, &c. Penalty for neglecting to serve warrants, &c.
- 63. Forms of proceedings.

COMMISSIONER.

SECTION 1. The governor with the advice and consent of the council shall annually appoint and commission a competent person as commissioner to purchase and sell spirituous and intoxicating liquors, of a pure quality, to the several city and town agents appointed under the provisions of this chapter, and to regularly appointed agents in cities and towns of other of the New England States, and to no other person. Such commissioner shall, unless sooner removed, hold his office for one year, and until his successor is appointed and qualified.

SECT. 2. The commissioner, within ten days after being commissioned, shall file in the office of the treasurer of the commonwealth a bond to the commonwealth in the penal sum of twenty thousand dollars, with two or more good and sufficient sureties to be approved by the treasurer, for the faithful performance by him of the requisitions of this chapter.

SECT. 3. He shall establish and maintain in the city of Boston a suitable place of business, and shall purchase and sell to such agents, and to them only for the purposes in this chapter specified, spirituous and intoxicating liquors of a pure quality, and unadulterated with any mixture, or noxious or poisonous substance. All liquors kept for sale by him shall be analyzed by one of the state assayers at an expense not exceeding one per cent. of the cost of the liquor, to be paid by the commissioner; and he shall sell no spirituous or intoxicating liquors, except such as one of said assayers in writing certifies to be pure; and all analyzations of liquor shall be made from samples taken by the assayer from original packages purchased by the agent; and all liquors sold by said agent shall be certified by him to have been taken from packages so analyzed. His sales shall be made for cash, and at a price not exceeding an advance of five per cent. upon the actual cost, together with the cost of such analysis.

SECT. 4. He shall keep a record, in which shall be plainly and truly recorded all purchases and sales made by him, the names of the persons of and to whom, and the prices at which, the same were made; which record shall be at all times open to the inspection of the mayor and aldermen and selectmen of the cities and towns, and to the prosecuting officers of the commonwealth. All packages of liquors sold by him shall have his seal affixed thereto before delivery, and all liquors so purchased or sold and sealed may be transported from place to place.

SECT. 5. If he adulterates or causes to be adulterated said liquors, or any thereof, or sells to persons other than those to whom he is authorized by section first of this chapter, or at an advance greater than five per cent. upon the cost as aforesaid, he shall forfeit to the commonwealth the amount of his bond and be imprisoned in the state prison not less

Commissioner, how appointed, &c.  
1855, 470, § 1.  
1858, 172, § 1.

to give bond.  
1855, 470, § 4.

to keep place of business in Boston, sell to agents, &c. Liquors to be analyzed.  
1855, 470, § 2.  
1858, 172, § 2.  
1861 Ch. 136

to keep record of all purchases, sales, &c., seal all packages, &c.  
1855, 470, § 3.

penalty for adulterating, or selling to persons not agents, &c.  
1855, 470, § 7.



than six months nor more than five years. And if any person employed by him violates any of the provisions of this section, he shall be liable to the same term of imprisonment.

SECT. 6. If he, or any person in his employ or on his premises, sells any adulterated spirituous or intoxicating liquor, they shall be liable to the penalties provided in section thirty-one for being a common seller. Commissioner, penalty for selling adulterated liquors. 1857, 293, § 3.

SECT. 7. He shall not claim or receive of the commonwealth any compensation for his outlay, services, or expenses, in said business, or contract any debt or obligation, nor incur any liability, on the faith or in behalf of the commonwealth. to have no claim on state, &c. 1855, 470, § 6.

SECT. 8. He shall annually, on or before the fifteenth day of October, report to the secretary of the commonwealth the amount of his sales to city and town agents, in detail; the cost thereof, his commissions, expenses, and profits, thereon; designating also the cities and towns to which he has made no sales. The report shall be made up to the last day of the preceding month, shall be printed by the secretary, included with the public series of documents, and laid before the legislature. to report annually, &c. 1858, 172, § 5.

SECT. 9. He shall appoint in the city of Boston as many agents, not exceeding five, as he thinks the interests of the citizens require, who shall have the same powers and be subject to the same obligations as agents appointed by the mayor and aldermen of cities, and who shall sell only pure liquors at the lowest cash prices. Their authority shall not continue after the commissioner by whom they are appointed ceases to hold his office. to appoint agents in Boston. 1858, 172, § 6.

SECT. 10. In case of the death, removal, or the expiration of the term of office, of the commissioner, his successor shall purchase his stock of spirituous or intoxicating liquors, analyzed and certified as aforesaid, to an amount not exceeding twenty-five per cent. of his last year's sales. successor of, to purchase his stock. 1858, 172, § 3.

SECT. 11. If the parties cannot agree upon the value of the liquors, it shall be determined by three persons, one appointed by the person purchasing, one by the person owning the liquors, and the third by the two so appointed; and their award shall be binding on the parties. Value of stock, how determined. 1858, 172, § 4.

AUTHORITY TO MANUFACTURE AND SELL FOR EXPORTATION, &c.

SECT. 12. The county commissioners and the mayor and aldermen of the city of Boston, on the first Monday of May annually or as soon thereafter as practicable, may authorize such persons as apply to them in writing, to manufacture spirituous or intoxicating liquors at places within their respective jurisdictions, and to sell the same in quantities not less than thirty gallons, to be exported or to be used in the arts or for mechanical and chemical purposes in this state, and such authority shall continue for the term of one year from the date thereof, unless sooner revoked for cause, or annulled as hereinafter provided. Manufacturers of liquors, how authorized. 1855, 215, § 9.

SECT. 13. Every such person shall receive from the board by which he is so authorized, a certificate giving him authority to manufacture and sell spirituous and intoxicating liquors as aforesaid, at such place within the jurisdiction of the board as shall be designated with precision in the certificate; but it shall not be delivered to such person until he has executed and given to said board a bond with two good and sufficient sureties in the sum of six thousand dollars, in substance as follows:— to receive certificates, &c., and give bonds. 1855, 215, § 11.

Know all men that we, \_\_\_\_\_, as principal, and \_\_\_\_\_ and \_\_\_\_\_, as sureties, are holden and stand firmly bound to the inhabitants of the county of \_\_\_\_\_, (or city of Boston, as the case may be,) in the sum of six thousand dollars, to be paid unto them, their successors or assigns, to which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_. The condition of this obligation is such,

that whereas the above bounden \_\_\_\_\_ has been duly authorized to manufacture spirituous and intoxicating liquors at \_\_\_\_\_, in the town (or city) of \_\_\_\_\_, and county of \_\_\_\_\_, and to sell the same in quantities not less than thirty gallons, to be exported, or to be used in the arts, or for mechanical and chemical purposes, or in any quantity to duly authorized agents of cities and towns, as by law provided, until the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, unless such authority is sooner revoked or annulled: Now, if said \_\_\_\_\_ shall, in all respects, conform to the provisions of law relating to the business which he is authorized as above to pursue, and shall violate no law of the commonwealth touching the manufacture and sale of spirituous or intoxicating liquors, during the term for which he is authorized to manufacture such liquors as above mentioned, then this obligation to be void — otherwise to remain in full force.

Manufacturer, certificate of to be void, and bond to be put in suit, &c., when, &c. 1855, 215, §§ 11, 14.

SECT. 14. If the principal in the bond commits a breach of any condition thereof, his certificate shall thereupon become void, and he shall not thereafter be authorized to manufacture or sell spirituous or intoxicating liquors. If upon complaint made to the county commissioners or the mayor and aldermen of Boston, and notice to the principal, and a hearing of the parties thereon, any breach of the bond appears to have been committed, they shall at the expense of the county or city cause the bond to be put in suit, and shall make a record that his authority is revoked and void; or they may put the bond in suit without such complaint, notice, and hearing.

to keep books open to inspection, &c., in which sales shall be recorded. 1855, 215, § 10.

SECT. 15. Every such manufacturer shall keep a book, which shall at all times be open to the inspection of the board authorizing him to manufacture, in which he shall enter the date of every sale of spirituous liquors made by him, the name of the purchaser, his residence, and the quantity and kind of liquor sold, and if exported, the place to which exported and the name of the consignee, substantially in the following form:—

Date.	Name of purchaser.	Residence of purchaser.	Quantity and kind of liquor.	Where exported.	Name of consignee.	Purpose of use.
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record of, to be kept, and names furnished, &c. 1855, 215, § 12.

SECT. 16. The clerks of the commissioners and the city clerk of Boston shall keep a record of the names, residences, and certificates, in full, of all persons authorized by said boards respectively to manufacture and sell as provided in section twelve, and the names and residences of all agents furnished them by city and town clerks; which record shall be open to public inspection at all reasonable times; and they shall furnish a list of said names and residences to all persons authorized by their boards to manufacture and sell spirituous or intoxicating liquors, and to all agents whose names have been furnished them as aforesaid.

CITY AND TOWN AGENTS.

Agents for selling to be appointed annually, &c. Salary. Penalty on towns for not appointing. 1855, 215, § 5. 1858, 172, § 9.

SECT. 17. The mayor and aldermen or selectmen of every city and town, on the first Monday of May annually, or as soon after as convenient, shall appoint for one year, unless sooner removed by the board appointing them, one or more suitable persons as agents of such place to purchase and sell at some convenient places therein spirituous or intoxicating liquors to be used in the arts, or for medicinal, chemical, and mechanical purposes, and no other; and if in any year they neglect for three months after said date to appoint at least one such agent, they shall forfeit one hundred dollars, to be recovered to his own use in an action of tort by any person who may sue for the same. Every agent shall receive such fixed salary, not dependent in amount upon the sales, as the board appointing him shall determine, and in his sales shall conform to such rules and regulations as they may prescribe.

certificates and bonds of. 1855, 215, § 8.

SECT. 18. Every agent shall receive from the board appointing him a certificate, authorizing him, as agent of such city or town, to purchase and sell at such places therein as shall be designated with precision in

his certificate, intoxicating liquors to be used in the arts, or for medicinal, chemical, and mechanical purposes only; but it shall not be delivered to him until he has executed and given to said board a bond, with two good and sufficient sureties in the sum of six hundred dollars, in substance as follows:—

Know all men that we, \_\_\_\_\_, as principal and \_\_\_\_\_ and \_\_\_\_\_, as sureties, are holden, and stand firmly bound to the inhabitants of the town of \_\_\_\_\_, (or city, as the case may be,) in the sum of six hundred dollars, to be paid unto them, their successors or assigns, to which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Scaled with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_. The condition of this obligation is such, that, whereas the above bounden \_\_\_\_\_ has been duly appointed an agent for the town (or city) of \_\_\_\_\_ to purchase intoxicating liquors and to sell the same within, for, and on account of, said town, (or city,) to be used in the arts, or for medicinal, chemical and mechanical purposes, and no other, until the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, unless sooner removed from said agency: Now, if the said \_\_\_\_\_ shall, in all respects, conform to the provisions of law relating to the business for which he is appointed, and to such rules and regulations as now are, or shall from time to time be, established by the board making the appointment, then this obligation to be void — otherwise to remain in full force.

Agents, form of bond of.

The city and town clerks shall keep a record in full of all such appointments, which shall be open to public inspection at all reasonable times; and they shall, as soon as practicable after the appointments, furnish a list thereof to the county commissioners.

record of.

SECT. 19. Upon complaint made to the mayor and aldermen, or selectmen, they shall notify the principal, and if upon a hearing of the parties it appears that a breach of the conditions of the bond has been committed, they shall revoke and make void his authority; and at the expense and for the use of their city or town, shall cause the bond to be put in suit; or they may put such bond in suit without such complaint, notice, or hearing.

bond of, may be put in suit, authority revoked, &c. 1855, 215, § 14.

SECT. 20. Each agent shall keep an account of all purchases of liquors made by him, and shall specify the kinds and quantity purchased, the prices paid, the persons of whom purchased, and the dates of the purchases; and shall also keep a regular account of all the forfeited spirituous or intoxicating liquors delivered to him for sale by order of any justice or court. He shall keep a book and enter therein the date of every sale made by him, the person to whom sold, the kind, quantity, and price, thereof, and the purpose for which it was sold, substantially in the following form:—

to keep books of sales open to inspection, and accounts of purchases, &c. 1855, 215, § 6.

Date.	Name.	Residence.	Kind and quantity.	Purpose of use.	Price.
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which book shall at all times be open to the inspection of the mayor and aldermen, selectmen, overseers of the poor, sheriffs, constables, and justices of the peace, in such city or town.

SECT. 21. Every agent shall purchase of the commissioner appointed under section one all spirituous or intoxicating liquor to be sold by him. Any agent purchasing such liquor of any other person, or selling such liquor purchased by him of any other person, shall be liable to the penalties provided in section thirty-one for being a common seller.

to purchase only of commissioner. Penalty. 1855, 470, § 5. 1857, 293, § 2. 1851 Ch. 136

SECT. 22. The supreme judicial court shall have jurisdiction in equity, on complaint of any party interested, to restrain and enjoin any agent who purchases or sells spirituous or intoxicating liquors in violation of any law of this state; and such injunction may be issued by any justice of the court in term time or vacation.

may be restrained by S. J. C. from purchasing, &c., contrary to law. 1857, 293, § 1.

SECT. 23. Every agent shall annually on or before the fifteenth day of October make a return to the secretary of the commonwealth of the amount and kind of liquors purchased by him, the date of each pur-

to make returns annually, &c. 1858, 172, §§ 7, 8.



chase, the prices paid, and the name of the party of whom purchased; and if he fails to make such return, he shall forfeit a sum not exceeding one hundred dollars. The returns shall be kept on file in the secretary's office, but need not be printed.

Penalty for making false statement to agent, &c.  
1855, 215, § 7.

SECT. 24. Whoever, purchasing spirituous or intoxicating liquor of any agent, intentionally makes a false statement regarding the use to which the liquor is intended to be applied, shall pay a fine of not less than five nor more than twenty dollars.

#### SALES, &C., SPECIALLY AUTHORIZED.

Foreign liquors imported under laws of U. S. may be sold in original packages.  
1855, 215, §§ 2, 4.

SECT. 25. The importer of liquor of foreign production imported under authority of the laws of the United States, may own, possess, keep, or sell, the same, in the original casks or packages in which it was imported, and in quantities not less than the quantities in which the laws of the United States require such liquor to be imported, and if sold by him, the same shall be as pure and unadulterated as when imported.

Pure alcohol may be sold by druggists to physicians, &c., for medicinal purposes.  
1839, 135.  
1855, 215, § 2.

SECT. 26. Druggists may sell, for medicinal purposes only, pure alcohol to other druggists, apothecaries, and physicians, known to be such: *provided*, that they shall keep a book in which they shall enter the date and quantity of every sale, the name and residence of the purchaser, and if exported, the place to which exported, and the name of the consignee; which book shall at all times be open to the inspection of the mayor and aldermen or selectmen. If a druggist or the clerk or agent of a druggist is convicted of an illegal sale, he shall pay a fine of one thousand dollars.

Chemists may keep intoxicating liquor, &c. Sales, &c., of cider, and pure wine.  
1855, 215, § 4.

SECT. 27. A chemist, artist, or manufacturer, in whose art or trade they may be necessary, may keep at his place of business spirituous liquors for use in such art or trade, but not for sale; and any person may manufacture or sell cider for other purposes than that of a beverage, and unadulterated wine for sacramental purposes.

#### UNLAWFUL SALES, &C. — REMEDIES, PUNISHMENTS, &C.

No person to manufacture or sell intoxicating liquor, without being authorized, &c.  
1855, 215, § 1.  
3 Gray, 479.

SECT. 28. No person shall manufacture for sale, or sell by himself, his clerk, servant, or agent, directly or indirectly, any spirituous or intoxicating liquor, or any mixed liquor part of which is spirituous or intoxicating, unless he is authorized as provided in this chapter. Ale, porter, strong beer, lager-bier, cider, and all wines, shall be considered intoxicating liquors within the meaning of this chapter, as well as distilled spirits; but this enumeration shall not prevent any other pure or mixed liquors from being regarded as intoxicating.

No person to own, or keep liquors with intent to sell, &c.  
1855, 215, § 3.

SECT. 29. No person shall own, possess, or keep, any spirituous or intoxicating liquor, with intent to sell the same in this state, and no owner of such liquor shall permit or suffer any other person to keep the same for the purpose of selling it in this state, unless authorized as provided in this chapter.

Penalties for unlawful sales.  
1855, 215, § 15.  
1 Gray, 481, 483.  
3 Gray, 479, 514.  
4 Gray, 18, 426.  
5 Gray, 97.  
6 Gray, 482, 485, 487, 488, 489.  
See Ch. 120, § 30.

SECT. 30. Whoever by himself, his clerk, servant, or agent, directly or indirectly, or on any pretence or by any device, sells, or in consideration of the purchase of any other property, gives, to another person spirituous or intoxicating liquor, or mixed liquor part of which is spirituous or intoxicating, in violation of the provisions of this chapter, shall for one violation, pay ten dollars and be imprisoned in the house of correction not less than twenty nor more than thirty days; for a second violation, shall pay twenty dollars and be imprisoned in the house of correction not less than thirty nor more than sixty days; and for any subsequent violation, shall pay fifty dollars and be imprisoned in the house of correction not less than three nor more than six months; and

if in any case the fine and costs are not paid, the imprisonment shall be extended thirty days. Whoever in the employment or on the premises of another violates any provisions of this section, shall be held equally guilty with the principal, and suffer the same punishment.

SECT. 31. Whoever is a manufacturer of spirituous or intoxicating liquor for sale, or a common seller thereof, in violation of the provisions of this chapter, shall for one violation, pay fifty dollars and be imprisoned in the house of correction not less than three nor more than six months; for a second violation, shall pay the sum of two hundred dollars and be imprisoned six months in the house of correction; and for any subsequent violation, shall pay the sum of two hundred dollars and be imprisoned twelve months in the house of correction in the county where the offence was committed. Whoever in the employment or on the premises of another violates the provisions of this section, shall be held equally guilty with the principal, and shall suffer the same punishment. Three several sales of spirituous or intoxicating liquors to one or more persons shall be sufficient evidence of a violation of this section, but this shall not prevent proof of the same by other evidence.

Penalty for being manufacturer or common seller.  
1855, 215, § 17.  
1 Gray, 388, 463, 466.  
2 Gray, 510.  
3 Gray, 456.  
4 Gray, 11, 16, 426.  
5 Gray, 97.  
7 Gray, 496.

SECT. 32. The names of all the parties charged with any offence, under either of the two preceding sections, and one or more offences, may be included in the same complaint or indictment, and may be tried at the same time. Whoever is convicted of more than one offence on the same complaint or indictment, or on different indictments, at the same or any other terms of the court, shall be subject to the same punishments as if he had been successively convicted on as many complaints or indictments at different terms of the court as there are offences of which he is convicted; but the whole aggregate term of imprisonment under any one complaint or indictment, or at any one term of the court, for violations of the provisions of either section, shall never exceed one year.

Several parties and offences may be included in same complaint, &c.; and several offences may be tried at same time, &c.  
1855, 215, §§ 15, 17.  
1 Gray, 470.  
2 Gray, 505.  
4 Gray, 209.

SECT. 33. In all cases under this chapter, delivery of intoxicating liquor in or from any building or place, other than a private dwelling-house or its dependencies, or in such dwelling-house or dependencies, if part of the same is a tavern, public eating-house, grocery, or other place of common resort, shall be deemed *prima facie* evidence of and punishable as a sale; and a delivery in or from a private dwelling-house with payment or promise of payment either express or implied, on, before, or after, such delivery, shall be deemed *prima facie* evidence of and punishable as a sale.

Delivery *prima facie* evidence of sale, except, &c.  
1855, 215, § 34.  
6 Gray, 1.  
7 Gray, 222.

SECT. 34. Whoever owns, possesses, or keeps, any spirituous or intoxicating liquor, with intent to sell the same contrary to the provisions of this chapter, shall be fined ten dollars and imprisoned twenty days in the house of correction, and shall be imprisoned twenty days longer if said fine and the costs are not paid. A complaint may be made and prosecuted under this section, whether any liquor has been seized as being owned or kept by the person complained against or not.

Penalty for owning or keeping liquor with intent to sell, &c.  
1855, 215, § 24.

SECT. 35. Whoever, for the purpose of conveying to another person, receives any spirituous or intoxicating liquor which has been sold or is intended for sale in violation of this chapter, having reasonable cause to believe that the same has been so sold or is so intended for sale, shall on conviction thereof, either in the place where the liquor is received or in any place through which it is carried, or in the place at which it is delivered to the purchaser or to any person for him, pay a fine of twenty dollars.

for receiving liquor unlawfully sold, to be conveyed to another person.  
1855, 215, § 18.

SECT. 36. Whoever, having authority from a railroad corporation to receive goods to be transported by such corporation, receives, for the purpose of having the same transported on such railroad, any spirituous or intoxicating liquor sold or intended for sale in violation of this chapter, having reasonable cause to believe that the same has been so sold

on railroad corporations, their servants, &c.  
1855, 215, § 19.



or is so intended for sale, shall be liable to the penalty prescribed in the preceding section; and the corporation shall also be liable to pay a fine of fifty dollars, to be recovered by indictment or complaint in any county in which such liquor has been received or into which it is carried.

Penalty for bringing liquor into the state, &c.  
1855, 215, § 20.

SECT. 37. Whoever brings into this state, or conveys from place to place within the same, any spirituous or intoxicating liquor, with intent to sell the same himself or to have it sold by another, or having reasonable cause to believe that the same is intended to be sold in violation of this chapter, shall be punished for the first and each subsequent offence in the manner provided in section thirty, for any person illegally selling spirituous or intoxicating liquor.

for selling to certain persons after notice in writing, &c.  
1855, 215, § 21.  
1861 *Ch.* 136.

SECT. 38. The husband, wife, parent, child, guardian, or employer, of any person who has the habit of drinking spirituous or intoxicating liquor to excess, may give notice in writing signed by him or her to any person not to deliver spirituous or intoxicating liquor to the person who has such habit. If the person so notified at any time within twelve months after such notice delivers any such liquor to the person who has such habit, the person giving the notice may in an action of tort recover of the person notified any sum not less than twenty-one nor more than five hundred dollars, as may be assessed by the jury as damages. A married woman may bring such action in her own name notwithstanding her coverture, and all damages recovered by her shall go to her separate use. In case of the death of either party the action and right of action given by this section shall survive to or against his executor or administrator.

Persons unlawfully furnishing liquor liable for damages done by persons intoxicated thereby.  
1855, 215, § 22.

SECT. 39. If a person in a state of intoxication commits an assault and battery or injures any property, whoever furnished him with any part of the spirituous liquor which occasioned his intoxication, if the same was furnished in violation of this chapter, shall be liable to the same action by the party injured as the person intoxicated would be liable to; and the party injured, or his legal representatives, may bring either a joint action against the person intoxicated and the person who furnished the liquor, or a separate action against either.

Persons found intoxicated in certain cases may be arrested without warrant, &c.  
1855, 215, § 23.

SECT. 40. If a person is found in a state of intoxication in a public place, or is found in any place in a state of intoxication committing a breach of the peace or disturbing others by noise, any sheriff, deputy-sheriff, constable, watchman, or police officer shall without a warrant take him into custody, and detain him in some proper place until in the opinion of such officer he is so far recovered from his intoxication as to render it proper to carry him before a court of justice. The officer shall then take him before some justice of the peace or police court in the city or town where he has been found, and shall make a complaint against him for the crime of drunkenness.

to be discharged if they disclose person of whom they procured liquor, &c.  
1855, 215, § 23.

SECT. 41. If such person then discloses fully the name of the person of whom, and the time, place, and manner in which, the liquor producing his intoxication was procured, and all circumstances attending it, the justice or court shall administer to him the oath provided for witnesses, and interrogate him in the presence of the officer; and if it appears to the officer and magistrate that either of the offences specified in sections thirty or thirty-one has been committed, the officer shall file his complaint for the commission of such offence, before said justice or court, against the persons who appear to have been guilty thereof, and the person so disclosing shall be named as one of the witnesses. The officer shall thereupon discontinue his prosecution for drunkenness, and the person arrested shall be discharged, and shall not be liable to be prosecuted again for the same offence.

Search warrants may be issued upon

SECT. 42. If two persons, of full age and competent to testify, make complaint under oath or affirmation, before a justice of the peace or



police court, that they have reason to believe, and do believe, that any spirituous or intoxicating liquor, described in the complaint, is kept or deposited by a person named in the complaint in a store, shop, warehouse, building, vehicle, steamboat, vessel, or place, and intended for sale contrary to the provisions of this chapter, such justice or court, upon its appearing that there is probable cause to believe said complaint to be true, shall issue a warrant of search to any sheriff, deputy-sheriff, city marshal, chief of police, deputy chief of police, deputy marshal, or constable, commanding him to search the premises in which it is alleged such liquor is deposited, and to seize such liquor with the vessels in which it is contained, and securely keep the same until final action is had thereon, and return the warrant with his doings thereon as soon as may be to the same or some other justice or police court in the place where such liquor is alleged to be kept or deposited.

complaint, under oath, &c. 1855, 215, § 25. 1 Gray, 1.

SECT. 43. No warrant shall issue for the search of a dwelling-house, unless a tavern, store, grocery, eating-room, or place of common resort is kept therein; and no warrant shall issue for the search of a dwelling-house unless one of the complainants makes oath or affirmation that he has reason to believe, and does believe, that such liquor has been sold therein or taken therefrom for the purpose of being sold by the occupant, or by his consent or permission contrary to law, within one month next before making such complaint, and is then kept therein for sale contrary to law by the person complained against. The complainant shall in his oath or affirmation state the facts and circumstances on which such belief is founded, and such allegations shall be recited in the complaint and warrant.

Search warrant not to issue to search dwelling-house, unless, &c. 1855, 215, § 25. 6 Gray, 491.

SECT. 44. In all cases the complaint shall particularly designate so as to identify the building, structure, and place, to be searched, the liquors to be seized, the person by whom they are owned, kept or possessed, and intended for sale, and shall allege the intent of such person to sell the same contrary to the provisions of this chapter. The warrant shall be supported by the oath or affirmation of the complainant, and shall allege that probable cause has been shown for the issuing thereof; and the place to be searched, the liquors to be seized, and the person believed to be the owner, possessor, or keeper of such liquors, intending to sell the same contrary to the provisions of this chapter, shall be set out therein by special designation and with the same particularity as in the complaint; and the offence both in the complaint and warrant shall be fully, plainly, and substantially described, and the complainants shall be summoned to appear as witnesses.

Place to be searched to be designated, &c. Decl. of rights, art. xiv. 1855, 215, § 25. 1 Gray, 1. 6 Gray, 490.

SECT. 45. The officer to whom the warrant is committed shall proceed to search the premises and seize the liquor described in the warrant, with the casks or other vessels in which it is contained, if they are found in or upon said premises, and shall convey the same to some place of security, where he shall keep the liquor and vessels until final action is had thereon.

Officer to search premises, seize liquors, &c. 1855, 215, § 25.

SECT. 46. If, in the opinion of the justice or court before which the warrant is returned, the value of the liquor seized, with the vessels containing it, does not exceed twenty dollars, a written notice under seal, and signed by the justice or the clerk of said court, shall be issued within twenty-four hours after such seizure, commanding the person complained against as the keeper of the liquor seized and all other persons claiming any interest therein, or in the casks or vessels containing the same, to appear before said justice or court, at a time and place therein named, to answer to said complaint, and show cause, if any they have, why such liquor with the vessels containing it should not be forfeited.

If liquor and vessels seized do not exceed \$20 in value, written notice to issue, &c. 1855, 215, § 26.

SECT. 47. The notice shall contain a description of the number and kind of vessels, the quantity and kind of liquor seized, as nearly as may be, and shall state when and where they were seized. It shall be served

Notice, what to contain, how served, &c. 1855, 215, § 26.

by any sheriff, deputy-sheriff, constable, or police officer, upon the person charged with being the keeper thereof, by leaving an attested copy of the same with him personally or at his usual place of abode, if an inhabitant of this state, and by posting up an attested copy on the building in which the liquor was seized, if it was found in any building, otherwise in some public place in the city or town where the liquor was seized, and by publishing an attested copy at least twice in some newspaper printed in the county where the seizure is made, if there is any such paper. The posting up of the notice, and the serving the same on the party complained of as keeper, and the first publication in the newspaper, shall be not less than fourteen days before the time appointed for the trial.

New notice may issue in certain cases, &c.  
1855, 215, § 26.

SECT. 48. If at the time appointed for trial said notice has not been duly served, or other sufficient cause appears, the trial may be postponed to some other day and place, and such further notice issued as shall supply any defect in the previous notice; and time and opportunity for trial and defence shall be given to persons interested.

Claimant of liquor may appear. Trial, forfeiture, &c.  
1855, 215, § 27.  
1 Gray, 1.

SECT. 49. At the time and place designated in the notice, the person complained against, or any person claiming an interest in the liquor and vessels seized, or any part thereof, may appear and make his claim verbally or in writing, and a record of his appearance and claim shall be made, and he shall be admitted as a party on the trial. Whether a claim as aforesaid is made or not, the justice or court shall proceed to try, hear, and determine, the allegations of such complaint, and whether said liquor and vessels, or any part thereof, are forfeited. If it appears that the liquor or any part thereof was at the time of making the complaint owned or kept by the person alleged therein, for the purpose of being sold in violation of this chapter, the court or justice shall render judgment that such and so much of the liquor so seized as was so unlawfully kept, and the vessels in which it is contained, be forfeited to the commonwealth.

Certain liquors forfeited to be delivered to town agents for sale, &c., and others to be destroyed, &c.  
1855, 215, § 27.

SECT. 50. Any liquor so forfeited, which in the opinion of said justice or court is suitable for use for medicinal, chemical, or mechanical purposes, shall, by the authority of the written order of the justice or court, be delivered to any agent appointed for the sale of spirituous liquors of the city or town in which the liquors were seized, to be sold by him, and the net proceeds paid over to the treasurer of the commonwealth. If there is no such agent in said city or town, the same shall be delivered to any such agent in the state that the justice or court may order, to be by him sold, and the proceeds paid over in like manner, and the officer to whom such order is directed shall make return of his doings in the premises. Any such liquor, which in the opinion of the justice or court is not suitable for use as aforesaid, shall, by like order, be destroyed in the presence of the justice or court, or in the presence of some person appointed thereby to witness such destruction, and the witness shall join with the officer in attesting the fact upon the back of the order by authority of which it was done.

Liquors seized, if not kept for sale, to be returned, &c.  
1855, 215, § 28.

SECT. 51. If it is not proved on the trial, that all or part of the liquor seized was kept or deposited for sale contrary to law, the justice or court shall issue a written order to the officer having the same in custody, to return so much thereof as was not proved to be so kept or deposited, with the vessels in which it is contained, to the place as nearly as may be from which it is taken, or to deliver the same to the person entitled to receive it; which order the officer, after executing the same, shall return to the justice or court with his doings indorsed thereon.

Costs in such cases, and executions thereon.  
1855, 215, § 27.

SECT. 52. If no person appears and is admitted as a party as aforesaid, or if judgment is rendered in favor of all the claimants who appear, the cost of the proceedings shall be paid as in other criminal cases. If only one party appearing fails to sustain his claim, he shall pay all the costs except the expense of seizing and keeping the liquor, and an exe-



ction shall be issued against him therefor. If judgment is rendered against two or more claimants, of distinct interests in the liquor, the costs shall according to the discretion of the justice or court be apportioned among such parties, and executions shall be issued against them severally. If such execution is not forthwith paid, the defendant therein named shall be committed to the jail, and shall not be discharged therefrom until he has paid the same and the costs of commitment, or until he has been imprisoned thirty days.

SECT. 53. The person claiming any such liquors, whose claim is not allowed as aforesaid, and the person complained against, shall have the same right of appeal and to the same court as if he had been convicted of a crime; but before his appeal is allowed he shall recognize to the commonwealth in the sum of two hundred dollars, with good and sufficient surety or sureties, to prosecute his appeal at the court appealed to and to abide the sentence of the court thereon; and upon such appeal any question of fact shall be tried by a jury. On the judgment of the court after verdict, whether of forfeiture of the whole or any part of the liquor and vessels seized, or otherwise, similar proceedings shall be had as are directed in the four preceding sections.

SECT. 54. If in the opinion of the justice or court before which a warrant is returnable under which any liquor has been seized, the value of the liquor seized with the vessels containing it exceeds twenty dollars, a notice shall be issued and served as directed in sections forty-six and forty-seven, except that the same shall be made returnable to the term of the superior court to be held in the county next after the expiration of fourteen days from the time of issuing the notice. The court before which the notice is made returnable shall have jurisdiction of the case, and may proceed therein in the manner directed in sections forty-eight, forty-nine, fifty, fifty-one, and fifty-two, as nearly as may be, and with a jury, upon any issue of fact presented by the claimant or directed by the court.

SECT. 55. Any mayor, alderman, selectman, sheriff, deputy-sheriff, chief of police, deputy-chief of police, city marshal, deputy or assistant-marshal, police officer, constable, or watchman, in his city or town, may without a warrant arrest any person whom he finds in the act of illegally selling, transporting, or distributing, intoxicating liquors, and seize the liquors, vessels, and implements of sale, in the possession of said person, and detain them in some place of safe keeping until warrants can be procured against said person and for the seizure of said liquor, vessels, and implements, under the provisions of this chapter. The several officers aforesaid shall enforce or cause to be enforced the penalties provided in this chapter, against every person guilty of any violation thereof of which they can obtain reasonable proof. If any sheriff, deputy-sheriff, chief of police, deputy-chief of police, constable, or police officer, after being furnished with a written notice of any violation of this chapter, and the names of the witnesses, for two weeks neglects to institute proceedings thereon, any person who thereafter makes complaint shall be entitled to all fines imposed and collected for said violation.

SECT. 56. Every mayor, alderman, selectman, city marshal, deputy-marshal, sheriff, deputy-sheriff, police officer, and constable, who has information that any intoxicating liquors are kept or sold in any tent, shanty, hut, booth, stall, or similar place for selling refreshments, in any public place on or near the grounds of any cattle show, agricultural exhibition, military muster, or public gathering of any kind, shall seize such liquor and the vessels in which it is contained, and arrest the keeper of such place, and take him as soon as may be before some justice of the peace or police court, with the liquor and vessels so found and seized, and make complaint for the arrest and trial of such person and for the

Persons claiming, &c., to have right of appeal. To recognize in sum of \$200, &c. 1855, 215, § 29.

Proceedings when value of liquor and vessels exceeds \$20. 1855, 215, § 30. 1859, 196.

Persons illegally selling may be arrested without warrant. 1855, 215, § 13. 6 Gray, 435. 7 Gray, 354.

Public officers to arrest persons illegally selling liquor at public gatherings, &c. 1855, 215, § 31.



seizure and confiscation of such liquors, according to the provisions of this chapter.

Persons convicted under this chapter to recognize, &c. 1855, 215, § 33.

SECT. 57. Whoever is convicted of any offence under this chapter, in addition to the punishment herein prescribed, shall be required by the court or magistrate before whom he is convicted, to recognize to the commonwealth in a sum not less than one thousand nor more than two thousand dollars, that he will not, within one year from the time of the conviction, violate any provision of this chapter or any law of this commonwealth relating to the manufacture and sale of intoxicating liquor, and shall stand committed until he enters into such recognizance.

Cases under this chapter to take precedence in courts, &c. *Nol. pros.* not to be entered, nor continuance granted, except, &c. 1855, 215, § 35. 6 Gray, 359.

SECT. 58. All cases under this chapter, whether by action, indictment, or complaint, which come before any court by original entry or appeal, shall take precedence in said court of all other business except those criminal cases in which the parties are actually imprisoned awaiting a trial; and the prosecuting officer shall not enter a *nolle prosequi* or grant a continuance in any such case, before or after a verdict, except where the purposes of justice may require it, to be shown upon a written motion filed in the case on behalf of the defendant, or a written statement filed by the prosecuting officer, stating the reason for a continuance; and he shall not enter a *nolle prosequi* except with the concurrence of the court. In cases under this chapter before a justice of the peace or police court, no admission of the defendant except a plea of guilty made in court shall be received on the trial without the consent of the prosecutor.

Recognizances to be put in suit within sixty days. 1855, 215, § 36.

SECT. 59. District-attorneys shall commence suits upon all recognizances given under this chapter in their respective districts, within sixty days after default entered of record, or after they have satisfactory evidence of any act which should cause a forfeiture thereof; and no suit on any recognizance shall be continued, unless for good cause satisfactory to the court. But nothing herein contained shall prevent the commencement of such suit after the expiration of said sixty days.

Liquors when common nuisances. 1855, 215, § 37. 1 Gray, 27.

SECT. 60. All intoxicating liquors kept for sale, and the implements and vessels actually used in selling and keeping the same, contrary to the provisions of this chapter, are declared to be common nuisances.

Payment for liquor illegally sold to be without consideration, &c. Actions for price not maintainable, &c. 1855, 215, § 37. 1 Gray, 541. 3 Gray, 569. 13 Gray, 73.

SECT. 61. All payments or compensations for spirituous or intoxicating liquors sold in violation of law, whether in money, labor, or personal property, shall be held to have been received without consideration, and against law, equity, and good conscience. No action of any kind shall be had or maintained in any court for the price of any liquor sold in any other state for the purpose of being brought into this commonwealth to be here kept or sold in violation of law, under such circumstances that the vendor would have reasonable cause to believe that the purchaser entertained such illegal purpose; and all bills of exchange, promissory notes, and other securities for and evidences of debt whatsoever, given in whole or in part for the price of liquor sold in violation of this chapter, shall be void against all persons holding the same with notice of such illegal consideration, either direct or implied by law.

Officers executing warrants protected, &c. Penalty for neglecting to serve warrants, &c. 1855, 215, § 38. 1 Gray, 47.

SECT. 62. No action shall be had or maintained against any sheriff, deputy-sheriff, chief of police, deputy-chief of police, or constable, or their assistants, for executing any warrant or order issued under this chapter by any justice or court competent to try the same; nor shall an action be had or maintained against any officer for seizing, detaining, or destroying any intoxicating liquor, or the vessels containing it, unless such liquor and vessels were legally kept by the owner thereof. If a sheriff, chief of police, or deputy-chief of police, marshal, constable, or other officer, to whom any warrant, process, or precept, provided for in this chapter, is directed, neglects or refuses to serve and execute the same, he shall be fined not less than three hundred dollars and not

exceeding one thousand dollars, and it shall be a sufficient cause for removal or dismissal from office. For any loss or damage arising to him, without fault or negligence on his part, in consequence of obedience to any precept, process, or warrant aforesaid, duly served, indemnity, if claimed, shall be claimed of the commonwealth after the loss or damage sustained, and in no other manner.

Indemnity,  
when claimed.

FORMS OF PROCEEDINGS.

SECT. 63. The following forms may be used in prosecutions under this chapter, and, if substantially followed, shall be deemed sufficient to fully and plainly, substantially and formally, describe the several offences in each of them set forth, and to authorize the lawful doings of the officers acting by virtue of the warrants issued in substantial conformity therewith; but this shall not be so construed as to prohibit the use of other suitable forms.

Forms of proceedings.  
1855, 397, § 1.

*Form of a Complaint for keeping intoxicating liquor for sale, under section thirty-four.* Complaint for keeping liquor for sale.

COMMONWEALTH OF MASSACHUSETTS.

M—, ss.  
To N. C., Esquire, one of the justices of the peace within and for the county of M—.

J. S. of L—, in the county of M—, in behalf of the commonwealth of Massachusetts, on oath complains that D. E., of said L—, on the day of , in the year eighteen hundred and , at said L—, did keep intoxicating liquor with intent to sell the same in this commonwealth, he, the said D. E., not being authorized to sell the same in said commonwealth for any purpose under the provisions of chapter eighty-six of the General Statutes of this commonwealth or by any legal authority whatever, against the peace and contrary to the form of the statute in such cases made and provided. Wherefore the said J. S. prays that a warrant may be issued for the arrest of said D. E., and that he be dealt with as to law and justice may appertain.

Received and sworn to, the day of , in the year eighteen hundred and  
Before N— C—, Justice of the Peace.

*Form of Warrant to arrest the party accused on the foregoing Complaint.* Warrant to arrest.

COMMONWEALTH OF MASSACHUSETTS.

M—, ss.  
[L. s.] To the sheriff of any county in the state, or either of his deputies, or either constable of any town in the county of M—.

Greeting :

In the name of the commonwealth of Massachusetts, you are hereby required forthwith to apprehend D. E. of L—, in said county of M—, (if he may be found within your precinct,) who stands charged by the complaint of J. S., upon oath, with the offence of keeping intoxicating liquors, with intent to sell the same in this commonwealth, contrary to law, and bring him before the subscriber, or some other justice of the peace in said county of M—, to be dealt with as to law and justice may appertain.

You are also required to summon (Here insert the names of the witnesses) and the complainant, to appear and give evidence of what they may know touching the matter of said complaint, at the time and place you have said D. E. before either of said justices for trial. Hereof fail not, and make due return of your doings herein.

Witness my hand and seal, at said L—, in the year one thousand eight hundred and  
N— C—, Justice of the Peace.

*Form of Mittimus for keeping intoxicating liquors for sale under section thirty-four.* Mittimus.

COMMONWEALTH OF MASSACHUSETTS.

M—, ss.  
[L. s.] To the sheriff of the county of M—, his deputies, the constables of the town of L—, and the keeper of the Jail in C—, in said county.

Whereas D. E. of L—, in said county, now stands convicted before me, the subscriber, one of the justices of the peace in and for said county of M—, of keeping intoxicating liquor at said L—, on the of in the year eighteen hundred and , with intent to sell the same in this commonwealth, he not being then and there authorized so to sell the same under the provisions of chapter eighty-six of the

General Statutes of this commonwealth, or by any lawful authority whatever; for which offence he, the said D. E., is sentenced by me, the said justice, to pay a fine of ten dollars to the use of the commonwealth, and costs of prosecution, taxed at dollar and cents, and to be imprisoned twenty days in the house of correction in C—, in said county.

We therefore command you, said sheriff, deputies, and constables, and each of you, forthwith to convey the defendant, D. E., to the house of correction in C—, in the county aforesaid, and to deliver him to said keeper. And you, the keeper, arc, in like manner, commanded to receive the defendant, D. E., (whom we herewith send,) into your custody in said jail, there safely to keep him for twenty days, and to keep him twenty days longer unless said fine and costs are sooner paid, or until he be otherwise discharged by due course of law.

Witness my hand and seal at aforesaid, the day of , in the year eighteen hundred and

N— C—, Justice of the Peace.

Complaint to search.

*Form of Complaint to search for intoxicating liquor, under section forty-two.*

COMMONWEALTH OF MASSACHUSETTS.

M—, ss.

To N. C., Esquire, a justice of the peace within and for the county of M—.

J. S., and L. P., both of B—, in said county of M—, and both being of full age, and competent to testify, in behalf of the commonwealth of Massachusetts, on oath, complain that they have reason to believe, and do believe, that intoxicating liquors, to wit:

(Here describe the liquors, as a certain quantity of rum, being about, and not exceeding, gallons; a certain quantity of gin, being about, and not exceeding, gallons, &c., according to the facts) on the day of , in the year one thousand eight hundred and , were, and still are kept and deposited by D. E., of said B—, in a certain , situate

(Here describe the building or other place, with particulars of its location, sufficiently to identify it)

in said B—, and occupied by said D. E., and which liquors are intended by said D. E. for sale in this commonwealth, said D. E. not being authorized to sell the same in this commonwealth, or to manufacture or keep the same for sale, for any purpose under the provisions of chapter eighty-six of the General Statutes of this commonwealth, or by any other legal authority whatever, against the peace of the commonwealth and the form of the statute in such case made and provided; and said complainants pray for a warrant to search said , described as aforesaid, for said liquors, and that the same may be declared to be forfeited, and that said D. E., and all other persons claiming an interest in said liquors, may be summoned to appear before said justice, or some other justice of the peace or court having jurisdiction of the case, to show cause, if any they have, why said liquors should not be declared forfeited.

(If the place intended to be searched be a dwelling-house, and no tavern, store, grocery, eating-room, or place of common resort be kept therein, the complaint should conclude as follows:—)

And I, J. S., one of the above-named complainants, on oath, say that I have reason to believe, and do believe, that intoxicating liquor, such as is above mentioned, has been sold in the house above mentioned, (or has been taken from the house above mentioned for the purpose of being sold,) by the occupant of said house, or with the consent and permission of the occupant of said house, contrary to law, within one month next before this day, and that said liquor above mentioned is now kept in said house for sale by said D. E., contrary to law; and my belief aforesaid is founded on the following facts and circumstances:—

(Here let such facts and circumstances be stated.)

J— S—,  
L— P—.

Received and sworn to at said B—, before me, this day of , in the year one thousand eight hundred and ; and it appears to me that there is probable cause to believe the foregoing complaint to be true.

N— C—, Justice of the Peace.

Search warrant.

*Form of Warrant to search a dwelling-house and seize liquors therein unlawfully kept for sale.*

COMMONWEALTH OF MASSACHUSETTS.

M—, ss.

[L. s.] To the sheriff of our county of M—, or either of his deputies or any constable of the town of B—, in said county.

Greeting:

Whereas J. S. and L. P., both of said B—, and both of full age, and competent to testify, on the day of , in the year one thousand eight hundred and , at said B—, in behalf of the commonwealth aforesaid, on oath, complained to the undersigned, one of the justices of the peace within and for said county of M—, that



they have reason to believe, and do believe, that on the       day of       , in the year one thousand eight hundred and       , at said B——, intoxicating liquors, to wit:—

(Here describe the liquors, as in the complaint)  
are kept and deposited by D. E., of said B——, in a certain       , situate  
(Here describe the building or other place, as in the complaint)

in said B——, and occupied by said D. E. as a       , and that said liquors were, and are, intended for sale by said D. E., in this commonwealth, contrary to law — he, said D. E., not being then and there authorized to sell or manufacture, or keep such liquors for sale in this commonwealth for any purpose under the provisions of chapter eighty-six of the General Statutes of this commonwealth, or by any other legal authority whatever, whereby said liquors have become liable to be forfeited.

(In case the place to be searched be a dwelling-house, and no tavern, store, grocery, eating-room, or place of common resort, be kept therein, the warrant should contain the following clause:—)

(And J. S., one of the said complainants, has duly made oath that he has reason to believe, and doth believe, that intoxicating liquors, such as are mentioned in the complaint, have been illegally sold in said house, within one month last past, by the occupant thereof, (or with the permission and consent of the occupant thereof, or have been taken from said house for the purpose of being sold,) contrary to law, within one month last past, and that such liquors are kept and deposited in said house by said D. E., and intended for sale in this commonwealth, contrary to law, and has, in his said oath, stated the following facts and circumstances on which said belief was founded.)

(Here let the facts and circumstances be repeated, as in the complaint.) And said complainants have also prayed that due process may issue to search for said liquors, and that such further proceedings may be had in the premises as to law and justice in that behalf may appertain; and whereas it appears to me, the subscriber, on the complaint aforesaid, that probable cause has been shown for the issuing of a warrant of search thereupon:—

These, therefore, are to require you in the name of the commonwealth, taking with you proper assistants, forthwith to enter the       herein above described, and make diligent and careful search for all the liquors herein above described, and, if such liquors are found therein, to seize and convey the same, and the vessels which contain such liquors, to some place of safety, and safely keep the same, to await the final action and decision of the court upon said complaint.

Herein fail not, and make due return of this warrant, with your doings thereon.

Witness my hand and seal at said B——, this       day of       , in the year one thousand eight hundred and

N—— C——, Justice of the Peace.

(In a warrant for searching any other place besides a dwelling-house, that part in the foregoing form which relates to the means of knowledge of the complainant that a sale had been made in the building should be omitted.)

*Warrant to officer to serve notice under sections forty-six and forty-seven.*

COMMONWEALTH OF MASSACHUSETTS.

M——, ss.

[L. s.] To the sheriff of our county of M——, or either of his deputies, or any constable of the town of B——, in said county:—

(If the seizure be made in a city, the warrant may be directed to the city marshal and other city officers authorized to serve it.)

You are hereby commanded to serve the annexed notice, by delivering an attested copy thereof into the hands of D. E. of B——, in the county of M——, or leaving an attested copy thereof at his usual place of abode, and also by posting up another attested copy thereof on

(Here describe the building in which the liquor was seized, if it be found in any building; but if not found in any building, say in some public place in said town of B——,) and also by publishing an attested copy thereof twice (or more times if thought advisable) in the       a newspaper published in said B——; and you are hereby commanded to serve said copy on said D. E. and to post another copy as above directed, and to publish the copy of said notice the first time, at least fourteen days before the day of       , in the year one thousand eight hundred and

Hereof fail not, and make due return of this warrant, with your doings thereon.

Witness my hand and seal at B——, this       day of       , in the year one thousand eight hundred and

N—— C——, Justice of the Peace.

*Form of Notice under sections forty-six and forty-seven, to be annexed to the foregoing Warrant, and served as therein directed.* Form of notice.

To D. E., of B——, in the county of M——, and to any and all other persons claiming any interest in (twenty gallons of rum in a barrel, two gallons of gin in a demijohn, and in said barrel and demijohn, or as the case may be,) which, by virtue of

Warrant to serve notice returnable before a justice.

a warrant issued by me, have been seized (at the dwelling-house of said D. E., in said B—, or as the case may be,) on the       day of       , in the year eighteen hundred and       , the value of which rum and gin, with the vessels containing them, does not in my opinion exceed twenty dollars.

You are hereby required to appear at

(Here name the place appointed for the hearing)  
in said B—, at       o'clock       M., on the       day of       in the year one thousand eight hundred and       , to answer to the complaint against said liquors and the vessels containing them, and for trial, and to show cause, if any you have, why said liquors and the vessels containing them should not be forfeited for being kept for sale by said D. E., in violation of the laws of this commonwealth.

Witness my hand at B—, this       day of       , in the year one thousand eight hundred and       N— C—, Justice of the Peace.

*Warrant to officer to serve notice under section fifty-four.*

COMMONWEALTH OF MASSACHUSETTS.

M—, ss.

[L. s.] To the sheriff of our county of M—, or either of his deputies, or any constable of the town of B—, in said county. —

(If the seizure be made in a city, the warrant may be directed to the city marshal and other city officers authorized to serve it.)

You are hereby commanded to serve the annexed notice, by delivering an attested copy thereof into the hands of D. E., of B—, in the county of M—, or by leaving an attested copy thereof at his usual place of abode, and also by posting up another attested copy thereof on

(Here describe the building in which the liquor was seized, if it be found in any building; but if not found in any building, add, in some public place in said town of B—,) and also by publishing an attested copy thereof twice (or more times if the magistrate thinks it necessary) in the       , a newspaper published in said B—; and you are hereby commanded to serve said copy on said D. E., and to post another copy as above directed, and to publish the copy of said notice the first time, at least fourteen days before the       day of       , in the year eighteen hundred and

Hereof fail not, and make return of this warrant, with your doings thereon, before the justices of our superior court next to be holden at C—, in and for our county of M—, on the       day of       , in the year eighteen hundred and

Witness my hand and seal at B—, this       day of       , in the year one thousand eight hundred and       N— C—, Justice of the Peace.

Form of notice.

*Form of Notice under section fifty-four, to be annexed to the foregoing Warrant.*

To D. E., of B—, in the county of M—, and to any and all other persons claiming any interest in (one hundred gallons of brandy in two hogsheads, and two gallons of gin in a demijohn, and in said hogsheads and demijohn, or as the case may be,) which, by virtue of a warrant issued by me, have been seized (at the dwelling-house of said D. E., in said B—, or as the case may be) on the       day of       , in the year one thousand eight hundred and       , the value of which brandy and gin, with the vessels containing them, in my opinion, exceeds twenty dollars.

You are hereby required to appear before the justices of the superior court next to be holden at C—, in said county of M—, on the       day of       next, to answer to the complaint against said liquors and vessels containing them, and for trial, and to show cause, if any you have, why said liquors and vessels should not be forfeited for being kept for sale by said D. E., in violation of the laws of this commonwealth.

Witness my hand and seal at B—, this       day of       , in the year one thousand eight hundred and       N— C—, Justice of the Peace.

Warrant for delivery of liquor to town agent, or destruction thereof.

*Form of Warrant to deliver liquor, suitable for chemical, medicinal or mechanical purposes, to town agent, and to destroy liquor unsuitable for such purposes.*

COMMONWEALTH OF MASSACHUSETTS.

M—, ss.

To L. M., deputy-sheriff, (here name the officer having the liquor in custody,)

[L. s.] and S. T., a person appointed by N— C—, a justice of the peace for said county, to witness the destruction of certain intoxicating liquors.

Greeting :

Whereas certain intoxicating liquors, to wit, (ten gallons of gin in a barrel, and four gallons of port wine in a demijohn, or as the case may be,) have been declared forfeited by me, the subscriber, one of the justices of the peace in and for the county of M—, for having been kept by D. E., of B—, in said county of M—, at said B—, on the       day of       , in the year eighteen hundred and       , with intent

to sell the same in this commonwealth, he not being then and there authorized so to sell the same, under the provisions of chapter eighty-six of the General Statutes of this commonwealth, or by any lawful authority whatever : whereupon I declared and adjudged among other things, that said liquors, with the vessels in which they are contained, were forfeited to the commonwealth : and whereas, after hearing the evidence in the case, and examining said liquors, I was of opinion that a part of said liquors, to wit, said (ten gallons of gin,) are suitable for medicinal purposes, and that the rest of said liquors, to wit, said (four gallons of port wine,) are not suitable for chemical, medicinal, or mechanical purposes : —

Now, I hereby command you, said L. M., to deliver said (ten gallons of gin) to U. T., agent of said town of B—, (or such agent as may be appointed,) for the sale of spirituous liquors, to be by him sold according to law, and the net proceeds paid over to the treasurer of the commonwealth ; and I further order you, said L. M., to destroy said (four gallons of port wine,) in the presence of S. T., a person appointed by me to witness the destruction thereof, and make return of your doings on this precept. And we command you, said S. T., to attend and witness the destruction thereof, and to join said L. M., in attesting the fact of the destruction of said liquor, in the return on the back of this precept.

And make return of this precept, with your doings thereon. Witness my hand and seal, at said B—, the day of , in the year eighteen hundred and N— C—, Justice of the Peace.

CHAPTER 87

OF THE SUPPRESSION OF COMMON NUISANCES.

SECTION

1. Burnt or dangerous buildings adjudged nuisances, how disposed of.
2. Owner aggrieved may apply for jury.
3. Verdict of jury, &c.
4. Costs.
5. Nuisance may be abated, &c.
6. Buildings, resorted to for prostitution, &c., nuisances.

SECTION

7. Buildings, resorted to for prostitution, penalty for keeping.
8. Such use of premises by tenant to avoid lease, &c.
9. Penalty on landlord for letting, &c., building for such purposes.
10. Booths, &c., used for gaming, &c., near public shows, &c., how removed.

SECTION 1. In any city or town which has adopted chapter four hundred and sixty-nine of the statutes of eighteen hundred and fifty-five, or which shall adopt this and the four following sections, at a legal meeting of the city council or inhabitants of the town, if the mayor and aldermen or selectmen, after due notice in writing to the owner of any burnt, dilapidated, or dangerous building, and a hearing of the matter, adjudge the same to be a nuisance to the neighborhood, or dangerous, they may make and record an order prescribing such disposition, alteration, or regulation, thereof as they deem necessary ; and thereupon the city or town clerk shall deliver a copy of the order to a constable, who shall forthwith serve an attested copy thereof upon such owner, and make return of his doings thereon to said clerk.

Burnt or dangerous buildings adjudged nuisances, how disposed of.  
1855, 469, §§ 1, 6.

SECT. 2. Any owner aggrieved by such order may within three days of the service thereof upon him apply for a jury to the superior court, if sitting in the county, or to any justice thereof in vacation. The court or justice shall issue a warrant for a jury, to be empanelled by the sheriff within fourteen days from the date of the warrant in the manner provided in chapter forty-three relating to highways.

Owner aggrieved may apply for jury.  
1855, 469, § 3.  
1859, 196.

SECT. 3. The jury may affirm, annul, or alter, such order ; and the sheriff shall return the verdict to the next term of the court for acceptance, and, being accepted, it shall take effect as an original order.

Verdict of jury, &c.  
1855, 469, § 4.

SECT. 4. If the order is affirmed, costs shall be taxed against the applicant ; if it is annulled, the applicant shall recover damages and costs against the city or town ; if it is altered in part, the court may render such judgment as to costs as justice shall require.

Costs.  
1855, 469, § 5.

SECT. 5. The mayor and aldermen or selectmen of any city or town

Nuisance may



be abated, &c.  
1849, 211.  
1855, 469, § 2.

*Allen 2.3.894*  
Buildings resorted to for prostitution, &c., nuisances.  
1855, 465, § 1.  
7 Gray, 328.  
13 Gray, 26.

penalty for keeping.  
1855, 465, § 2.

Such use of premises by tenant to avoid lease, &c.  
1855, 465, § 3.

Penalty on landlord for letting, &c., building for such purposes.  
1855, 465, § 4.

Booths, &c., used for gaming, &c., near public shows, &c., how removed.  
1850, 291.  
1851, 91.

shall have the same power and authority to abate and remove any such nuisance, as are given to the board of health in sections eight, nine, and ten, of chapter twenty-six.

SECT. 6. All buildings, places, or tenements, resorted to for prostitution, lewdness, or illegal gaming, or used for the illegal keeping or sale of intoxicating liquors, shall be deemed common nuisances.

SECT. 7. Whoever keeps or maintains such common nuisance shall be punished by fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year.

SECT. 8. If a tenant or occupant, under a lawful title, of any building or tenement, uses such premises, or any part thereof, for any of the purposes enumerated in section six, such use shall annul and make void the lease or other title under which he holds, and, without any act of the owner, shall cause the right of possession to revert and vest in such owner, and the owner may, without process of law, make immediate entry upon the premises, or he may avail himself of the remedy provided in chapter one hundred and thirty-seven.

SECT. 9. Whoever knowingly lets a building or tenement owned by him, or under his control, for any purpose enumerated in section six, or knowingly permits such building or tenement, or any part thereof, while under his control, to be used for such purpose, or after due notice of any such use omits to take all reasonable measures to eject therefrom the persons occupying the same as soon as it can lawfully be done, shall be deemed guilty of aiding in the maintenance of such nuisance, and punished by fine of not less than one hundred nor more than one thousand dollars, or imprisonment in the jail not less than thirty days, nor more than six months.

SECT. 10. The mayor and aldermen or selectmen of any place, upon complaint made to them under oath, that the complainant has reason to believe, and does believe, that any booth, shed, or other temporary erection, situated within one mile of any muster-field, cattle-show ground, or other place of public gathering, is used and occupied for the sale of spirituous or fermented liquors, or for the purpose of gaming, may, if they consider the complaint well founded, order the owner or occupant thereof to vacate and close the same forthwith. If the owner or occupant refuses or neglects so to do, the mayor and aldermen or selectmen may forthwith abate such booth, shed, or erection, as a nuisance, and pull down or otherwise destroy the same, in any manner they choose, or through the agency of any force, civil or military.

## CHAPTER 88.

### OF LICENSES AND MUNICIPAL REGULATIONS OF POLICE.

#### INNOLDERS AND COMMON VICTUALLERS.

##### SECTION

1. Penalty on innholder without license.
2. County commissioners, &c., may grant licenses, specifying place, &c.
3. Licenses to expire on first of April.
4. Clerks of commissioners to transmit lists to selectmen.
5. Persons applying to commissioners to produce certificate from selectmen.
6. Applications, how made.
7. Provisions in case selectmen refuse certificate.
8. Innholders to entertain travellers, &c.

##### SECTION

9. Innholders, penalties on, for refusing, &c.
10. how liable for loss of property of guests.
11. in case of loss by fire, &c.
12. in cases of loss, may show negligence of guests, &c.
13. Rights, &c., of common victuallers.
14. Innholders, &c., to put up signs.
15. Punishment if fines are not paid.
16. on second conviction.
17. on third conviction.
18. Innholders, &c., not to give credit to students, &c.
19. violating preceding section, &c.

SECTION

- 20. Penalty.
- 21. Commissioners, &c., not required to license. No fee.
- 22. Laws relating to innholders, &c., to be furnished persons licensed.

INTELLIGENCE OFFICES.

- 23. Intelligence office, penalty for keeping without license.
- 24. Selectmen may license.

JUNK, OLD METALS, AND SECOND-HAND ARTICLES.

- 25. Licenses to deal in old, &c., articles.
- 26. to designate place of dealing, &c.
- 27. penalty for dealing without, &c.

PAWNBROKERS.

- 28. Pawnbrokers to be licensed.
- 29. Form of license, &c.
- 30. Penalty for carrying on business without license.

STABLES.

- 31. Livery stables in maritime towns to be licensed.
- 32. Penalty for unauthorized erection or use of stables.

STEAM-ENGINES, FURNACES AND BOILERS.

- 33. Steam-engines and furnaces not to be used in certain cases without license.
- 34. Public notice of applications for license, &c.
- 35. Municipal officers may regulate furnaces, steam-engines, &c.
- 36. Appeal, and proceedings thereon.
- 37. Court may restrain use while appeal is pending.
- 38. Verdict of jury may affirm, &c., order. Acceptance of verdict.
- 39. Recovery of costs.
- 40. Engines, &c., when common nuisances, &c.
- 41. Selectmen, &c., may examine steam-engines and prohibit use.
- 42. may remove as nuisances.
- 43. Steam-boilers not to be made or used, &c., without safety plugs.
- 44. Penalty for removing plugs.
- 45. for making, &c., boilers without plugs.

ROCKETS, GUNPOWDER, AND OTHER EXPLOSIVE SUBSTANCES.

- 46. Penalty for selling rockets, &c., without license.
- 47. for firing, &c., without license.

SECTION

- 48. Towns, &c., may order how gunpowder, gun-cotton, &c., shall be kept.
- 49. Justices to issue warrants for searching places where gunpowder, &c., is suspected to be unlawfully kept.
- 50. Penalty for unlawfully keeping gunpowder, &c.
- 51. Towns may regulate storage and sale of camphene, &c.

DOGS.

- 52. Dogs to be registered and licensed.
- 53. Clerk to issue license. Treasurer to keep account, &c.
- 54. to post list, &c.
- 55. Dog may be licensed at any time, &c. Removal.
- 56. Penalty for neglect.
- 57. for removing collar, &c.; for exposing poisons, &c.
- 58. Dogs unlicensed may be killed, &c. Bounty.
- 59. damages by.
- 60. when any person may kill, &c.
- 61. dangerous, to be confined by owner, or killed.
- 62. after notice, any person may kill.
- 63. Liability of owner in case, &c.
- 64. Towns liable for loss in certain cases; may recover of owner.
- 65. Person damaged to have choice of remedy.
- 66. Officers to kill unlicensed dogs. Penalty for neglect.
- 67. Towns may make by-laws, &c. Fees for license.
- 68. Fines, &c., how recovered.

BILLIARD TABLES AND BOWLING ALLEYS.

- 69. Selectmen, &c., may grant licenses to keep billiard tables, &c., for hire, &c.
- 70. Penalty for keeping tables, &c., without license.
- 71. for admitting minors to, &c.
- 72. Officers may enter billiard rooms, &c., to enforce laws.
- 73. Penalty for erecting, &c., bowling alley.

THEATRICAL EXHIBITIONS, PUBLIC SHOWS, MASKED BALLS, &c.

- 74. Theatrical exhibitions, &c., may be licensed.
- 75. penalty for setting up, &c., contrary to law.
- 76. at which lager bier, &c., is sold.
- 77. Penalty for getting up, &c., masked balls, &c.
- 78. Justices may require sureties of offenders.
- 79. Penalty for exhibiting fighting birds, &c.

INNOLDERS AND COMMON VICTUALLERS.

SECTION 1. Whoever presumes to be an innholder or common victualler, without being licensed as such according to the provisions of this chapter, shall forfeit one hundred dollars.

SECT. 2. The county commissioners may grant licenses to as many persons to be innholders or common victuallers in the several towns within their respective jurisdictions as they think the public good requires; and the mayor and aldermen of the several cities may in like manner grant licenses to innholders and common victuallers in their respective cities. Every such license shall specify the street, lane, alley, or other place, and the number of the building, or some other particular description thereof, where such person shall exercise his employment; and the license shall not protect a person exercising his employment in any other place than that specified in the license.

Penalty on innholder without license. R. S. 47, § 1. 6 Greenl. 412. 24 Pick. 552. County commissioners, &c. may grant licenses, specifying place, &c. R. S. 47, §§ 17, 18. 1850, 299. 3 Pick. 281.

Licenses to expire on first of April.  
R. S. 47, § 19.

SECT. 3. Such licenses shall expire on the first day of April in each year; but a license may be granted or renewed at any time during the preceding month of March, to take effect from said first day of April; and after that day they may be granted for the remainder of the year, when the officers authorized to grant the same deem it expedient.

Clerks of commissioners to transmit lists to selectmen.  
R. S. 47, § 22.

SECT. 4. The clerk of the county commissioners shall seasonably, before the time for granting licenses in each year, transmit to the selectmen of every town within the jurisdiction of such commissioners, a list of the persons in such town who were licensed as innholders or victuallers the preceding year.

Persons applying to commissioners to produce certificate from selectmen.  
R. S. 47, § 23.

SECT. 5. No such license shall be granted or renewed to any person by the county commissioners unless he produces a certificate from the selectmen of the town for which he applies to be licensed, in substance as follows, to wit:—

We, the subscribers, a majority of the selectmen of the town of \_\_\_\_\_, do hereby certify that \_\_\_\_\_ has applied to us to be recommended as (here expressing the employment and a particular description of the place for which the license is applied for) in said town, and that, after mature consideration had thereon at a meeting held for that purpose at which we were each of us present, we are of opinion that the public good requires that the petition of said \_\_\_\_\_ be granted, he being to the best of our knowledge and belief a person of good moral character.

Applications, how made.  
R. S. 47, § 24.

SECT. 6. Whoever produces such certificate shall be heard and his application decided upon, either on a motion made orally by himself, or his counsel, or upon a petition in writing, as he elects.

Provisions in case selectmen refuse certificate.  
R. S. 47, § 25.

SECT. 7. If the selectmen of any town unreasonably neglect or refuse to make and deliver such a certificate, either for the original granting or the renewal of a license, the person aggrieved thereby may apply for a license to the commissioners, first giving twenty-four hours' notice to a majority of said selectmen of his intended application, so that if they see fit they may appear and object thereto; and if on such application it appears that the selectmen did unreasonably neglect or refuse to give such certificate, and that the public good requires that the license be granted, the commissioners may grant the same.

Innholders to entertain travellers, &c.  
R. S. 47, § 5.

SECT. 8. Every innholder shall at all times be furnished with suitable provisions and lodging for strangers and travellers, and with stable room, hay, and provender, for their horses and cattle; and if he is not so provided, the county commissioners or mayor and aldermen by whom the same was granted may revoke his license.

penalties on, for refusing, &c.  
R. S. 47, § 8.

SECT. 9. If an innholder when requested refuses to receive and make suitable provisions for strangers and travellers, and their horses and cattle, he shall be punished by fine not exceeding fifty dollars, and shall by order of the court be deprived of his license; and the court shall order the sheriff or his deputy forthwith to cause his sign to be taken down.

how liable for loss of property of guests.  
1853, 405, § 1.  
9 Pick. 284.  
7 Cush. 417.

SECT. 10. Innholders shall not be liable for losses sustained by their guests, except of wearing apparel, or personal baggage, and money necessary for travelling expenses and personal use, unless upon delivery or offer of delivery by such guests of their money, jewelry, or other property, to the innholder, his agents, or servants, for safe custody.

in case of loss by fire, &c.  
1853, 405, § 2.  
9 Pick. 284.

SECT. 11. In case of loss by fire or overwhelming force, innkeepers shall be answerable to their guests only for ordinary and reasonable care in the custody of their baggage or other property.

in cases of loss, may show negligence of guests, &c.  
1853, 405, § 3.

SECT. 12. An innholder against whom a claim is made for loss sustained by a guest, may in all cases show that such loss is attributable to the negligence of the guest himself, or to his non-compliance with the regulations of the inn: *provided*, such regulations are reasonable and proper, and are shown to have been duly brought to the notice of the guest by the innholder.

Rights, &c., of

SECT. 13. Every common victualler shall have the rights and privi-



leges and be subject to the duties and obligations of innholders, except that he shall not be required to furnish lodging for travellers, nor stable room, hay, or provender, for horses and cattle.

SECT. 14. Every innholder and common victualler shall at all times have a board or sign affixed to his house, shop, cellar, or store, or in some conspicuous place near the same, with his name at large, and the employment for which he is licensed, thereon, and upon neglect thereof shall forfeit twenty dollars.

SECT. 15. Whoever is convicted under the preceding provisions, and fails to pay the fine and costs awarded against him, may be imprisoned in the jail for a time not exceeding ninety days, at the discretion of the court or justice before whom the trial is had.

SECT. 16. Whoever licensed under the preceding provisions is convicted a second time of a breach of any of said provisions, shall in addition to the penalties before provided be adjudged to have forfeited his license.

SECT. 17. Whoever is convicted a third time of a breach of any of the preceding provisions, shall in addition to the penalties before provided be punished by imprisonment in the jail not exceeding ninety days.

SECT. 18. No innholder, tavern-keeper, retailer, confectioner, or keeper of any shop or house for the sale of drink or food, or any livery stable keeper for horse or carriage hire, shall give credit to any student in an incorporated academy or other educational institution within this state.

SECT. 19. No person shall be approved or licensed for either of the employments aforesaid, if it appears that he has given credit contrary to the provisions of the preceding section.

SECT. 20. Whoever gives credit contrary to the provisions of section eighteen, shall forfeit a sum equal to twice the amount so unlawfully trusted or credited, whether the same is paid or not.

SECT. 21. Nothing contained in this chapter shall be construed to require the county commissioners or mayor and aldermen to grant either of the licenses aforesaid, when in their opinion the public good does not require it. And when such license is granted, no fee shall be charged therefor.

SECT. 22. The secretary of the commonwealth shall cause a condensed summary of all laws relating to innholders and common victuallers to be printed for the use of the state, and shall supply county commissioners and mayors and aldermen of cities therewith; who shall also furnish to each person licensed by them a copy of such summary at the time of granting the license.

INTELLIGENCE OFFICES.

SECT. 23. Whoever, without a license therefor, establishes or keeps an intelligence office for the purpose of obtaining or giving information concerning places of employment for domestics, servants, or other laborers, except seamen, or for the purpose of procuring or giving information concerning such persons for or to employers, shall pay a fine of ten dollars for each day such office is so kept.

SECT. 24. The mayor and aldermen or selectmen of any city or town may, for the purposes mentioned in the preceding section, grant licenses to suitable persons for the term of one year, and may revoke the same at pleasure. They shall receive one dollar for each license so granted.

JUNK, OLD METALS, AND SECOND-HAND ARTICLES.

SECT. 25. The mayor and aldermen or selectmen of any city or town which has adopted by-laws therefor, may license suitable persons to be

common victuallers.  
R. S. 47, § 6.

Innholders, &c., to put up signs.  
R. S. 47, § 7.

Punishment, if fines are not paid.  
R. S. 47, § 27.  
23 Pick. 280.

on second conviction.  
1837, 242, § 3.

on third conviction.  
R. S. 47, § 29.  
1837, 242, § 4.

Innholders, &c., not to give credit to students, &c.  
R. S. 23, § 69.  
1855, 163, § 1.  
1 Pick. 177.

*1860 ch. 102.*

violating preceding section, &c.  
R. S. 23, § 70.  
1855, 163, § 2.  
Penalty.  
R. S. 23, § 71.  
1855, 163, § 3.

Commissioners, &c., not required to license.  
No fee.  
1837, 242, § 2.

Laws relating to innholders, &c., to be furnished persons licensed.  
1837, 242, § 5.

Intelligence office, penalty for keeping without license.  
1848, 270, § 1.

selectmen may license.  
1848, 270, § 2.

Licenses to deal in old, &c., articles.

1839, 53, §§ 1, 4. dealers in and keepers of shops for the purchase, sale, or barter, of junk, old metals, or second-hand articles, within their respective cities and towns.

License to designate place of dealing, &c.  
1839, 53, § 2.

SECT. 26. The license shall designate the place where the business is to be carried on, and contain such conditions and restrictions as may be prescribed by such by-laws, and shall continue in force for one year unless sooner revoked.

penalty for dealing without, &c.  
1839, 53, §§ 3, 4.

SECT. 27. Whoever not so licensed keeps a shop or is a dealer in such city or town, or being licensed keeps such shop, or is such dealer, in any other place or manner than that designated in his license, or after notice to him that his license has been revoked, shall pay a fine of twenty dollars for each offence.

#### PAWNBROKERS.

Pawnbrokers to be licensed.  
1855, 121, §§ 1, 4.

SECT. 28. The mayor and aldermen or selectmen of any city or town, which has adopted by-laws therefor, may license suitable persons to carry on the business of pawnbrokers, within their respective cities and towns.

Form of license, &c.  
1855, 121, § 2.

SECT. 29. The license shall designate the place where the business is to be carried on, contain such conditions and restrictions as may be prescribed by such by-laws, and continue in force one year unless sooner revoked.

Penalty for carrying on business without license, &c.  
1855, 121, §§ 3, 4.

SECT. 30. Whoever not being licensed carries on such business or is concerned therein within such city or town, or being licensed carries on such business or is concerned therein in any other place or manner than that designated in his license, or after notice to him that his license is revoked, shall pay a fine not exceeding fifty dollars for each offence.

#### STABLES.

Livery stables in maritime towns to be licensed.  
R. S. 58, § 4.  
1855, 49.  
1 Gray, 163.

SECT. 31. Whoever occupies or uses a building in any maritime place for a livery stable, except in such part thereof as the mayor and aldermen or selectmen shall direct, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time.

Penalty for unauthorized erection or use of stables.  
1851, 319.  
1852, 129.  
1853, 362.

SECT. 32. Whoever erects, occupies, or uses, a building for a stable for more than four horses, in any city or town, except in such part thereof as the mayor and aldermen or selectmen direct, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time. And the supreme judicial court or any one of the justices thereof, either in term time or vacation, may issue an injunction to prevent such erection, occupancy, or use, without such direction.

#### STEAM-ENGINES, FURNACES, AND BOILERS.

Steam-engines and furnaces not to be used in certain cases without license.  
1845, 197, §§ 1, 10.  
1846, 96, §§ 1, 3.

SECT. 33. No furnace for melting iron or making glass, and no stationary steam-engine designed for use in any mill for planing or sawing boards or turning wood, or in which any other fuel than coal is used to create steam, shall be erected or put up to be used in any city or town by which the provisions relating thereto of chapter one hundred ninety-seven of the statutes of eighteen hundred and forty-five or chapter ninety-six of the statutes of eighteen hundred and forty-six respectively have been adopted, or by which this and the seven following sections shall have been adopted, at a legal meeting of the city council of the city or the inhabitants of the town called for that purpose, unless the mayor and aldermen or selectmen thereof have granted a license therefor, prescribing the place where the building in which



such steam-engine or furnace is to be used shall be erected, the materials and construction thereof, with such regulations as to the height of flues and protection against fire as they deem necessary for the safety of the neighborhood. Such license may be granted on a written application, and shall be recorded in the records of the city or town.

SECT. 34. Upon application for such license the mayor and aldermen or selectmen shall assign a time and place for the consideration of the same, and cause at least fourteen days' public notice thereof to be given, at the expense of the applicant, in such manner as they may direct, in order that all persons interested may be heard thereon.

SECT. 35. In any city or town by which chapter one hundred and ninety-seven of the statutes of eighteen hundred and forty-five has been adopted, or by which sections thirty-three to forty inclusive shall have been adopted at a legal meeting of the city council of the city or inhabitants of the town called for that purpose, the mayor and aldermen or selectmen, after due notice in writing to the owner of such steam-engine or furnace, except for making glass, erected or in use therein before the time of such adoption, and a hearing of the matter, may adjudge the same to be dangerous or a nuisance to the neighborhood, and make and record an order prescribing such rules, restrictions, and alterations, as to the building in which the same is constructed or used, the construction and height of its smoke flues, with such other regulations as they deem necessary for the safety of the neighborhood; and the city or town clerk shall deliver a copy of such order to a constable, who shall serve on the owner an attested copy thereof and make return of his doings thereon to said clerk within three days from the delivery thereof to him.

SECT. 36. The owner of a steam-engine or furnace who is aggrieved by such order, may apply to the superior court, or a justice thereof in vacation, for a jury; and the court or justice shall issue a warrant for a jury to be empanelled by the sheriff in like manner as is provided in chapter forty-three in regard to the laying out of highways. Such application shall be made within three days after the order is served upon the owner, and the jury shall be empanelled within fourteen days from the issuing of the warrant.

SECT. 37. The court or justice, on granting the application for a jury, may issue an injunction restraining the further use of such engine or furnace until the final determination of the application.

SECT. 38. The jury may find a verdict either affirming or annulling the order in full, or making alterations therein; which verdict shall be returned by the sheriff to the next term of the court for acceptance as in the case of highways, and when accepted shall take effect as an original order.

SECT. 39. If the order is affirmed, costs shall be recovered by the city or town against the applicant; if it is annulled, damages and costs shall be recovered by the complainant against the city or town; and if it is altered, the court may render such judgment as to costs, as to justice shall appertain.

SECT. 40. Any steam-engine or furnace erected or used contrary to the provisions of the seven preceding sections, shall be deemed a common nuisance. And the mayor and aldermen or selectmen shall have like authority to remove the same as is given to boards of health to remove nuisances by sections eight, nine, and ten, of chapter twenty-six.

SECT. 41. The mayor and aldermen or selectmen of any city or town, or any person by them authorized, may, after notice to the parties interested, examine any steam-engine or steam-boiler therein; and for that purpose may enter any house, shop, or building; and if upon such examination it appears probable that the use of such engine or boiler is unsafe, they may issue a temporary order to suspend such use, and if

Public notice of applications for license, &c. 1845, 197, § 5.

Municipal officers may regulate furnaces, steam-engines, &c. 1845, 197, §§ 2-10.

Appeal and proceedings thereon. 1845, 197, § 6. 1859, 196.

Court may restrain use while appeal is pending. 1845, 197, § 7.

Verdict of jury may affirm, &c., order. Acceptance of verdict. 1845, 197, § 8.

Recovery of costs. 1845, 197, § 9.

Engines, &c., when common nuisances, &c. R. S. 21, §§ 10, 11. 1845, 197, §§ 3, 10. 1846, 96, §§ 2, 3. 1849, 211, §§ 3, 4, 5, 8.

Selectmen, &c., may examine steam-engines and prohibit use. 1852, 191, § 1. 1859, 259.

*Allen 142*



after giving the parties interested, so far as known, an opportunity to be heard, they adjudge such engine or boiler unsafe, or defective, or unfit to be used, they may pass a permanent order prohibiting the use thereof until it is rendered safe. If, after notice to the owner or person having charge thereof, such engine or boiler is used contrary to either of such orders, it shall be deemed a common nuisance, without any other proof thereof than its use.

Steam-boilers, when may be removed as nuisances.  
R. S. 21, §§ 10, 11; 1849, 211, §§ 3, 4, 5, 8; 1852, 191, § 2; 1859, 259.

not to be made or used, &c., without safety plugs.  
1850, 277, § 1.  
1852, 247, § 1.

Penalty for removing safety plugs.  
1850, 277, § 2.

for making, &c., boilers without safety plugs.  
1850, 277, § 3.  
1852, 247, § 1.

SECT. 42. The mayor and aldermen and selectmen shall have the same authority to abate and remove any steam-engine or steam-boiler erected or used contrary to the provisions of the preceding section, as boards of health have to remove nuisances, by sections eight, nine, and ten, of chapter twenty-six.

SECT. 43. No person shall manufacture, set up, use, or cause to be used, any steam-boiler, unless it is provided with a fusible safety plug made of lead or some other equally fusible material, and of a diameter of not less than one-half an inch; which plug shall be placed in the roof of the fire-box, when a fire-box is used, and in all cases, in a part of the boiler fully exposed to the action of the fire, and as near the top of the water line as any part of the fire-surface of the boiler; and for this purpose Ashcroft's "protected safety fusible plug" may be used.

SECT. 44. Whoever without just and proper cause removes from any boiler the safety plug thereof, or substitutes therefor any material more capable of resisting the action of the fire than the plug so removed, shall be punished by a fine not exceeding one thousand dollars.

SECT. 45. Whoever manufactures, sets up, knowingly uses, or causes to be used, for six consecutive days, a steam-boiler unprovided with a safety fusible plug as named in section forty-three, shall be punished by fine not exceeding one thousand dollars.

#### ROCKETS, GUNPOWDER, AND OTHER EXPLOSIVE SUBSTANCES. 1860 Ch. 103.

Penalty for selling rockets, &c., without license.  
R. S. 55, § 5.  
1839, 135.

for firing, &c., without license.  
R. S. 53, § 6.  
1839, 135.  
10 Cush. 494.

Towns, &c., may order how gunpowder, gun-cotton, &c., shall be kept.  
R. S. 53, § 7.  
1847, 51.

SECT. 46. Whoever sells, gives away, or offers for sale, or has in his possession with intent to sell, any of the fireworks called rockets, crackers, squibs, or serpents, without license from the mayor and aldermen or selectmen of the city or town, shall for every such offence forfeit a sum not exceeding ten dollars.

SECT. 47. Whoever sets fire to, or has in his possession with intent to set fire to, any rocket, cracker, squib, or serpent, or throws any lighted rocket, cracker, squib, or serpent, within any city or town, without the license of the mayor and aldermen or selectmen, shall for every offence forfeit a sum not exceeding ten dollars.

SECT. 48. The city council of a city and the inhabitants of a town may order that no gunpowder shall be kept in any place within the limits thereof, unless it is well secured in tight casks or canisters; that no gunpowder, above the quantity of fifty pounds, shall be kept or deposited in any shop, store, or other building, or in a ship or vessel, which is within the distance of twenty-five rods from any other building or wharf; that no gunpowder, above the quantity of twenty-five pounds, shall be kept or deposited in any shop, store, or other building, within ten rods of any other building; and that no gunpowder, above the quantity of one pound, shall be kept or deposited in any shop, store, or other building, within ten rods of another building, unless it is well secured in copper, tin, or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass, or tin covers. They may make a like order in regard to gun-cotton, or other substances prepared like it for explosion, and, if considered necessary for public safety, may restrict the quantity to be so kept to one-fifth of the weight of gunpowder allowed by this section.

SECT. 49. Upon complaint made to a justice of the peace or police court by the mayor or either of the aldermen, selectmen, or firewards of any place, that he has probable cause to suspect, and does suspect, that gunpowder, gun-cotton, or other substance prepared like it for explosion, is deposited and kept within the limits thereof contrary to law, such justice or court may issue a warrant, directed to either of the constables of such place, ordering him to enter any shop, store, or other building, or vessel, specified in the warrant, and there make diligent search for such gunpowder, gun-cotton, or other substance, suspected to have been so deposited or kept, and to make return of his doings to said justice or court forthwith.

Justices to issue warrants for searching places where gunpowder, &c., is suspected to be unlawfully kept.  
R. S. 58, § 8.  
1847, 51.

SECT. 50. Whoever commits an offence against any order made under section forty-eight, shall forfeit a sum not exceeding twenty dollars; but the four preceding sections shall not extend to any manufactory of gunpowder, gun-cotton, or other substance aforesaid, nor in any case prevent the transportation thereof through any city or town, or from one to another part thereof.

Penalty for unlawfully keeping gunpowder, &c.  
R. S. 58, § 9.  
1839, 135.  
1847, 51.  
See Ch. 49,  
§§ 69-71.

SECT. 51. The city council of any city and the inhabitants of any town may adopt such rules and regulations as they deem reasonable in relation to the storage and sale, within the limits thereof, of camphene or any similar explosive or inflammable fluid, and may affix penalties for breaches thereof, not exceeding twenty dollars for any one offence.

Towns may regulate storage and sale of camphene, &c.  
1850, 165.

DOGS.

SECT. 52. Every owner or keeper of a dog shall annually on or before the thirtieth day of April, cause it to be registered, numbered, described, and licensed for one year from the first day of the ensuing May, in the office of the clerk of the city or town wherein he resides; and shall cause it to wear around its neck a collar distinctly marked with its owner's name and registered number, and shall pay for such license one dollar for a male dog and five dollars for a female dog.

Dogs to be registered and licensed.  
1859, 225, § 1.

SECT. 53. The clerk shall issue the license, and receive and pay the money therefor into the city or town treasury, retaining to his own use ten cents for each license. The treasurer shall keep an accurate and separate account of all sums received and paid out under the provisions of this chapter relating to dogs, which account shall at all times be open to the inspection of any voter of the place.

Clerk to issue license.  
Treasurer to keep account, &c.  
1859, 225, § 1.

SECT. 54. The clerk shall annually, within one week after the first day of May, post in some conspicuous public place a list of all dogs licensed for the current year; and shall furnish a copy thereof to the chief of police of the city, or one of the constables of the town; and shall also, from time to time, furnish said officers with a list of such dogs as are subsequently licensed during the year.

to post list, &c.  
1859, 225, § 3.

SECT. 55. Any owner of a dog may, at any time, have it licensed until the first day of the ensuing May, upon paying the sum as provided in section fifty-two; but such license shall not exempt him from the penalty of the following section, on complaint made prior to issuing the license. No new license for the current year shall be necessary upon the removal of a licensed dog into another city or town, unless required by some by-law passed under section sixty-seven.

Dog may be licensed at any time, &c.  
Removal.  
1859, 225, §§ 10, 11.

SECT. 56. Whoever keeps a dog contrary to the provisions of this chapter shall forfeit ten dollars, to be recovered by complaint, to the use of the place wherein the dog is kept.

Penalty for neglect.  
1859, 225, § 9.

SECT. 57. Whoever wrongfully removes the collar from or steals a dog, licensed and collared as aforesaid, shall be punished by fine not exceeding fifty dollars; and whoever wrongfully kills, maims, entices, or carries away such a dog, shall be liable to its owner for its value in an action of tort. Whoever distributes or exposes any poisonous sub-

for removing collar, &c.  
for exposing poisons, &c.  
1859, 225, §§ 4, 5.



stance, with intent that the same shall be eaten by any dog, shall be punished by fine not exceeding fifty nor less than ten dollars.

Dogs may be killed when not licensed, &c. Bonnty. 1839, 225, § 4.

SECT. 58. Any person may, and every police officer and constable shall, kill or cause to be destroyed all dogs going at large and not licensed and collared according to the provisions of this chapter; and such officers, when not otherwise paid for their services, shall receive from the city or town treasury fifty cents for each dog so destroyed by them.

damages by. R. S. 58, § 13. 20 Pick. 477. 12 Met. 291. 12 Cush. 278.

SECT. 59. Every owner or keeper of a dog shall forfeit to any person injured by it double the amount of the damage sustained by him, to be recovered in an action of tort.

when any person may kill, &c. R. S. 58, § 14. 13 Johns. R. 312. 4 Cowen, 351

SECT. 60. Any person may kill a dog that shall suddenly assault him while he is peaceably walking or riding without the enclosure of its owner or keeper; and any person may kill a dog that is found out of the enclosure or immediate care of its owner or keeper, worrying, wounding, or killing any neat cattle, sheep, or lambs.

dangerous, to be confined by owner or killed. R. S. 58, § 15. 1839, 135.

SECT. 61. If any person so assaulted, or finding a dog strolling out of the enclosure or immediate care of its owner or keeper, shall, within forty-eight hours after such assault or finding, make oath thereof before a justice of the peace or police court for the county, or before the clerk of the city or town where the owner of the dog dwells, and shall further swear that he suspects the dog to be dangerous or mischievous, and shall give notice thereof to its owner or keeper by delivering him a certificate of such oath signed by such justice or clerk, the owner or keeper shall forthwith kill or confine it; and if he neglects so to do for twenty-four hours after such notice, he shall forfeit ten dollars.

after notice, any person may kill. R. S. 58, § 16.

SECT. 62. If, after such notice, the dog is not killed or confined, but is again found strolling out of the enclosure or immediate care of its owner or keeper, any person may kill it.

Liability of owner in case, &c. R. S. 58, § 17. 1852, 312.

SECT. 63. If a dog, after such notice to its owner or keeper, shall by such assault wound or cause to be wounded any person, or shall worry, wound, or kill any neat cattle, sheep, or lambs, or do any other mischief, the owner or keeper shall be liable to pay to the person injured thereby treble damage, to be recovered in an action of tort.

Towns liable for loss in certain cases. may recover of owner. 1839, 225, §§ 6, 7.

SECT. 64. Whoever suffers loss by reason of the worrying, maiming, or killing of his sheep, lambs, or other domestic animals, by dogs, may, within thirty days after he knows of such loss, present proof thereof to the mayor or selectmen of the city or town wherein the damage is done; and thereupon said officers shall draw an order in favor of the owner upon the treasurer of said city or town for the amount of such loss. The treasurer shall register such orders at the time of their presentation, and annually on the first day of January pay them in full, if the gross amount received by his city or town under the provisions of this chapter relating to dogs, and not previously paid out, is sufficient therefor; otherwise he shall divide such amount *pro rata* among such orders, in full discharge thereof. After such order has been drawn, the city or town may in an action of tort recover against the keeper or owner of any dog concerned in doing the damage the full amount thereof.

Person damaged to have choice of remedy. 1839, 225, § 8.

SECT. 65. The owner of sheep, lambs, or other domestic animals worried, maimed, or killed by dogs, shall have his election whether to proceed under the provisions of the preceding section or of sections sixty-one, sixty-two, and sixty-three; but having signified such election, by commencing a suit or obtaining an order, he shall not have the other remedy.

Officers to kill unlicensed dogs.

SECT. 66. The mayor and aldermen of each city, and the selectmen of each town, shall require all dogs not licensed and collared according to the foregoing provisions, to be destroyed, and shall enforce all penal-

12 Cush. 278.



ties herein provided. Any officer refusing or neglecting to perform the duties herein imposed upon him, shall be punished by fine not exceeding twenty-five dollars, to be paid into the city or town treasury.

Penalty for neglect.  
1859, 225, §§ 12, 13.

SECT. 67. The city council of any city, and the inhabitants of any town, may make such additional by-laws and regulations concerning the licensing and restraining of dogs, as they deem expedient, and may affix any penalties, not exceeding ten dollars, for any breach thereof; but such by-laws and regulations shall relate only to dogs owned or kept in such city or town; and the annual fee required for a license shall in no case be more than one dollar in addition to the sum required by section fifty-two.

Towns may make by-laws, &c.  
Fees for license.  
1859, 225, § 14.

SECT. 68. All fines and penalties provided in the sixteen preceding sections may be recovered on complaint before any police court or trial justice in the county where the offence is committed.

Fines, &c., how recovered.

BILLIARD TABLES AND BOWLING ALLEYS.

SECT. 69. The mayor and aldermen or selectmen of any city or town may grant a license to any person to keep a billiard table or bowling alley for hire, gain, or reward, upon such terms and conditions as they deem proper, to be used for amusement merely, but not for the purpose of gaming for money or other property. Such license may be revoked at the pleasure of the authority granting it.

Selectmen, &c., may grant licenses to keep billiard tables, &c., for hire, &c.  
1857, 194, § 2.  
See Ch. 85, § 6.

SECT. 70. Whoever without such license keeps or suffers to be kept in a house, building, yard, or dependency thereof, by him actually occupied or owned, a table for the purpose of playing at billiards, or a bowling alley for the purpose of playing at bowls, for hire, gain, or reward, or for hire, gain, or reward suffers any person to resort to the same for such purpose, shall forfeit for every such offence a sum not exceeding one hundred dollars.

Penalty for keeping tables, &c., without license.  
1857, 194, § 1.  
See Ch. 120, § 40.

SECT. 71. The keeper of a billiard room or table, or bowling alley, who admits a minor thereto without the written consent of his parent or guardian, or who suffers any person to play at the same after six o'clock in the afternoon on Saturday, or after ten o'clock in the afternoon of any other day, shall forfeit ten dollars for the first and twenty dollars for each subsequent offence.

for admitting minors to, &c.  
1855, 429, § 1.

SECT. 72. Any marshal or his deputy, sheriff or his deputy, constable, police officer, or watchman, may at any time enter into a billiard room, bowling alley, or other room connected therewith, for the purpose of enforcing any law of the state; and whoever obstructs or hinders the entrance of such officer shall be punished by fine of not less than five nor more than twenty dollars.

Officers may enter billiard rooms, &c., to enforce laws.  
1855, 429, § 2.

SECT. 73. The provisions of section thirty-two shall apply to the erection, occupancy, or use, of buildings for bowling alleys in any city or town.

Penalty for erecting, &c., bowling alley.  
1851, 319.  
1852, 129.  
1853, 362.

THEATRICAL EXHIBITIONS, PUBLIC SHOWS, MASKED BALLS, &c.

SECT. 74. The mayor and aldermen or selectmen of any city or town may license theatrical exhibitions, public shows, public amusements and exhibitions of every description, to which admission is obtained upon payment of money or the delivery of any valuable thing, or by a ticket or voucher obtained for money or any valuable thing, upon such terms and conditions as they deem reasonable; and they may revoke or suspend the same at their pleasure.

Theatrical exhibitions, &c., may be licensed.  
1849, 231, § 1.  
7 Gray, 162.

SECT. 75. Whoever offers to view, sets up, sets on foot, maintains, carries on, publishes, or otherwise assists in or promotes, any such exhibition, show, or amusement, without such license, shall be punished by fine not exceeding five hundred dollars for each offence.

penalty for setting up, &c., contrary to law.  
1849, 231, § 2.  
4 Cush. 74.  
6 Cush. 179.

Penalty for setting up theatrical exhibitions at which lager-bier, &c., is sold.  
1858, 152, §§ 1, 2.

SECT. 76. Whoever offers to view, sets up, sets on foot, maintains, or carries on, a theatrical exhibition, public show, concert, or dance-hall exhibition, of any description, at which lager-bier or other intoxicating liquors are sold or exposed for sale, with the consent of those who get up, set on foot, or otherwise promote, such exhibitions or shows, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the house of correction not more than two years, unless such exhibition or show has been first duly licensed as provided by section seventy-four. This section shall not authorize the licensing of the sale at any exhibition or show, of liquors the sale of which is prohibited by law.

for getting up, &c., masked balls, &c.  
1849, 231, § 3.

SECT. 77. Whoever gets up, sets on foot, causes to be published, or otherwise aids in getting up and promoting, any masked ball or other public assembly, at which the company wear masks or other disguises, and to which admission is obtained upon payment of money or the delivery of any valuable thing, or by a ticket or voucher obtained for money or any valuable thing, shall for the first offence be punished by fine not exceeding five hundred dollars; and for any subsequent offence, by imprisonment in the jail or house of correction not exceeding one year.

Justices may require sureties of offenders.  
R. S. 58, § 3.

SECT. 78. Any justice of the peace or police court, upon complaint made of an offence against the provisions of the three preceding sections, shall bind over all persons so offending, to appear at the next term of the superior court, and shall also require such persons to find sureties for the keeping of the peace and being of good behavior until such term of the court, and shall commit such persons upon their refusing or neglecting so to recognize and find sureties.

Penalty for exhibiting fighting birds, &c.  
1859, 158.

SECT. 79. Whoever establishes or promotes an exhibition of the fighting of birds or animals, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the house of correction not exceeding six months. Whoever is present at, or aids in, or contributes to such an exhibition, shall be punished by fine not exceeding ten dollars.

# PART II.

OF THE ACQUISITION, THE ENJOYMENT, AND THE TRANSMISSION, OF PROPERTY, REAL AND PERSONAL; THE DOMESTIC RELATIONS, AND OTHER MATTERS CONNECTED WITH PRIVATE RIGHTS.

## TITLE I.

OF REAL PROPERTY AND THE ALIENATION THEREOF.

CHAPTER 89.—Of Alienation by Deed; the Legal Formalities, Construction, and Operation, of Deeds for the Conveyance of Lands.

CHAPTER 90.—Of Estates in Dower, by the Curtesy, for Years, and at Will; and General Provisions concerning Real Estate.

## CHAPTER 89.

OF ALIENATION BY DEED; THE LEGAL FORMALITIES, CONSTRUCTION, AND OPERATION, OF DEEDS FOR THE CONVEYANCE OF LANDS.

### GENERAL PROVISIONS.

#### SECTION

1. Conveyances of land by deed.
2. without writing, to have effect of leases at will.
3. what not valid unless by deed recorded.
4. by tenant in tail.
5. by tenant for life and remainder man in tail.
6. of equitable estates tail.
7. Grantee may in equity obtain conveyance of legal estate, &c.
8. Conveyance by quitclaim.
9. by tenant for life or years.
10. Expectant estates not defeated, &c.
11. Exception as to estates tail.
12. Conveyance, &c., for life with remainder to heirs.
13. Conveyance to two or more.
14. Exceptions.
15. Defeasance of conveyance to be recorded.
16. Grantor to make encumbrances known to grantee.

#### SECTION

17. Damages in removing apparent encumbrances may be recovered of grantor.

#### ACKNOWLEDGMENT AND PROOF OF DEEDS.

18. Deeds to be acknowledged.
19. before whom to be acknowledged.
20. proof of execution of, when grantor is dead, &c.
21. when subscribing witnesses are dead.
- 22, 23. when grantor refuses to acknowledge.
24. when subscribing witnesses are dead, &c.
25. Copy of deed not acknowledged may be filed in registry of deeds, and effect thereof.
26. Effect may be prolonged.
27. Deed without witness, not so proved.
28. Certificate of acknowledgment, &c., to be indorsed on deed.
29. Powers of attorney to convey real estate to be acknowledged, &c.

#### DISCHARGE OF MORTGAGES.

30. Mortgages, how discharged.
31. Mortgagee liable for refusing to discharge.

### GENERAL PROVISIONS.

SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed executed by any person having authority to convey the same, or by his attorney, and acknowledged and recorded

Conveyances of land by deed. R. S. 59, § 1. 12 Met. 157.



13 Met. 79.  
6 Cush. 163.  
Conveyances  
not in writing,  
effect of.  
R. S. 59, § 29.  
9 Met. 462.  
11 Met. 251.  
12 Met. 300.  
1 Gray, 571.

in the registry of deeds for the county or district where the lands lie, without any other act or ceremony.

SECT. 2. Estates or interests in lands, created or conveyed without an instrument in writing signed by the grantor or his attorney, shall have the force and effect of estates at will only, and no estate or interest in lands shall be assigned, granted, or surrendered, unless by a writing signed as aforesaid or by the operation of law.

what not valid  
unless by deed  
recorded.  
R. S. 59, § 28.  
3 Mass. 575.  
6 Mass. 30.  
1 Met. 212.  
2 Met. 619.  
3 Met. 405.

SECT. 3. No bargain and sale or other like conveyance of an estate in fee simple, fee tail, or for life, and no lease for more than seven years from the making thereof, shall be valid and effectual against any person other than the grantor, and his heirs and devisees, and persons having actual notice thereof, unless it is made by a deed recorded as aforesaid.

SECT. 4. Any person actually seised of lands as tenant in tail, may convey the same in fee simple by a deed in common form, in like manner as if he were seised thereof in fee simple; and such conveyance shall bar the estate tail and all remainders and reversions expectant thereon.

by tenant in  
tail.  
R. S. 59, § 3.  
13 Met. 486.

SECT. 5. When lands are held by one person for life, with a vested remainder in tail to another, the tenant for life and the remainder man may convey the same in fee simple by their deed or deeds in common form, in like manner as if the remainder had been limited in fee simple; and such deed or deeds shall bar the estate tail and all remainders and reversions expectant thereon.

of equitable  
estates tail.  
1851, 14, § 1.

SECT. 6. Equitable estates tail in lands or tenements, in possession or remainder, may be conveyed in fee simple, and all remainders and reversions expectant thereon may be barred, in the same manner as legal estates tail may be conveyed and the remainders and reversions expectant thereon barred by the two preceding sections.

Grantee may, in  
equity, obtain  
conveyance of  
legal estate, &c.  
1851, 14, § 2.  
1857, 214.

SECT. 7. The person to whom such equitable fee simple is conveyed pursuant to the preceding section, may call for a conveyance of the outstanding legal estate from the person in whom the same is at any time thereafter vested in trust; and the supreme judicial court shall have jurisdiction in equity to compel the conveyance thereof.

Conveyance by  
quitclaim.  
R. S. 59, § 5.  
8 Pick. 143.

SECT. 8. A deed of quitclaim and release of the form in common use in this state, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.

by tenant for  
life or years.  
R. S. 59, § 6.

SECT. 9. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

Expectant es-  
tates not defeat-  
ed, &c.  
R. S. 59, § 7.

SECT. 10. No expectant estate shall be defeated or barred by any alienation or other act of the owner of the precedent estate, nor by any destruction of such precedent estate by disseisin, forfeiture, surrender, or merger.

Exception as to  
estates tail.  
R. S. 59, § 8.

SECT. 11. The two preceding sections shall not be construed to prevent the barring of estates tail in the manner before provided in this chapter, nor to prevent any expectant estate from being defeated in any manner provided for or authorized by the party creating the estate.

Conveyance,  
&c., for life, &c.  
R. S. 59, § 9.  
1 Coke's R. 94.  
7 Met. 172.  
13 Met. 486.  
3 Cush. 390.

SECT. 12. When lands are given by deed or will to any person for his life, and after his death to his heirs in fee, or by words to that effect, the conveyance shall be construed to vest an estate for life only in such first taker, and a remainder in fee simple in his heirs.

Conveyance to  
two or more.  
R. S. 59, § 10.  
16 Mass. 61.  
4 Cush. 111.

SECT. 13. All conveyances and devises of lands made to two or more persons, except as provided in the following section, shall be construed to create estates in common and not in joint tenancy; unless it is expressed therein that the grantees or devisees shall take the lands jointly, or as joint tenants, or in joint tenancy, or to them and the survivor of them.

SECT. 14. The preceding section shall not apply to mortgages, nor to devises or conveyances made in trust, or made to husband and wife, nor to a devise or conveyance in which it manifestly appears from the tenor of the instrument, that it was intended to create an estate in joint tenancy.

Exceptions.  
R. S. 59, § 11.  
5 Mass. 521.  
7 Mass. 131.  
11 Mass. 469.  
22 Pick. 556.  
8 Gray, 154.

SECT. 15. When a deed purports to contain an absolute conveyance of any estate in lands, but is made or intended to be made defeasible by a deed of defeasance, bond, or other instrument, for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance is recorded in the registry of deeds for the county or district where the lands lie.

Defeasance of conveyance to be recorded.  
R. S. 59, § 27.  
5 Pick. 181.  
2 Cush. 494.  
6 Cush. 170.

SECT. 16. In all conveyances of real estate by deed or mortgage, upon which any encumbrance exists, the grantor, whether he executes the same in his own right, or as executor, administrator, assignee, trustee, or otherwise by order of law, shall, before the consideration is paid, by exception in the deed or otherwise, make known to the grantee the existence and nature of such prior encumbrance, so far as he has knowledge thereof.

Grantor to make encumbrances known to grantee.  
1855, 177, § 1.

SECT. 17. Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all encumbrances when an encumbrance appears of record to exist thereon, whether known or unknown to him, shall be liable in an action of contract to the grantee, his heirs, executor, administrator, successors, or assigns, for all damages sustained in removing the same.

Damages in removing apparatus of record to exist thereon, whether known or unknown to him, shall be liable in an action of contract to the grantee, his heirs, executor, administrator, successors, or assigns, for all damages sustained in removing the same.  
1855, 177, § 3.

ACKNOWLEDGMENTS AND PROOF OF DEEDS.

SECT. 18. The acknowledgment of deeds shall be by the grantors, or one of them, or by the attorney executing the same.

Deeds to be acknowledged.  
R. S. 59, § 12.  
9 Mass. 219.  
6 Pick. 86.

SECT. 19. The acknowledgment may be made before any justice of the peace in this state; or before any justice of the peace, magistrate, or notary public, or commissioner appointed for that purpose by the governor of this commonwealth, within the United States, or in any foreign country; or before a minister or consul of the United States in any foreign country.

before whom.  
R. S. 59, § 13.  
1856, 253.  
4 Cush. 260.  
See Ch. 14, § 41-47.

SECT. 20. When a grantor dies or departs from the state without having acknowledged his deed, the due execution thereof may be proved by the testimony of a subscribing witness thereto, before any court of record or probate court in this state.

proof of execution of, when grantor is dead.  
R. S. 59, § 14.  
1851, 208, § 1.

SECT. 21. If all the subscribing witnesses to such deed are also dead or out of the state, the same may be proved before a court of record or probate court in this state, by proving the handwriting of the grantor and of any subscribing witness.

when witnesses are dead.  
R. S. 59, § 15.  
1851, 208, § 1.

SECT. 22. If a grantor refuses to acknowledge his deed, the grantee or any person claiming under him may apply to a justice of the peace in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, who shall thereupon issue a summons to the grantor, to appear at a certain time and place before the justice to hear the testimony of the subscribing witnesses; which summons, with a copy of the deed annexed, shall be served seven days at least before the time therein assigned for proving the deed.

when grantor refuses to acknowledge.  
R. S. 59, § 16.

SECT. 23. At such hearing or any adjournment thereof, the due execution of the deed may be proved by the testimony of one or more of the subscribing witnesses; and if proved to the satisfaction of the justice, he shall certify the same thereon, and also whether or not the grantor was present at the hearing.

same subject.  
R. S. 59, § 17.

SECT. 24. If a grantor refuses to acknowledge his deed and the sub-

when sub-

scribing witnesses are dead, &c.  
R. S. 59, § 18.  
1851, 208, § 1.  
8 Met. 355.

scribing witnesses to the same are all dead or out of the state, it may be proved before any court of record or probate court in this state, by proving the handwriting of the grantor and of any subscribing witness; the court first summoning the grantor for the purpose and in the manner before provided.

Copy of deed not acknowledged may be filed in registry of deeds, and effect thereof.  
R. S. 59, § 19.  
1851, 208, § 1.

SECT. 25. Any person interested in a deed that is not acknowledged, may, before or during such application to a court of record or probate court or such proceedings before a justice, file in the registry of deeds a copy of the deed, compared with the original by the register; which shall for thirty days thereafter have the same effect as the recording of the deed, if the deed is within that time duly proved and recorded.

Effect may be prolonged.  
R. S. 59, § 20.

SECT. 26. If at the expiration of said thirty days such proceedings for proving the execution of the deed are pending, the effect of filing such copy shall continue until the expiration of seven days after the termination of the proceedings.

Deed without witness not so proved.  
R. S. 59, § 21.  
1851, 208, § 1.

SECT. 27. A deed shall not be proved in the manner before provided unless it has at least one subscribing witness.

Certificate of acknowledgment, &c., to be indorsed on deed.  
R. S. 59, § 22.  
1851, 208, § 1.  
4 Mass. 546.  
13 Mass. 377.  
2 Cush. 497.

SECT. 28. A certificate of the acknowledgment of the deed under the hand of the officer taking the same, or of the proof as above provided by the clerk or register of the court, or the judge or justice respectively, shall be indorsed upon the deed or annexed thereto; and such deed and certificate may be recorded at length in the registry of deeds for the county or district where the lands lie; and no deed shall be recorded without such certificate.

Powers of attorney to convey real estate to be acknowledged, &c.  
1849, 205.

SECT. 29. The provisions of law concerning the acknowledgment and registry of deeds shall apply to letters of attorney for the conveyance of real estate; which if made by husband and wife for the purpose of authorizing conveyances of her real estate, (and not merely for the release of dower by the wife,) shall be acknowledged by both husband and wife before the same is recorded.

DISCHARGE OF MORTGAGES.

Mortgages, how discharged.  
R. S. 59, § 33.

SECT. 30. Mortgages may be discharged by an entry on the margin of the record thereof in the registry of deeds, signed by the mortgagee, or his executor, administrator, or assignee, acknowledging the satisfaction of the mortgage; and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Mortgagee liable for refusing to discharge.  
R. S. 59, § 34.  
1852, 312.

SECT. 31. If a mortgagee, his executor, administrator, or assignee, after full performance of the condition, whether before or after breach thereof, shall for seven days after being thereto requested, and after a tender of his reasonable charges, refuse or neglect to make such discharge or execute and acknowledge a deed of release of the mortgage, he shall be liable for all damages occasioned by such neglect or refusal, to be recovered in an action of tort.

CHAPTER 90.

OF ESTATES IN DOWER, BY THE CURTESY, FOR YEARS, AND AT WILL; AND GENERAL PROVISIONS CONCERNING REAL ESTATE.

SECTION

1. Dower in lands of husband.
2. in right of redemption.
3. when and how to be assigned by probate court.

SECTION

4. Partition of land may be made before assigning dower.
5. Dower, how assigned when estate cannot be divided.



SECTION

6. Dower to be claimed within twenty years from death of husband except, &c.
7. Widow may occupy in common with heirs, with their assent.
8. Dower, how released.
9. how barred by jointure settled with wife's assent.
10. by pecuniary provision.
11. If settled or made without wife's assent, she may elect.
12. Widow not dowerable of wild lands.
13. If evicted, may be endowed anew.
14. Penalty for waste by tenant in dower.
15. Widow of intestate, without issue, to take half of real estate for life, &c.
16. or may at her election have dower.
17. Undivided estate of widow in estate of husband may be set off same as dower.
18. Widow may remain in house, &c.
19. Tenant by the curtesy.
20. Terms for one hundred years to be regarded as real estate, while, &c.
21. Such tenant a freeholder.
22. Tenant in dower, &c., liable for part of rent.
23. Prior devises, &c., of such terms not affected.
24. Tenant of part of land demised liable for rent.

SECTION

25. Tenant at sufferance liable for rent.
26. Rent how recovered.
27. Action by or against executors, &c.
28. Landlords not deprived of other remedies.
29. Rent deemed necessities.
30. Written leases, how terminated if rent is not paid.
31. Tenancy at will, how terminated
32. Easements of light and air not acquired by mere use.
33. Easements acquired by use for twenty years.
34. Acquiring of such right prevented by notice served and recorded.
35. Service of such notice when adverse claimant is unknown.
36. Estates tail liable for debts, &c.
37. Contingent estates alienable.
38. Aliens may take, &c., real estate. Titles confirmed.
39. S. J. C. may allow tenant for life to cut grown trees.
40. Commissioners to superintend, &c.
41. Proceeds may be invested and trustees appointed.
42. Income to be paid to tenant for life; principal to owner in fee.
43. Trustees may be removed; shall give bond.

SECTION 1. Every woman shall be entitled to her dower at common law in the lands of her husband, to be assigned to her after his decease, unless she is lawfully barred thereof.

SECT. 2. If upon a mortgage made by a husband his wife has released her right of dower, or if the husband is seised of land subject to a mortgage which is valid and effectual as against his wife, she shall nevertheless be entitled to dower in the mortgaged premises as against every person except the mortgagee and those claiming under him. If the heir or other person claiming under the husband redeems the mortgage, the widow shall either repay such part of the money paid by him as shall be equal to the proportion which her interest in the mortgaged premises bears to the whole value thereof, or she shall at her election be entitled to dower only according to the value of the estate after deducting the money paid for redemption.

SECT. 3. When a widow is entitled to dower in lands of which her husband died seised, and her right is not disputed by the heirs or devisees, it may be assigned to her, in whatever counties the lands lie, by the probate court for the county in which the estate of the husband is settled; and the court shall for that purpose issue a warrant to three discreet and disinterested persons, authorizing them to set off the dower by metes and bounds, when it can be so done without damage to the whole estate. The commissioners shall be sworn to perform their duty faithfully and impartially according to their best skill and judgment.

SECT. 4. When a woman is entitled to dower in lands owned by her husband as tenant in common, the probate court upon petition by her, and notice as in case of other partitions, may empower the commissioners to make partition of such lands, and then assign to her dower in the portion set to the estate of her husband.

SECT. 5. When the estate out of which dower is to be assigned consists of a mill or other tenement which cannot be divided without damage to the whole, the dower may be assigned of the rents, issues, or profits, thereof, to be had and received by the widow, as a tenant in common with the other owners of the estate.

SECT. 6. After the eighteenth day of March in the year eighteen

Dower.  
R. S. 60, § 1.  
5 Met. 277.  
11 Met. 566.  
7 Gray, 537.  
in right of redemption.  
R. S. 60, § 2.  
15 Mass. 278.  
3 Pick. 475.  
13 Met. 415.  
4 Cush. 257.  
4 Gray, 46.  
7 Gray, 148.

when and how to be assigned by probate court.  
R. S. 60, § 3.  
9 Mass. 9.  
13 Met. 414.  
4 Cush. 257.

Partition of land may be made before assigning dower.  
1842, 73.

Dower, how assigned when estate cannot be divided.  
R. S. 60, § 4.

to be claimed

within twenty years from death of husband except, &c. 1853, 56, § 1.

hundred and sixty-three, widows shall not be entitled to make claim for dower, or commence any action or other proceeding for the recovery thereof, unless the same is made or commenced within twenty years from the decease of the husband; except that if at the time of the husband's decease the widow was or shall be absent from the state, under twenty-one years of age, insane, or imprisoned, she may make such claim or commence such action or proceeding at any time within twenty years after such disability ceases.

Widow may occupy in common with heirs, with their assent. R. S. 60, § 6. 3 Pick. 475. 5 Pick. 146.

SECT. 7. When a widow is entitled to dower in lands of which her husband died seised, she may continue to occupy the same with the children or other heirs of the deceased, or to receive one-third part of the rents, issues, or profits, thereof, so long as the heirs do not object thereto, without having her dower assigned; and whenever the heirs or any of them deem it proper to hold or occupy their share in severalty, the widow may claim her dower and shall have the same assigned to her according to law.

Dower, how released. R. S. 60, § 7. 1856, 169. 3 Mason, 347. 3 Greenl. 63. 7 Mass. 14. 8 Pick. 536. 18 Pick. 9. 6 Cush. 196.

SECT. 8. A married woman may bar her right of dower in any estate conveyed by her husband, or by operation of law, by joining in the deed conveying the same, and therein releasing her right to dower; or by releasing the same by a subsequent deed executed separately, or jointly with her husband. And her dower may also be released in the manner provided in chapter one hundred and eight.

how barred by jointure. R. S. 60, § 8. 7 Mass. 153. 15 Mass. 106. 2 Cush. 467. 6 Cush. 196.

SECT. 9. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before her marriage: *provided*, such jointure consist of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband; her assent to such jointure being expressed, if she is of full age, by her becoming a party to the conveyance by which it is settled, and if she is under age, by her joining with her father or guardian in such conveyance.

by pecuniary provision. R. S. 60, § 9.

SECT. 10. Any pecuniary provision made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

If jointure is settled or made without wife's assent, she may elect. R. S. 60, § 10

SECT. 11. If such jointure or pecuniary provision in lieu of dower is made before the marriage and without the assent of the intended wife, or if it is made after marriage, it shall bar her dower, unless within six months after the death of her husband she makes her election to waive such provision and be endowed of the lands of her husband. If the husband dies while absent from his wife, she shall have six months after notice of his death within which to make such election; and she shall in all cases have six months for that purpose, after notice of the existence of such jointure or provision.

Widow not dowable of wild lands. R. S. 60, § 12. 15 Mass. 164. 1 Pick. 21. 7 Pick. 143.

SECT. 12. A widow shall not be endowed of wild lands of which her husband dies seised, nor of wild lands conveyed by him, although they should be afterwards cleared; but this shall not bar her right of dower in any wood lot or other land used with the farm or dwelling-house, although such wood lot or other land has never been cleared.

If evicted, may be endowed anew. R. S. 60, § 13. 13 Mass. 168. 1 Met. 66.

SECT. 13. If a woman is lawfully evicted of lands assigned to her as dower or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure, or other provision, had not been made.

Penalty for waste by tenant in dower. R. S. 60, § 15. 5 Mason, 13. 7 Pick. 152.

SECT. 14. If a tenant in dower commits or suffers waste on the premises held in dower, she shall forfeit the place wasted, and also the amount of damage done to the premises, to be recovered in an action of waste by the person having the next immediate estate of inheritance.

Widow of intestate without issue to take half of real estate

SECT. 15. When a man dies seised of lands, tenements, or hereditaments, or of any right or interest therein in fee simple, not having lawfully devised the same, and leaving a widow, but no issue, the widow in

lien of dower shall be entitled to one-half of said estate during her natural life; and if any part thereof taken by the widow is wild or woodland, she may use, clear, and improve, the same.

for life, &c.  
1854, 406, §§ 1,  
2, 4.

SECT. 16. The widow may have her dower instead of the provisions of the preceding section, if within six months of the date of the letters of administration she files in the probate office her election to claim dower.

Widow may at her election have dower.  
1854, 406, § 4.

SECT. 17. When a widow is entitled to any undivided part, or the use and improvement of any undivided part, of the real estate of her husband for the term of her life or widowhood, by the provisions of the will of her husband, in lieu of dower, or by any provisions of law, the probate court in the county where the estate of the husband is settled, may cause her interest in said estate to be set off and assigned to her in like manner as dower.

Undivided estate of widow in estate of husband may be set off same as dower.  
1850, 111.  
1858, 33.

SECT. 18. A widow may remain in the house of her husband forty days after his death without being chargeable with rent.

Widow may remain in house, &c.  
R. S. 60, § 16.

SECT. 19. When a man and his wife are seised in her right, and when a married woman is seised to her sole and separate use, free from the control of her husband, of any estate of inheritance in lands, and they shall have issue born alive which might inherit the same, the husband shall on the death of his wife hold the lands for his life as a tenant thereof by the curtesy.

Sec Ch. 96, § 5.  
Tenant by the curtesy.  
R. S. 60, § 17.  
1845, 208.  
1855, 304.  
1857, 249.  
2 Gray, 457.

SECT. 20. When land is demised for the term of one hundred years or more, the term shall, so long as fifty years thereof remain unexpired, be regarded as an estate in fee simple, as to every thing concerning the descent and devise thereof upon the decease of the owner, the right of dower therein, the estate in lieu of dower, and the sale thereof by executors, administrators, or guardians, by license from any court; and also as to the levying of executions thereon, and the redemption thereof when taken on execution or mortgaged.

Terms for 100 years regarded as real estate, &c.  
R. S. 60, § 18.  
5 Mass. 419.  
Sec Ch. 133, § 40.

SECT. 21. Whoever holds as lessee or assignee under such a lease, shall, so long as fifty years of the term are unexpired, be regarded as a freeholder for all purposes.

Such tenant a freeholder.  
R. S. 60, § 19.

SECT. 22. When dower, or an estate in lieu of dower, is assigned out of such land, the widow and her assignee shall be held to pay to the owner of the unexpired residue of the term, in case of dower, one-third, and in case of an estate in lieu of dower, one-half, of the rent reserved in the lease under which the husband held the term.

Tenant in dower, &c., liable for part of rent.  
R. S. 60, § 20.

SECT. 23. No devise of any such term by will, made before the first day of June in the year one thousand eight hundred and thirty-four, although the deviser shall have died after that day, and no other conveyance thereof made before said first day of June, shall be controlled or affected by any thing contained in the three preceding sections.

Prior devises, &c., of such terms not affected.  
R. S. 60, § 21.  
10 Mass. 437.

SECT. 24. Every person in possession of land out of which rent is due, whether it was originally demised in fee or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it is only a part of what was originally demised.

Tenant of part of land demised liable for rent.  
R. S. 60, § 22.  
17 Mass. 440.  
22 Pick. 565.  
2 Met. 504.  
3 Cush. 206.  
at sufferance, *Allen 218.*  
liable for rent.

SECT. 25. Tenants at sufferance in possession of lands or tenements shall be liable to pay rent therefor for such time as they may occupy or detain the same.

SECT. 26. Such rent may be recovered in an action of contract; and the deed of demise or other instrument in writing, if there is any, showing the provisions of the lease, may be used in evidence by either party to prove the amount of rent due from the defendant.

Rent, how recovered.  
R. S. 60, § 23.  
1852, 312.

SECT. 27. Such action may be brought by or against executors and administrators, for any arrears of rent accrued in the lifetime of the deceased parties respectively, in the same manner as for debts due from or to the same parties in their lifetime on any personal contract.

Action by or against executors, &c.  
R. S. 60, § 24.



Landlords not deprived of other remedies.  
R. S. 60, § 25.

Rent deemed necessities.  
1859, 127.

Written leases, how terminated if, &c.  
1847, 267, § 1.  
8 Cush. 283.  
2 Gray, 224.  
See Ch. 137, § 3.

Tenancy at will, how terminated.

R. S. 60, § 26.  
17 Mass. 282.  
1 Pick. 43.  
2 Pick. 70.  
6 Pick. 339.  
23 Pick. 104.  
2 Met. 29.  
12 Met. 300.  
13 Met. 275.  
5 Cush. 133, 563.  
6 Cush. 87.

Easements of light, &c., not acquired by use.  
1852, 144.  
6 Gray, 255.

acquired by use for 20 years.  
R. S. 60, § 27.  
1852, 144.  
7 Met. 398.

acquiring of, prevented by notice served and recorded.  
R. S. 60, § 28.  
1852, 144.  
See Ch. 154, § 14.

Service of such notice when adverse claimant is unknown.  
1851, 218.

Estates tail, liable for debts, &c.  
R. S. 60, § 29.  
4 Mass. 195.  
3 Gray, 183.

Contingent estate alienable.  
R. S. 60, § 30.

SECT. 28. Nothing contained in the eight preceding sections shall deprive landlords of any other legal remedy for the recovery of their rents, whether secured to them by their leases or provided by law.

SECT. 29. Debts for the rent of a dwelling-house, occupied by the debtor or his family, shall be held to be claims for necessities.

SECT. 30. Upon neglect or refusal to pay the rent due according to the terms of any written lease, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

SECT. 31. Estates at will may be determined by either party, by three months' notice in writing for that purpose given to the other party; and when the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

7 Cush. 346. 11 Cush. 93. 2 Gray, 224, 335. 6 Gray, 224.  
8 Cush. 283. 12 Cush. 174. 5 Gray, 308. 7 Gray, 197.

SECT. 32. Whoever has erected or may erect any house or other building near the land of another person, with windows overlooking such land, shall not by the mere continuance of such windows acquire any easements of light or air, so as to prevent the erection of any building thereon.

SECT. 33. No person shall acquire a right or privilege of way, nor any other easement, from, in, upon, or over, the land of another; by the adverse use or enjoyment thereof, unless such use has been continued uninterrupted for twenty years.

SECT. 34. The owner of the land in such case may give notice in writing, to the person claiming or using the privilege, of his intention to dispute the right of way or other easement, and to prevent the other party from acquiring such right; and such notice, being served and recorded as hereafter provided, shall be deemed an interruption of such use, and shall prevent the acquiring of a right thereto by the continuance of the use for any length of time thereafter. Such notice shall be served like an original summons in civil actions on the other party, or his agent, or guardian, if within the state, otherwise on the tenant or occupant of the estate, if there is any, and if not, a copy of the notice shall be affixed to the house or to some other conspicuous part of the premises. The service shall be indorsed and returned on the original paper; and the notice with the return shall be recorded in the registry of deeds for the county or district where the land lies, within three months after the service. Every such notice given by the guardian or agent of the owner of the land shall have like effect as if given by himself.

SECT. 35. The notice under the preceding section, when an owner of the adjoining land to be notified is unknown, may be given by conspicuously affixing to or posting on the premises a copy thereof, and serving the same on the person to whom the premises were last assessed for taxes in the place where they lie, and recording the same as required in said section.

SECT. 36. All lands held in fee tail shall be liable for the debts of the tenant in tail, both in his lifetime and after his decease, like estates in fee simple; and when taken on execution, or sold by executors, administrators, or guardians, the creditor or purchaser shall hold the same in fee simple; but this shall not extend to lands in which the debtor has only an estate tail in remainder.

SECT. 37. When any contingent remainder, executory devise, or other estate in expectancy, is so granted or limited to any person that

in case of his death before the happening of the contingency the estate would descend to his heirs in fee simple, such person may, before the happening of the contingency, sell, assign, or devise, the premises, subject to the contingency.

SECT. 38. Aliens may take, hold, transmit, and convey, real estate; and no title to real estate shall be invalid on account of the alienage of any former owner; but nothing contained in this section shall defeat the title to any real estate heretofore released or conveyed by the commonwealth or by authority thereof.

Aliens may take, &c., real estate, &c. 1852, 29, 80. 15 Pick. 349.

SECT. 39. When woodland is held by one person for life, with remainder or reversion to another in fee simple or fee tail, and the trees thereon have come to an age and growth fit to be felled, and are in such a state that they will probably become of less value by standing, the supreme judicial court may, on the petition of a party interested therein, order the trees or any part thereof to be felled and sold.

S. J. C. may allow tenant for life to cut grown trees. R. S. 60, § 33. R. S. act of amend. § 7.

SECT. 40. The court in such case shall appoint one or more commissioners to superintend and direct the felling and sale of the trees, and to account to the court for the proceeds thereof.

Commissioners to superintend, &c. R. S. 60, § 34. R. S. act of amend. § 7.

SECT. 41. The court may cause the proceeds of such sale, after deducting therefrom all necessary expenses and charges, to be invested in other real estate, or in public stocks, or other stocks or funds, as shall appear most for the interest of all concerned therein; and may appoint one or more trustees to take and hold such estate or stocks, and to dispose of the same and of the interest or income thereof, under the direction of the court, to and for the use of the persons entitled to the land.

Proceeds may be invested, and trustees appointed. R. S. 60, § 35. R. S. act of amend. § 7.

SECT. 42. The interest and income of the proceeds shall be paid to the tenant for life, so long as he is entitled to the profits of the land, and upon the determination of his estate, the principal shall belong to the person who is entitled to the land in fee simple or fee tail; and the real estate, stocks, or funds, in which the proceeds are invested, shall be conveyed and transferred to such person accordingly.

Income to be paid to tenant for life; principal to owner in fee. R. S. 60, § 36. R. S. act of amend. § 7.

SECT. 43. The court may from time to time remove the trustees and appoint others in their stead; and every trustee shall give bond with sufficient sureties to the clerk of the court, or to such other person as the court shall designate, for the use and benefit of the persons interested in the proceeds, with condition for the faithful discharge of the trust.

Trustees may be removed; shall give bond. R. S. 60, § 37. R. S. act of amend. § 7.

## TITLE II.

### CHAPTER 91.

#### OF TITLE TO REAL PROPERTY BY DESCENT.

SECTION

1. General rules of descent.
2. Illegitimate child to inherit from mother, &c.
3. mother to be heir to.
4. whose parents intermarry, &c.
5. Degrees of kindred, how computed. Half blood to inherit.
6. Advancement to child or other descendant.

SECTION

7. Advancement in real or personal estate to be taken as part thereof, &c.
8. how proved.
9. value of, how ascertained.
10. If person receiving advancement dies before intestate.
11. Estates by curtesy, in dower, &c., not affected.
12. Construction of terms.

General rules of descent.

R. S. 61, § 1.  
1857, 298.  
7 Met. 363.  
9 Met. 28.  
4 Gray, 245.

SECTION 1. When a person dies seised of land, tenements, or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, (except as provided in chapter one hundred and four,) in manner following: —

First. In equal shares to his children and the issue of any deceased child by right of representation; and if there is no child of the intestate living at his death, then to all his other lineal descendants; if all the descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise they shall take according to the right of representation:

Second. If he leaves no issue, then to his father:

Third. If he leaves no issue nor father, then in equal shares to his mother, brothers, and sisters, and to the children of any deceased brother or sister by right of representation:

Fourth. If he leaves no issue, nor father, and no brother nor sister, living at his death, then to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters:

6 Cush. 156.

Fifth. If he leaves no issue, and no father, mother, brother, nor sister, then to his next of kin in equal degree; except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor who is more remote: *provided,*

Sixth. If a person dies leaving several children, or leaving one child and the issue of one or more others, and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who have died, by right of representation:

12 Mass. 490.

Seventh. If at the death of such child who shall have died under age and not having been married, all the other children of his said parent are also dead, and any of them have left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of the other children of the same parent; and if all the issue are in the same degree of kindred to the child, they shall share the estate equally; otherwise they shall take according to the right of representation:

1849, 87.

Eighth. If the intestate leaves a widow and no kindred, his estate shall descend to his widow; and if the intestate is a married woman and leaves no kindred, her estate shall descend to her husband:

R. S. 61, § 1.  
1849, 87.

Ninth. If the intestate leaves no kindred, and no widow or husband, his or her estate shall escheat to the commonwealth.

Illegitimate child to inherit from mother, &c.

R. S. 61, § 2.  
1851, 211.  
11 Met. 294.  
2 Gray, 535.

SECT. 2. An illegitimate child shall be heir of his mother and any maternal ancestor, and the lawful issue of an illegitimate person shall represent such person and take by descent any estate which the parent would have taken if living.

mother heir to.

R. S. 61, § 3.  
4 Pick. 93.

SECT. 3. If an illegitimate child dies intestate, without lawful issue, his estate shall descend to his mother.

SECT. 4. An illegitimate child whose parents have intermarried and whose father has acknowledged him as his child, shall be considered legitimate.

whose parents intermarry, &c.

1853, 253, § 1.

Degrees of kindred, how computed. Half blood to inherit.

R. S. 61, § 5.

Advancement

SECT. 5. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

SECT. 6. Any estate, real or personal, given by the intestate in his lifetime as an advancement to any child or other lineal descendant, shall be considered as part of the intestate's estate, so far as it regards



the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the intestate's estate; but he shall not be required to refund any part thereof, although it exceeds his share.

SECT. 7. If such advancement is made in real estate, the value thereof shall be considered as part of the real estate to be divided; if it is in personal estate, it shall be considered as part of the personal estate; and if in either case it exceeds the share of real or personal estate respectively that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

SECT. 8. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

SECT. 9. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered as of that value in the division and distribution of the estate; otherwise it shall be estimated according to its value when given.

SECT. 10. If a child or other lineal descendant so advanced dies before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

SECT. 11. Nothing contained in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower, nor her right to any part of the real estate of her husband given to her by law in lieu of dower.

SECT. 12. Inheritance or succession, "by right of representation," takes place when the descendants of a deceased heir take the same share or right in the estate of another person that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

to child or other descendant.  
R. S. 61, §§ 6, 7.  
1 Pick. 161.  
See Ch. 136, § 66.

Advancement in real or personal estate to be taken as part thereof, &c.  
R. S. 61, § 8.  
16 Mass. 200.

how proved.  
R. S. 61, § 9.  
4 Pick. 21.  
5 Pick. 527.  
22 Pick. 508.  
1 Gray, 587.

value of, how ascertained.  
R. S. 61, § 10.

If person receiving advancement dies before intestate.  
R. S. 61, § 11.

Estates by curtesy, in dower, &c., not affected.  
R. S. 61, § 12.  
1854, 406, §§ 1, 2.

Construction of terms.  
R. S. 61, § 13.

## TITLE III.

### CHAPTER 92.

#### OF WILLS.

SECTION

1. Real estate may be disposed of by will, &c.
2. Personal estate may be disposed of by will, &c.
3. Devise of land to carry right of entry, &c.
4. Estate acquired after.
5. General devise how construed.

SECTION

6. Wills, how made.
7. made under existing laws, valid.
8. made out of state.
9. who may make nuncupative.
10. Devise, &c., to attesting witness, to be void unless, &c.

## SECTION

11. Will, how revoked.
12. may be deposited for safe keeping in registry of probate.
13. Such will to be enclosed in sealed wrapper, &c.
14. to whom to be delivered.
15. when to be opened by probate court.
16. Possessor of will to deliver it, &c., within thirty days after testator's decease.
17. Proceedings against persons suspected of concealing wills, &c.
18. Costs may be allowed and execution issued.
19. Will how proved when not objected to.
20. Mode of trial on appeal to S. J. C., in case, &c.
21. Will proved out of state, how allowed here.
22. allowance of, &c.
23. Estate to be settled as in other cases.
24. Widow may waive provisions of husband's will, and take as if he died intestate, &c.
25. Case of child, &c., not provided for.

## SECTION

26. Case of posthumous child having no provision.
27. Devises, &c., to contribute equally to share of posthumous child, &c.
28. Case of devise dying before testator and leaving issue.
29. When estate devised is taken for debts, other devisees to contribute.
30. Unless different appropriation is made by the will.
31. Whole estate liable for debts.
32. Child, &c., omitted in will, liable and entitled to contribution as devisee.
33. Case of insolvency of devisee, &c.
34. Undevised real estate first liable for debts.
35. Proceedings in suits for contribution.
36. Devises to contribute equally when dower, &c., is taken on one.
37. Such cases how decided.
38. No will effectual without probate. Probate conclusive.

Real estate may be disposed of by will, &c.  
 R. S. 62, § 1.  
 12 Mass. 488.  
 18 Pick. 115.  
 2 Gray, 524.  
 6 Gray, 24.  
 7 Gray, 71.  
 See Ch. 108, § 9.

SECTION 1. Every person of full age and of sound mind being seised in his own right of any lands, tenements, or hereditaments, or of any right thereto, or entitled to any interest therein, excepting an estate tail, may devise and dispose of the same by his last will and testament in writing; and all such estate not disposed of by the will shall descend as the estate of an intestate; being chargeable in both cases with the payment of all his debts.

Personal estate may be disposed of by will, &c.  
 R. S. 62, § 5.  
 1 Pick. 230.  
 2 Gray, 524.  
 7 Gray, 71.  
 See Ch. 108, § 9.

SECT. 2. Every person of full age and of sound mind, may, by his last will and testament in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his right thereto and interest therein; and all such estate not disposed of by will shall be administered as intestate estate.

Devise of land to carry rights of entry, &c.  
 R. S. 62, § 2.  
 10 Mass. 131.  
 15 Mass. 115.  
 12 Met. 503.

SECT. 3. When a person devises lands of which he is not then seised, but to or for which he has any right of entry, or when after making a devise the devisor is disseised or ousted of the devised premises, they shall nevertheless pass to the devisee in like manner as they would have descended to the heirs of the devisor if he had died intestate; and the devisee shall have the like remedy for the recovery thereof, either by entry or by action, as the heirs might have had.

estate acquired after.  
 R. S. 62, § 3.  
 6 Mass. 149.  
 5 Pick. 112.  
 7 Met. 146.

SECT. 4. Any estate, right, or interest, in lands acquired by the testator after making his will, shall pass thereby in like manner as if possessed at the time of making the will, if such clearly and manifestly appears by the will to have been the intention of the testator.

12 Met. 169, 262.  
 1 Cush. 107, 118.  
 3 Cush. 366.

SECT. 5. Every devise of land, in any will made after the last day of April in the year eighteen hundred and thirty-six, shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it clearly appears by the will that the devisor intended to convey a less estate.

General devise, how construed.  
 R. S. 62, § 4.  
 1 Cush. 93.

SECT. 6. No wills, except such as are mentioned in the three following sections, shall be effectual to pass any estate, real or personal, nor to charge or in any way affect the same, unless it is in writing and signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed in his presence by three or more competent witnesses. If the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it arises, shall not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

4 Gray, 350.

Wills, how made.  
 R. S. 62, § 6.  
 4 Greenl. 220.  
 5 Mass. 229.  
 12 Mass. 353.  
 14 Mass. 421.  
 3 Pick. 374.  
 9 Pick. 350.  
 1 Met. 349.  
 10 Met. 54.  
 2 Cush. 433.  
 7 Gray, 42.

SECT. 7. A will of real or personal estate made and executed in conformity with the law existing at the time of the execution thereof, shall be effectual to pass such estate.

made under existing laws valid.  
 1838, 2.

made out of state.

SECT. 8. A will made out of this state, which might be proved and

allowed according to the laws of the state or country in which it was made, may be proved, allowed, and recorded, in this state, and shall thereupon have the same effect as if it had been executed according to the laws of this commonwealth.

1843, 92, §§ 1, 2.  
5 Cush. 245.

SECT. 9. A soldier in actual military service, or a mariner at sea, may dispose of his wages and other personal estate by a nuncupative will, as he might heretofore have done.

Who may make a nuncupative will.

R. S. 62, § 7.  
2 Greenl. 298.

SECT. 10. All beneficial devises, legacies, and gifts, made or given in any will to a subscribing witness thereto, shall be wholly void unless there are three other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

Devise, &c., to attesting witness to be void, unless, &c.  
R. S. 62, § 8.

SECT. 11. No will shall be revoked, unless by burning, tearing, cancelling, or obliterating, the same, with the intention of revoking it, by the testator himself, or by some person in his presence and by his direction; or by some other will, codicil, or writing, signed, attested, and subscribed, in the manner provided for making a will; but nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

Will, how revoked.

R. S. 62, § 9.  
4 Greenl. 341.  
15 Mass. 115.  
4 Gray, 163.

SECT. 12. A will may be deposited by the person making the same, or by any person for him, in the registry of probate in the county where the testator lives, to be safely kept until delivered or disposed of as hereinafter provided; and the register, upon being paid the fee of one dollar therefor, shall receive and keep such will and give a certificate of the deposit thereof.

may be deposited, for safe keeping, in registry of probate.  
R. S. 62, § 10.

SECT. 13. Every will intended to be deposited as aforesaid, shall be enclosed in a sealed wrapper, shall have indorsed thereon the name of the testator, his place of residence, the day when, and the person by whom, it was delivered; and may have indorsed thereon the name of any person to whom it is to be delivered after the death of the testator; and it shall not be opened nor read until delivered to a person entitled to receive the same, or otherwise disposed of as hereinafter provided.

to be enclosed in sealed wrapper, &c.  
R. S. 62, § 11.

SECT. 14. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorized by him by an order in writing duly proved by the oath of a subscribing witness; and after his death, it shall be delivered to the person named in the indorsement on the wrapper of the will, if there is a person so named who shall demand it.

to whom to be delivered.  
R. S. 62, § 12.

SECT. 15. If no person demands the will in pursuance of such appointment, it shall be publicly opened at the first probate court held after notice of the testator's death, and shall be retained in the registry until it is there offered for probate; or if the jurisdiction of the case belongs to another court, it shall be delivered to the executors or other persons entitled to the custody thereof, to be presented for probate in such other court.

when to be opened by probate court.  
R. S. 62, § 13.

SECT. 16. Every person, other than the register of the probate court, having the custody of a will, shall, within thirty days after notice of the death of the testator, deliver it into the probate court which has jurisdiction of the case, or to the executors named in the will; and if, without reasonable cause, he neglects to do so after being duly cited for that purpose by said court, he may be committed to the jail by warrant of the court, there to be kept in close custody until he delivers the will as above directed; and he shall be further liable to any party aggrieved for the damage sustained by such neglect.

Possessor of will to deliver it, &c., within thirty days after testator's decease.  
R. S. 62, § 14.  
6 Greenl. 274.  
4 Mass. 137.  
4 Pick. 33.

SECT. 17. Upon complaint under oath made to the probate court by a person claiming to be interested in the estate of a person deceased, against any one suspected of retaining, concealing, or conspiring with others to retain or conceal, any will or testamentary

Proceedings against persons suspected of concealing wills, &c.  
1849, 146, § 1.

See Ch. 161, §§ 19, 20.



instrument of the deceased, the judge may cite the suspected person to appear before him and be examined on oath upon the matter of the complaint. If the person cited refuses to appear and submit to examination, or to answer such interrogatories as shall be lawfully propounded to him, or to obey any lawful order, the judge may commit him to the jail, there to remain in close custody until he submits to the order of the court. All such interrogatories and answers shall be in writing and signed by the party examined, and shall be filed in the probate court. But nothing in this section shall authorize the judge to require a person to criminate himself.

See Ch. 161, § 20.

Costs.  
1849, 146, § 2.

SECT. 18. On such complaint the judge, in his discretion, may award costs to be paid by either party, and may issue execution therefor.

Will, how  
proved when  
not objected to.  
R. S. 62, § 15.  
3 Mass. 236.  
5 Pick. 510.

SECT. 19. When it appears to the probate court, by the consent in writing of the heirs at law, or other satisfactory evidence, that no person interested in the estate intends to object to the probate of a will, the court may grant probate thereof upon the testimony of one only of the subscribing witnesses.

Mode of trial on  
appeal to S. J.  
C., in case, &c.  
R. S. 62, § 16.

SECT. 20. Upon an appeal from the probate of a will, if it appears from the reasons of appeal that the sanity of the testator or the attestation of the witnesses in his presence is in controversy, the supreme judicial court may for the determination thereof direct a real or feigned issue to be tried by a jury in the same court, at the expense of the appellant if the issue is found against him.

Will proved out  
of state, how al-  
lowed here.  
R. S. 62, §§ 17,  
18.

SECT. 21. The executor or any person interested in a will proved and allowed in any other of the United States, or in a foreign country, according to the laws of such state or country, may produce a copy of the will and of the probate thereof, duly authenticated, to the probate court in any county in which there is any estate, real or personal, on which the will may operate; whereupon the court shall assign a time and place for hearing the case, and shall cause notice thereof to all persons interested to be given in some public newspaper three weeks successively, the first publication to be thirty days at least before the time assigned.

allowance of,  
&c.  
R. S. 62, § 19.  
1843, 92.  
1852, 29.  
4 Greenl. 134.  
16 Mass. 433.  
4 Met. 252.  
12 Met. 424.

SECT. 22. If it appears that the instrument ought to be allowed in this state as the last will and testament of the deceased, the court shall order the copy to be filed and recorded. The will shall then have the same force and effect as if it had been originally proved and allowed in the same court in the usual manner; but nothing in this section shall give effect to a will made in this state by an inhabitant thereof, not executed according to the laws of this commonwealth.

Estate to be set-  
tled as in other  
cases.  
R. S. 62, § 20.

SECT. 23. After allowing and recording a will pursuant to the two preceding sections, the probate court shall grant letters testamentary thereon, or letters of administration with the will annexed, and shall proceed in the settlement of the estate that may be found in this state, in the manner provided in chapter one hundred and one with respect to the estates of persons who were inhabitants of another state or country.

Widow may  
waive provis-  
ions of hus-  
band's will, &c.  
R. S. 60, § 11.  
1854, 428.  
12 Pick. 146.  
23 Pick. 163.  
1 Met. 72.  
5 Met. 277.  
11 Met. 291.  
4 Cush. 175.  
6 Cush. 307.

SECT. 24. When a man dies having lawfully disposed of his estate by will and leaving a widow, she may, at any time within six months after the probate of the will, file in the probate office in writing her waiver of the provisions made for her in the will; and shall in such case be entitled to such portion of his real and personal estate as she would have been entitled to if her husband had died intestate. If she makes no such waiver, she shall not be endowed of his lands, unless it plainly appears by the will to have been the intention of the testator that she should have such provisions in addition to her dower.

Case of child,  
&c., not pro-  
vided for.

SECT. 25. When a testator omits to provide in his will for any of his children, or for the issue of a deceased child, they shall take the

Sup. 1861 Ch. 152 § 3

same share of his estate, both real and personal, that they would have been entitled to if he had died intestate; unless they shall have been provided for by the testator in his lifetime, or unless it appears that such omission was intentional, and not occasioned by accident or mistake.

SECT. 26. When a child of a testator, born after his father's death, has no provision made for him by his father, in his will or otherwise, he shall take the same share of his father's estate, both real and personal, that he would have been entitled to if his father had died intestate.

SECT. 27. When a portion is assigned to a posthumous child, or to a child or other relation of a child omitted in the will of his parent, as mentioned in the two preceding sections, the same shall be taken equally from all the devisees and legatees, in proportion to the value of what they respectively receive under the will; unless in consequence of a specific devise or bequest, or of some other provision in the will, a different apportionment among the devisees and legatees is found necessary, in order to give effect to the intention of the testator as to that part of his estate which passes by his will.

SECT. 28. When a devise of real or personal estate is made to a child or other relation of the testator, and the devisee dies before the testator, leaving issue who survive the testator, such issue shall take the estate so devised in the same manner as the devisee would have done if he had survived the testator; unless a different disposition thereof is made or required by the will.

SECT. 29. When any estate, real or personal, that is devised, is taken from the devisee for the payment of the debts of the testator, all the other devisees and legatees shall contribute their respective proportions of the loss to the person from whom the estate is taken, so that the loss shall fall equally on all the devisees and legatees according to the value of the property received by each; except as provided in the following section.

SECT. 30. If in such case the testator, by making a specific devise or bequest, has virtually exempted any devisee or legatee from liability to contribute with the others for the payment of the debts, or if by any other provisions in his will he has prescribed or required any appropriation of his estate for the payment of his debts different from that prescribed in the preceding section, the estate shall be appropriated and applied in conformity with the will.

SECT. 31. Nothing contained in the two preceding sections shall impair or in any way affect the liability of the whole estate of the testator for the payment of his debts; but the provisions in these sections shall apply only to the marshalling of the assets, as between those who hold or claim under the will.

SECT. 32. When part of the estate of a testator descends to a child or other descendant by reason of his having no provision made for him in the will, or when it descends to a posthumous child, such estate shall, for all the purposes of the three preceding sections, be considered as if it had been devised to such child or other descendant; and he shall be bound to contribute with the devisees and legatees, and entitled to claim contribution from them, as before provided.

SECT. 33. When any person liable to contribute towards the discharge of such debt according to the provisions of the four preceding sections, is insolvent or unable to pay his just proportion thereof, the others shall be severally liable for the loss occasioned by such insolvency, each one in proportion to the value of the property received by him from the estate of the deceased; and if any person so liable dies without having paid his proportion of such debt, his executors and administrators shall be liable therefor, in like manner as if it had been his proper debt, to the extent to which he would have been liable if living.

R. S. 62, § 21.  
1 Story, 426.  
1 Mass. 146.  
2 Mass. 570.  
3 Mass. 17.  
14 Mass. 357.  
6 Met. 400.  
2 Gray, 525.  
3 Gray, 367.

Case of posthumous child having no provision.  
R. S. 62, § 22.  
Devisees, &c., to contribute equally to share of posthumous child, &c.  
R. S. 62, § 23.

Case of devisee dying before testator, and leaving issue.  
R. S. 62, § 24.  
Cas. Tem. Talb. 251; 1 Scho. & Lef. 111.  
5 Met. 396.

When estate devised is taken for debts, other devisees to contribute.  
R. S. 62, § 25.  
1 Cush. 107.

Unless a different appropriation is made by the will.  
R. S. 62, § 26.

Whole estate liable for debts.  
R. S. 62, § 27.

Child, &c., omitted in will, liable and entitled to contribution, as devisee.  
R. S. 62, § 28.

Case of insolvency of devisee, &c.  
R. S. 62, § 29.

Undevised real estate first liable for debts. R. S. 62, § 30. 3 John's Ch. R. 148, 312. 6 Mass. 149.

SECT. 34. When part of the real estate of a testator descends to his heirs, by reason of its not being devised or disposed of by his will, and his personal estate is insufficient for the payment of his debts, the undevised real estate shall be first chargeable with the debts, in exoneration as far as it will go of the real estate devised; unless it appears from the will that a different arrangement of his assets for the payment of his debts was made by the testator; in which case they shall be applied for that purpose in conformity to the will.

Proceedings in suits for contribution. R. S. 62, § 31.

SECT. 35. All cases arising under the preceding provisions of this chapter, in which devisees or legatees may be required to contribute to make up the share of a child of the testator, or of the issue of a child, or in which contribution is to be made among devisees, legatees, and heirs, or any of them, may be decided in an action at law, when the case is such as to allow of that course of proceeding; or may be heard and determined in the probate court, allowing an appeal to the supreme court of probate as in other cases; or they may be originally brought and finally determined in the supreme judicial court as a court of equity.

Devisees to contribute equally when dower, &c., is taken from one. 1839, 96, § 1. 1854, 406. 1854, 428. 1 Cush. 107.

SECT. 36. When the estate of one or more devisees under a will is taken and assigned by the probate court for the dower of the widow of the testator, or for the portion given to her by law in lieu of dower, or is set out to her upon a judgment or decree of any other court therefor, all the other devisees and legatees shall contribute their respective proportions of the loss to the person from whom the estate is so taken or set out, so as to make the loss fall equally upon all the devisees and legatees in proportion to the value of property received by them under the will; but no devisee or legatee shall be held to contribute who is exempted therefrom by the provisions of the will.

Such cases, how decided. 1839, 96, § 2.

SECT. 37. All cases arising under the preceding section may be decided in an action at law when the case is such as to allow of that course of proceeding, or they may be originally brought and determined in the supreme judicial court as a court of equity.

No will effectual without probate. R. S. 62, § 32. 16 Mass. 433. 1 Pick. 114. 6 Met. 369. 12 Met. 421.

SECT. 38. No will shall be effectual to pass real or personal estate, unless it has been duly proved and allowed in the probate court; and the probate of a will devising real estate shall be conclusive as to its due execution, in like manner as of a will of personal estate.

## TITLE IV.

[OF THE SETTLEMENT OF ESTATES OF DECEASED PERSONS, TRUSTS, AND SPECIAL PROVISIONS RELATING TO ESTATES, TRUSTS, AND GUARDIANSHIPS.]

CHAPTER 93.—Of Letters Testamentary and Proceedings on the Probate of Wills.

CHAPTER 94.—Of Administration and the Distribution of Estates of Intestates.

CHAPTER 95.—Of Public Administrators.

CHAPTER 96.—Of Inventories, Allowances to Widows and Children, and Collection of the Effects of Deceased Persons.

CHAPTER 97.—Of the Payment of Debts and Legacies.



CHAPTER 98.—Of the Accounts and Settlements of Executors and Administrators.

CHAPTER 99.—Of Insolvent Estates.

CHAPTER 100.—Of Trusts.

CHAPTER 101.—Special Provisions relating to Estates, Trusts, and Guardianships.

## CHAPTER 93.

### OF LETTERS TESTAMENTARY AND PROCEEDINGS ON THE PROBATE OF WILLS.

**SECTION**

1. Letters testamentary to be issued.
2. Executor's bond.
3. when he is residuary legatee.
4. not to discharge lien of creditors on real estate, unless, &c.
5. Executor, when exempt from giving sureties.

**SECTION**

6. Executor renouncing, or not named, &c., administration to be granted.
7. Administration during minority of executor.
8. Bond of administrator with will annexed.
9. Executor of executor, &c.

**SECTION 1.** When a will has been duly proved and allowed, the probate court shall issue letters testamentary thereon to the executor named therein, if he is legally competent, and if he accepts the trust and gives bond to discharge the same; otherwise the probate court shall grant letters of administration on the estate as hereinafter provided.

Letters testamentary to be issued.  
R. S. 63, § 1.  
6 Met. 369.

**SECT. 2.** Every executor, before entering upon the execution of his trust, shall give bond with sufficient surety or sureties in such sum as the judge of the probate court shall order, payable to said judge and his successor, with condition substantially as follows, (except as provided in chapter one hundred and one:)—

Executor's bond.  
R. S. 63, § 2.  
1850, 196.  
1 Mass. 35.  
8 Pick. 526.  
7 Cush. 207.

First. To make and return to the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights, and credits, of the testator, which are by law to be administered, and which shall have come to his possession or knowledge:

Second. To administer according to law, and the will of the testator, all his goods, chattels, rights, and credits, and the proceeds of all his real estate that may be sold for the payment of his debts or legacies, which come to the possession of the executor, or of any other person for him: and

Third. To render upon oath a just and true account of his administration, within one year, and at any other times when required by said court.

When two or more persons are appointed executors, none shall intermeddle or act as such but those who give bond as before prescribed.

**SECT. 3.** If it appears to the judge, that the bond prescribed by the preceding section is not necessary for the protection of any person interested in the estate, he may permit an executor who is residuary legatee, instead of giving such bond, to give bond in a sum and with sureties to the satisfaction of the judge, with condition to pay all debts and legacies of the testator, and such sums as may be allowed by the probate court for necessities to the widow or minor children; and in such case the executor shall not be required to return an inventory.

when he is residuary legatee.  
1857, 88, § 1.  
5 Met. 247.  
6 Cush. 235.  
2 Gray, 404.  
5 Gray, 67.

**SECT. 4.** The giving of the bond provided for in the preceding section, shall not discharge the lien on the real estate of the testator for the payment of his debts, except on such part as shall have been sold by the executor to a purchaser in good faith and for a valuable consideration; and all estate not so sold may be taken on execution by any creditor not otherwise satisfied, in like manner as if a bond had been given in the other form.

not to discharge lien of creditors on real estate, unless, &c.  
1857, 88, § 2.  
3 Mass. 523, 542.

**SECT. 5.** An executor shall be exempt from giving a surety or sure-

Executor, when

exempt from giving sureties. 1858, 72.

ties on his bond, when the testator has ordered or requested such exemption, or that no bond should be taken, or when all the persons interested in the estate who are of full age and legal capacity, other than creditors, certify to the court their consent thereto; but not until all creditors of the estate, and the guardian of any minor interested therein, have been notified, and had opportunity to show cause against the same: *provided*, that the judge may, at or after the granting of letters testamentary, require bond with sufficient surety or sureties, if he is of opinion that the same is required by a change in the situation or circumstances of the executor, or for other sufficient cause.

Executor renouncing, or not named, &c., administration to be granted. R. S. 63, § 5. 1855, 111, § 1.

SECT. 6. If a person appointed executor refuses to accept the trust, or, after being duly cited for that purpose, neglects to appear and accept the same, or neglects for twenty days after probate of the will to give bond as before prescribed, the probate court shall grant letters testamentary to the other executors, if there are any capable and willing to accept the trust; and if there are none, or if, in any case, the executors are dead, or none are named in the will, the court shall commit administration of the estate, with the will annexed, to the widow of the deceased, or to his next of kin, or to such other person as would have been entitled thereto if the deceased had died intestate: *provided*, that after the expiration of said twenty days, and before letters testamentary or of administration with the will annexed are granted, the court may grant letters testamentary to any person appointed executor who shall give the bond prescribed by law.

Administration during minority of executor. R. S. 63, § 6.

SECT. 7. When a person appointed executor is at the time of proving the will under the age of twenty-one years, administration with the will annexed may be granted during his minority, unless there is another executor who accepts the trust, in which case the estate shall be administered by such other executor until the minor arrives at full age, when upon giving bond as before provided he may be admitted as joint executor with the former.

Bond of administrator, with will annexed. R. S. 63, § 8.

SECT. 8. Whoever is appointed administrator with the will annexed, shall, before entering on the execution of his trust, give bond to the judge of the probate court in like manner and with like condition as is required of an executor.

Executor of executor, &c. R. S. 63, § 10.

SECT. 9. The executor of an executor shall not, as such, administer the estate of the first testator.

## CHAPTER 94.

### OF ADMINISTRATION AND THE DISTRIBUTION OF ESTATES OF INTESTATES.

ADMINISTRATION.		SECTION
SECTION	<ol style="list-style-type: none"> <li>1. Administration, to whom granted.</li> <li>2. Administrator's bond.</li> <li>3. Original administration not to be granted after twenty years.</li> <li>4.   except when property accrues, &amp;c.</li> <li>5. Administration revoked on proof of will.</li> </ol>	<ol style="list-style-type: none"> <li>11. Expense of last sickness, &amp;c.</li> <li>12. Special administrator to cease to act, &amp;c., on appointment of executor, &amp;c.</li> <li>13.   not liable to creditors, &amp;c.</li> </ol>
	SPECIAL ADMINISTRATION.	EXECUTORS IN THEIR OWN WRONG.
	<ol style="list-style-type: none"> <li>6. Special administrator during suit, &amp;c.</li> <li>7.   bond of.</li> <li>8.   powers and duties of.</li> <li>9. Allowance to widow, &amp;c., from income.</li> <li>10. appeal not to prevent, &amp;c.</li> </ol>	<ol style="list-style-type: none"> <li>14. Executors in their own wrong.</li> <li>15.   accountable to rightful executor, &amp;c.</li> </ol>
		DISTRIBUTION.
		<ol style="list-style-type: none"> <li>16. Distribution of personal estate.</li> <li>17. Advancements to issue not computed in distribution to widow.</li> </ol>

ADMINISTRATION.

SECTION 1. Administration of the estate of an intestate shall be granted to some one or more of the persons hereinafter mentioned; and they shall be entitled thereto as follows:—

Administration, to whom granted.  
R. S. 64, § 4.  
18 Pick. 24.  
19 Pick. 336.  
1 Cush. 525.  
2 Gray, 228.

First. His widow, or next of kin, or both, as the probate court shall deem fit; and if they do not either take or renounce the administration, they shall, if resident within the county, be cited by the court for that purpose:

Second. If the persons so entitled are incompetent, or evidently unsuitable for the discharge of the trust, or if they neglect without sufficient cause for thirty days after the death of the intestate to take administration of his estate, the probate court shall commit administration to one or more of the principal creditors, if there is any competent and willing to undertake the trust:—

4 Cush. 412.

Third. If there is no such creditor, administration shall be granted to such other person as the court shall deem fit: *provided*,

Fourth. That if the deceased was a married woman, administration of her estate shall in all cases be granted to her husband, if competent and willing to undertake the trust, unless by force of a marriage settlement or otherwise she has made some testamentary disposition of her separate estate, or some other provision, which renders it necessary or proper to appoint some other person to administer her estate; and

Fifth. If the deceased leaves no widow, husband, or next of kin, in this state, administration shall be granted to a public administrator in preference to creditors.

R. S. 64, § 4, clause 5.  
1839, 142.  
1853, 419.

SECT. 2. Every administrator, before entering on the execution of his trust, shall give bond, with sufficient sureties in such sum as the judge of the probate court shall order, payable to said judge and his successors, with condition substantially as follows, (except as provided in chapter one hundred and one:—

Administrator's bond.  
R. S. 64, § 5.  
1850, 196.  
1 Mass. 35.

First. To make and return into the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights, and credits, of the deceased, which have or shall come to his possession or knowledge:

Second. To administer according to law all the goods, chattels, rights, and credits, of the deceased, and the proceeds of all his real estate that may be sold for the payment of his debts, which shall at any time come to the possession of the administrator or of any other person for him:

Third. To render upon oath a true account of his administration within one year, and at any other times when required by the probate court:

Fourth. To pay any balance remaining in his hands, upon the settlement of his accounts, to such persons as the probate court shall direct:

Fifth. To deliver the letters of administration into the probate court, in case any will of the deceased is thereafter duly proved and allowed.

SECT. 3. Administration shall not be originally granted after the expiration of twenty years from the death of the testator or intestate, except in cases expressly authorized by law.

Administration not to be granted after twenty years.

SECT. 4. When administration has not been taken on the estate of a person deceased intestate within twenty years after his decease, if thereafter any property real or personal accrues to said estate, or belonging thereto first comes to the knowledge of any person interested therein, original administration may be granted on such property at any time within five years next after it so accrues or becomes known, but such administration shall affect no other property.

R. S. 64, § 13.  
1844, 115, § 2.  
6 Cush. 493.  
See Ch. 99, § 28.  
except when property accrues, &c.  
1848, 309, § 1.

SECT. 5. If, after granting letters of administration as of an intestate estate, a will of the person deceased is duly proved and allowed, the first administration shall be revoked; and the executor, or administrator with the will annexed, may demand, collect, and sue for, all the goods, chattels, rights, and credits, of the deceased, remaining unadministered.

revoked on proof of will.  
R. S. 64, § 10.



## SPECIAL ADMINISTRATION.

Special admin-  
istrator during  
suit, &c.  
R. S. 64, § 6.  
21 Pick. 101.  
22 Pick. 507.

SECT. 6. When by reason of a suit concerning the proof of a will, or from other cause, there is delay in granting letters testamentary or of administration, the probate court may appoint a special administrator to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he shall nevertheless proceed in the execution of his duties until it is otherwise ordered by the supreme court of probate.

bond of.  
R. S. 64, § 7.

SECT. 7. Every such administrator, before entering on the duties of his trust, shall give bond, with sufficient surety or sureties in such sum as the court shall order, payable to the judge and his successors, with condition that he will make and return into the probate court within three months, a true inventory of all the goods, chattels, rights, and credits, of the deceased, which have or shall come to his possession or knowledge, and that he will truly account on oath for all the goods, chattels, debts, and effects, of the deceased, that shall be received by him as such special administrator, whenever required by the probate court, and will deliver the same to whoever shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

powers and  
duties of.  
R. S. 64, § 8.  
1858, 122.

SECT. 8. He shall collect all the goods, chattels, and credits, of the deceased, and preserve the same for the executor or administrator when appointed, and for that purpose may commence and maintain suits; and may sell such perishable and other goods as the judge shall order to be sold. If he is appointed by reason of a suit concerning the probate of a will, or delay for any cause in granting letters testamentary, the judge may authorize him to take charge of the real estate of the deceased or any part thereof, and to collect the rents, make necessary repairs, and do all other things which the judge may deem needful for the preservation thereof, and as a charge thereon. He shall be allowed such compensation for his services as the judge shall deem reasonable.

Allowance to  
widow, &c.,  
from income.  
1859, 143, §§ 1,  
2, 3.

SECT. 9. Upon the petition of the widow or children, or either of them, the probate court may, after notice to all parties interested, make a reasonable allowance out of the income of the estate, real or personal, in the hands of a special administrator appointed on account of the pendency of a suit concerning the probate of a will, as an advancement for their support, not exceeding such portion of the income of the estate as they would be entitled to whether the will is finally proved or not.

appeal not to  
prevent, &c.  
1859, 143, §§ 4, 5.

SECT. 10. An appeal from the decree concerning such allowance shall not prevent the payment of the sum decreed, if the petitioner gives bond to the special administrator, with sureties approved by the judge, conditioned to repay the same, if the decree is reversed.

Expense of last  
sickness, &c.  
1859, 143, § 6.

SECT. 11. A special administrator may, by leave of the probate court, pay from the personal estate in his hands, the expenses of the last sickness and funeral of the deceased.

Special admin-  
istrator to cease  
to act, &c., on  
appointment of  
executor, &c.  
R. S. 64, § 9.

SECT. 12. Upon granting letters testamentary or of administration, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all goods, chattels, money, and effects, of the deceased, in his hands; and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

not liable to  
creditors, &c.  
R. S. 64, § 10.

SECT. 13. Such special administrator shall not be liable to an action by any creditor of the deceased; and the time of limitation for all suits against the estate shall begin to run after granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted.

EXECUTORS IN THEIR OWN WRONG.

SECT. 14. Whoever injuriously intermeddles with any goods or effects of a deceased person without being thereto authorized by law, shall be liable to the persons aggrieved, as an executor in his own wrong.

Executors in their own wrong. R. S. 64, § 11.

SECT. 15. Every executor in his own wrong shall be liable to the rightful executor or administrator for the full value of the goods or effects of the deceased taken by him, and for all damages caused by his acts to the estate of the deceased; and he shall not be allowed to retain or deduct any part of the goods or effects, except for such funeral expenses or debts of the deceased or other charges actually paid by him as the rightful executor or administrator might have been compelled to pay.

accountable to rightful executor, &c. R. S. 64, § 12.

DISTRIBUTION.

SECT. 16. When a person dies possessed of personal estate, or any right or interest therein, not lawfully disposed of by will, it shall be applied and distributed as follows:—

Distribution of personal estate. R. S. 64, § 1. 1838, 145. 1842, 15. 1845, 208, § 7. 9 Met. 37. 10 Met. 170.

First. The widow and minor children shall be entitled to such parts thereof as may be allowed to them under the provisions of chapter ninety-six:

Second. The personal estate remaining after such allowance shall be applied to the payment of the debts of the deceased, with the charges of his funeral and settling his estate:

4 Met. 319.

Third. The residue shall be distributed among the same persons who would be entitled to the real estate by chapter ninety-one, and in the same proportion as there prescribed, except as is herein provided:

1852, 29. 23 Pick. 163. 1 Met. 204. 6 Cush. 156.

Fourth. If the intestate was a married woman, her husband shall be entitled to the whole of the residue:

Fifth. If the intestate leaves a widow and issue, the widow shall be entitled to one-third of the residue:

Sixth. If there is no issue, the widow shall be entitled to the residue to the amount of five thousand dollars, and to one-half the excess of such residue above ten thousand dollars: and

1854, 406, § 3.

Seventh. If there is no husband, widow, or kindred, of the intestate, the whole shall escheat to the commonwealth.

SECT. 17. If the intestate leaves a widow and issue, and any of the issue have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the one-third part to be assigned to the widow; but she shall be entitled only to the third part of said residue after deducting the value of the advancement.

Advancements to issue not computed in distribution to widow. R. S. 64, § 2. 1 Pick. 161.

CHAPTER 95.

OF PUBLIC ADMINISTRATORS.

SECTION

1. Public administrators to be appointed.
2. to administer on estates of persons dying without heirs, &c.
3. not when heir, &c., claims right, &c.
4. to be discharged when heir, &c., claims right to administer, &c.
5. to surrender letters and account to successor, &c., when.
6. to give bonds.

SECTION

7. Public administrators may give general bond with conditions.
8. under such bond, to account annually, and judge may require further sureties, &c.
9. When limitation begins in such cases.
10. Public administrators may sell, &c., as other administrators.
11. may sell all real estate in certain cases.

SECTION

- 12. Public administrators, balance in hands of, to be deposited with state treasurer.
- 13. to render accounts annually; suits on bonds, &c.
- 14. Heirs, &c., may take administration after property is paid into state treasury.

SECTION

- 15. Treasurer to pay to such executor, &c., money belonging to estate.
- 16. Proceedings on death, &c., of public administrator.
- 17. Public administrators neglecting duties, district-attorneys to prosecute, &c.

Public administrators to be appointed. 1839, 142, § 1.

SECTION 1. The governor, with the advice and consent of the council, shall appoint one or more suitable persons in each county to be public administrators therein, who, with those now in office, shall hold their offices during the pleasure of the executive.

to administer on estates of persons dying without heirs, &c. R. S. 64, § 4. 1839, 142, § 1. 1840, 40, §§ 1, 2.

SECT. 2. Such administrator shall within his county take out letters of administration and faithfully administer upon the estate of any person who dies intestate therein or elsewhere leaving property in such county to be administered, and not leaving a known husband, widow, or heir, in this state.

not when heir, &c., claims right, &c. R. S. 64, § 4. 1853, 419.

SECT. 3. Administration shall not be granted to a public administrator when the husband, widow, or any heir, of the deceased, in writing claims the right of administration, or requests the appointment of some other suitable person to the trust, if such husband, widow, heir, or other person, accepts the trust and gives the bond required.

to be discharged, when heir, &c., claims right to administer, &c. R. S. 64, § 4. 1838, 142, § 2.

SECT. 4. After granting letters of administration to a public administrator, and before the final settlement of the estate, if the husband, widow, or any heir, of the deceased, in writing claims the right of administration or requests the appointment of some other suitable person to the trust, the probate court shall grant letters of administration accordingly. Upon the appointment of a successor and his giving the bond required, the powers of the public administrator over the estate shall cease.

to surrender letters and account to successors, &c., when. R. S. 64, § 16. 1839, 142, § 2.

SECT. 5. Every public administrator shall deliver into the probate court his letters of administration upon the estate of any person deceased, if a will of such person is thereafter proved and allowed. Upon the appointment of an executor or administrator as his successor in any case, he shall surrender his letters of administration into the probate court with an account upon oath of his doings therein; and upon a just settlement of his account, shall pay over and deliver to his successor all sums of money remaining in his hands, and all property, effects, and credits, of the deceased, not administered.

to give bonds. 1839, 142, §§ 1, 2. Sec Ch. 94, § 2.

SECT. 6. Every public administrator shall give bond to the judge of the probate court, for the faithful performance of his duties, in like manner as required of other administrators, with the further condition to comply with the provisions of the preceding section.

may give general bond, with conditions. 1849, 123, §§ 2, 3. 1850, 196.

SECT. 7. Instead of a separate bond for each estate, he may give a general bond for the faithful administration of all estates on which letters of administration shall be granted to him, as public administrator. Such bond shall be given with sufficient surety or sureties in such sum as the judge of the probate court shall order, payable to said judge and his successors, with condition substantially as follows, (except as provided in chapter one hundred and one:)

to return an inventory within three months.

First. To make and return into the probate court, within three months from the time of granting to him as public administrator, letters of administration on the estate of any person deceased, a true inventory of all the real estate, goods, chattels, rights, and credits, of such person, which shall come to his possession or knowledge:

to administer according to law.

Second. To administer according to law all goods, chattels, rights, and credits, of every such person, and the proceeds of all his real estate that may be sold for payment of his debts, which shall come to the possession of said administrator, or any person for him:

to render account in one year, and annually at least.

Third. To render upon oath a true account of his administration of every such estate within one year from the date of his letters of administration thereon, and at least once in each year until the trust is fulfilled; and at any other times when required by the probate court:



Fourth. To pay the balance of every such estate, remaining in his hands upon the settlement of his accounts, to such persons as the probate court shall direct; and, when such estate has been fully administered, to deposit the whole amount remaining in his hands with the treasurer of the commonwealth:

Public administrator to pay over balance in his hands.

Fifth. To deliver the letters of administration on the estate of any person into the probate court, in case a will of such person is thereafter proved and allowed; and, upon the appointment of a successor as administrator of any estate, to surrender his letters of administration into said court, with an account under oath of his doings therein, and upon a just settlement of his account, to pay over and deliver to his successor all sums of money remaining in his hands, and all property, effects, and credits, of the deceased, not administered.

to return letters of administration if will is proved or successor appointed.

SECT. 8. Every public administrator who has given such general bond shall, at the probate court first held in his county after the first day of January in each year, render an account under oath of all balances of estates then remaining in his hands; and the judge may at any time require additional sureties to be furnished upon the bond, or a new bond to be given.

Administrators under such bond, to account annually, and judge may require further sureties, &c. 1849, 123, § 3.

SECT. 9. All periods of time which by law begin to run in other cases from the time of giving bond by the administrator, shall when such general bond is given, begin to run, as to each estate, from the date of letters of administration.

When limitation begins in such cases. 1849, 123, § 3.

SECT. 10. Public administrators may be licensed to sell real estate for the payment of debts, and shall administer estates and render their accounts, in the same manner as other administrators, except as herein otherwise provided.

Public administrators may sell &c., as others. 1839, 142, §§ 1, 3. 1849, 123, §§ 2, 3.

SECT. 11. After three years from the date of letters of administration to a public administrator, he may sell the real estate, although not necessary for the payment of debts, upon obtaining a license from the probate court if it appears to the judge to be for the interest of all concerned. In such case he shall take the oath, give the bond, and otherwise proceed, as required of administrators licensed to sell real estate more than is necessary for the payment of debts.

may sell all real estate, in certain cases. 1839, 142, § 4.

SECT. 12. When an estate has been fully administered by a public administrator, and the debts paid according to law, he shall deposit the balance of such estate remaining in his hands with the treasurer of the commonwealth; who shall receive and hold it for the benefit of those who may have lawful claims thereon.

balance in hands of, to be deposited with state treasurer. 1839, 142, §§ 1, 4.

SECT. 13. The probate courts shall require public administrators in their respective counties to render an account of their proceedings under any letters of administration, at least once in each year until the trust has been fulfilled. And when upon a final settlement of any estate it appears that moneys remain in the hands of such administrator, which by law should have been deposited with the treasurer of the commonwealth, the court shall certify that fact and a statement of the amount so withheld to said treasurer, who, unless such deposit is made within one month after the receipt of such notice, shall cause the probate bond of the administrator to be prosecuted for the recovery thereof.

to render accounts annually; suits on bonds, &c. 1839, 142, §§ 4, 5.

SECT. 14. If at any time within six years after such deposit is made with the treasurer, any person applies to the probate court which granted said letters of administration, and makes it appear that he is legally entitled by the will of the deceased or otherwise to the administration of said estate, the court shall grant administration thereof, or upon probate of such will, shall grant letters testamentary to such applicant, or at his request to some other suitable person: *provided*, that before granting such administration, the court shall order personal notice of the application to be served at least fourteen days before the hearing, upon a public administrator of the county, who shall appear in behalf of the commonwealth; and either party may appeal from any decree therein.

Heirs, &c., may take administration after property is paid into state treasury. 1839, 142, § 6.

Treasurer to pay to such executor, &c., money belonging to estate, &c.  
1839, 142, § 6.

SECT. 15. After the expiration of thirty days from the appointment of an executor or administrator as provided in the preceding section, if no appeal is claimed by any person interested, the treasurer shall pay over to such executor or administrator all money deposited in the state treasury to the credit of such estate, to be administered in like manner as the estates of other deceased persons.

Proceedings on death, &c., of public administrator.  
1849, 123, § 1.

SECT. 16. Upon the death, resignation, or removal, of a public administrator, the probate court shall issue a warrant to some other public administrator in the same county on his application therefor, requiring him to examine the accounts of such late public administrator, touching the estates on which he has taken out letters of administration, and to return into the probate court a statement of all such estates, not fully administered, and of the balance of each estate remaining in his hands at the time of his death, resignation, or removal. And thereupon the court shall issue to the public administrator making the return, upon his giving the requisite bond, letters of administration upon such of said estates as are not already administered, although the personal estate remaining may not amount to twenty dollars.

Public administrators, neglecting duties district-attorneys to prosecute, &c.  
1846, 211.

SECT. 17. When a public administrator neglects to return an inventory, settle an account, or perform any other duty incumbent on him, in relation to any estate, and there appears to be no heir entitled thereto, the district-attorney for the district within which the administrator received his letters, shall, in behalf of the commonwealth, prosecute all suits and do all acts necessary and proper to insure a prompt and faithful administration of the estate, and the payment of the proceeds thereof into the treasury.

## CHAPTER 96.

### OF INVENTORIES, ALLOWANCES TO WIDOWS AND CHILDREN, AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

INVENTORIES.	SECTION
<p>SECTION</p> <p>1. Inventory to be returned within three months, except, &amp;c.</p> <p>2. Appraisers, how appointed and sworn.</p> <p>3. Justice's order to appraisers.</p> <p>ALLOWANCES TO WIDOWS AND CHILDREN.</p> <p>4. Apparel, &amp;c., of widows, &amp;c.</p> <p>5. Necessaries, &amp;c., allowed to widow, &amp;c., not assets.</p> <p>COLLECTION OF THE EFFECTS, &amp;c.</p> <p>6. Persons suspected of concealing effects may be examined on oath.</p>	<p>SECTION</p> <p>7. When personal estate is insufficient, real estate may be sold, &amp;c.</p> <p>8. Proceeds of sale to be assets, &amp;c.</p> <p>9. Mortgage of real estate to be considered personal assets.</p> <p>10. In case of redemption, executor, &amp;c., to release; meantime to hold in trust, &amp;c.</p> <p>11. Lands, taken on execution by executor, &amp;c., to be considered personal assets.</p> <p>12. Real estate held in mortgage, &amp;c., by executor, &amp;c., may be sold, &amp;c.</p> <p>13. may be sold after foreclosure upon obtaining license.</p> <p>14. if not so sold, how distributed.</p>

#### INVENTORIES.

Inventory to be returned within three months, except, &c.  
R. S. 65, § 1.  
1857, 88.

SECTION 1. Every executor and administrator shall within three months after his appointment, make and return upon oath into the probate court, a true inventory of the real estate, and all the goods, chattels, rights, and credits, of the deceased, which are by law to be administered, and which shall have come to his possession or knowledge; except that an executor who gives bond to pay all the debts and legacies and the allowance to the widow and minor children as provided in chapter ninety-three, need not return an inventory.

Appraisers,

SECT. 2. The estate and effects comprised in the inventory shall be

appraised in any county by three suitable disinterested persons appointed by the probate court; or any disinterested justice of the peace may appoint such appraisers of any part of the estate which may be in his county. The appraisers shall be sworn to the faithful discharge of their duties.

how appointed and sworn.  
R. S. 65, § 2.

SECT. 3. When appraisers are appointed by a justice of the peace, he shall issue an order to them, in substance as follows:—

Justice's order to appraisers.  
R. S. 65, § 3.

To \_\_\_\_\_, ss. \_\_\_\_\_ of \_\_\_\_\_, in said county. You are hereby appointed to appraise, on oath, the estate and effects of \_\_\_\_\_, late of \_\_\_\_\_, deceased, which may be in said county. When you have performed that service, you will deliver this order, and your doings in pursuance thereof, to \_\_\_\_\_, (executor or administrator, as the case may be) of said deceased, that he may return the same to the probate court for the county of \_\_\_\_\_ . Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, Justice of the Peace.

ALLOWANCES TO WIDOWS AND CHILDREN.

SECT. 4. The articles of apparel and ornament of the widow and minor children of a deceased person, shall belong to them respectively.

Apparel, &c., of widows, &c.  
1838, 145, § 1.  
Necessaries, &c., allowed to widow, &c.  
R. S. 60, § 16.  
1838, 145, § 2.  
1842, 15.  
10 Pick. 431.  
10 Met. 170.  
6 Cush. 20.  
1 Gray, 521.  
3 Gray, 521.  
5 Gray, 24.  
See Ch. 90, § 18.

SECT. 5. Such parts of the personal estate of a person deceased as the probate court, having regard to all the circumstances of the case, may allow as necessaries to his widow, for herself and family under her care, or if there is no widow, to his minor children, not exceeding fifty dollars to any child; and also such provisions and other articles as are necessary for the reasonable sustenance of his family, and the use of his house and the furniture therein, for forty days after his death, shall not be taken as assets for the payment of debts, legacies, or charges of administration.

COLLECTION OF THE EFFECTS, &C.

SECT. 6. Upon complaint made to the probate court by an executor, administrator, heir, legatee, creditor, or other person, interested in the estate of a person deceased, against any one suspected of having fraudulently received, concealed, embezzled, or conveyed away, any money, goods, effects, or other estate, real or personal, of the deceased, the court may cite such suspected person, though he is executor or administrator, to appear and be examined on oath, upon the matter of the complaint. If the person so cited refuses to appear and submit to examination, or to answer such interrogatories as are lawfully propounded to him, the court may commit him to the jail, there to remain in close custody until he submits to the order of the court. The interrogatories and answers shall be in writing, signed by the party examined, and filed in the probate court.

Persons suspected of concealing effects may be examined on oath.  
1857, 71, § 2.  
7 Greenl. 467.  
4 Mass. 322.  
7 Pick. 14.  
8 Pick. 484.  
12 Met. 320.  
4 Cush. 46.

SECT. 7. When the goods and chattels, rights and credits, in the hands of an executor or administrator, are not sufficient to pay the debts of the deceased, with the charges of administration, his real estate, or as much thereof as may be necessary, shall be sold for that purpose by the executor or administrator, upon obtaining a license therefor in the manner provided in chapter one hundred and two.

When personal estate insufficient, real estate may be sold, &c.  
R. S. 65, § 8.  
7 Met. 454.  
7 Gray, 169.

SECT. 8. The proceeds of real estate so sold shall be considered as assets in the hands of the executor or administrator in like manner as if the same had originally been part of the goods and chattels of the deceased; and the executor or administrator, and the sureties in his administration bond, shall be accountable and chargeable therefor.

Proceeds of sale to be assets, &c.  
R. S. 65, § 9.

SECT. 9. When a mortgagee of real estate, or an assignee of such mortgagee, dies without having foreclosed the right of redemption, the mortgaged premises and the debt secured thereby shall be considered as personal assets in the hands of his executor or administrator, and shall be administered and accounted for as such; and if the mortgagee

Mortgage of real estate to be considered personal assets.  
R. S. 65, § 11.  
16 Mass. 18.  
10 Met. 337.  
*Allen 239*



8 Cush. 225.  
11 Cush. 150.  
3 Gray, 302, 504.

or assignee has not in his lifetime obtained possession of the mortgaged premises, his executor or administrator may take possession thereof, by open and peaceable entry or by action, in like manner as the deceased might have done if living.

In case of redemption, executor, &c., to release; meantime to hold in trust, &c.  
R. S. 65, § 12.  
4 Mass. 598.

SECT. 10. Upon the redemption of such mortgage, the money paid thereon shall be received by the executor or administrator, and he shall thereupon release and discharge the mortgage; and until such redemption the executor or administrator, if possession has been taken either by himself or the deceased, shall be seised of the mortgaged premises, in trust for the persons who would be entitled to the money if the premises had been redeemed.

Lands taken on execution by executor, &c., considered personal assets.  
R. S. 65, § 13.  
6 Greenl. 133.  
4 Mass. 598.

SECT. 11. When an executor or administrator recovers judgment for a debt due to the deceased, and levies the execution on real estate, he shall be seised of such real estate in trust for the persons who would have been entitled to the money, if the judgment had been satisfied in money; and the estate so taken on execution shall be considered as personal assets in his hands; and if redeemed, the money shall be received by the executor or administrator, who shall thereupon release the estate.

Real estate held in mortgage, &c., by executor, &c., may be sold, &c.  
1849, 47, § 1.  
1 Pick. 81.  
13 Met. 126.

SECT. 12. Real estate held by an executor or administrator in mortgage, or taken on execution by him, may be sold, subject to the right of redemption, at any time before the right of redemption is foreclosed, in the same manner as personal estate of a person deceased.

may be sold after foreclosure, upon obtaining license.  
R. S. 65, § 14.  
1849, 47, §§ 1, 2.

SECT. 13. Real estate held by an executor or administrator in mortgage, or taken on execution by him, may, after the right of redemption is foreclosed, be sold for the payment of debts, legacies, and charges of administration, in the same manner as real estate of which the deceased died seised, upon obtaining a license therefor in the manner provided in chapter one hundred and two.

if not so sold, how distributed.  
R. S. 65, § 15.  
8 Cush. 225.  
3 Gray, 504.

SECT. 14. If land so held by an executor or administrator in mortgage or on execution, is not redeemed or sold as before provided, it shall be assigned and distributed to the same persons, and in the same proportions, as if it had been part of the personal estate of the deceased. If upon such distribution the estate comes to two or more persons, the probate court may cause partition thereof to be made between them, in like manner as if it had been real estate held by the deceased in his lifetime.

## CHAPTER 97.

### OF THE PAYMENT OF DEBTS AND LEGACIES.

#### SECTION

1. Public notice to be given of taking administration.
2. perpetuating evidence of.
3. when omitted by accident, &c., and when evidence is not perpetuated.
4. Liability for damage.
5. Limitation of actions by creditors.
6. when assets are received after two years.
7. When action fails from defect in form, new action may be commenced.
8. Proceedings when right of action accrues after two years.
- 9, 10, 11. Further proceedings in such case.
12. Administrator *de bonis non* liable to actions for two years.
13. to give notice of appointment.
14. to be further liable in case new assets are received.
15. Action against heirs, &c., not barred.

#### SECTION

16. No action against executor, &c., within one year, except, &c.
17. Executors, &c., not liable for deficiency of assets, in case, &c.
18. on proving such payments, to be discharged.
19. may represent estate insolvent.
20. If assets are exhausted in paying preferred debts, action against executor barred.
21. When executor, &c., may demand security from legatee or next of kin to refund.
22. Legatee may sue.
23. Annuity given by will, when payable.
24. Apportionment of annuity in certain cases.
25. Executors, &c., liable in case of unnecessary delay, &c.
26. Claims of executors, &c., may be submitted to arbitration.
27. decided by court or jury on appeal.
28. Estate of deceased joint debtor, liable.

SECTION 1. Every executor and administrator, within three months after giving bond for the discharge of his trust, shall cause notice of his appointment to be posted in two or more public places in the city or town in which the deceased last dwelt; or he may be required by the probate court to give notice by publishing in some newspaper, or in such other manner as the court, taking into consideration the business of the deceased and the circumstances of his estate, shall direct.

Public notice to be given of taking administration.  
R. S. 66, § 1.

SECT. 2. An affidavit of the executor or administrator, or of the person employed by him to give such notice, being made before the judge or a justice of the peace, and filed and recorded with a copy of the notice in the probate office, within one year after giving bond as aforesaid, or at any time afterwards by permission of the court upon petition of the executor or administrator and satisfactory evidence furnished that the notice was given as ordered, shall be admitted as evidence of the time, place, and manner, in which the notice was given.

perpetuating evidence of.  
R. S. 66, § 2.  
1855, 132.

SECT. 3. If, by accident or mistake, notice is not given, or the evidence thereof fails to be perpetuated as provided in the preceding sections, the probate court may, on the petition of the executor or administrator, order such notice to be given at any time afterwards; in which case, the periods of time which are herein limited for the commencement of actions against executors and administrators and for other purposes, and which begin to run from the date of the administration bond, shall begin to run respectively from the time of passing such order.

when omitted by accident, &c., and when evidence is not perpetuated.  
R. S. 66, § 25.

SECT. 4. No order under the preceding section shall exempt the executor or administrator, and his sureties, from any liability for damages incurred by reason of the omission to give notice within three months.

Liability for damage.  
R. S. 66, § 26.

SECT. 5. No executor or administrator, after having given notice of his appointment as provided in section one, shall be held to answer to the suit of any creditor of the deceased, unless it is commenced within two years from the time of his giving bond as aforesaid, except in the cases hereinafter mentioned.

Limitation of actions by creditors.  
R. S. 66, § 3.  
1852, 294, § 1.  
6 Cush. 235.  
2 Gray, 331.  
7 Gray, 168.

SECT. 6. When assets come to the hands of an executor or administrator after the expiration of two years, he shall account for and apply the same in like manner as if they had been received within that time, and shall be liable to an action at law, or to any suit or process in the probate court, on account of such new assets, by or for the benefit of any creditor, in like manner as if the assets had been received within the two years, if such action or proceeding is commenced within one year after the creditor has notice of the receipt of such new assets, and not more than two years after the same is actually received.

when assets are received after two years.  
R. S. 66, § 4.  
1852, 294, § 1.  
3 Pick. 365.

SECT. 7. If an action commenced against an executor or administrator before the expiration of the two years limited in this chapter, fails of a sufficient service or return by an unavoidable accident; or if the writ in such action is abated or defeated in consequence of a defect in the form of the writ, or of a mistake in the form of the proceeding; or if, after a verdict for the plaintiff, the judgment is arrested; or, if a judgment for the plaintiff is reversed on a writ of error, the plaintiff may commence a new action for the same cause at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein.

When action fails from defect in form, new action may be commenced.  
1855, 157, § 1.

SECT. 8. A creditor of the deceased, whose right of action does not accrue within two years after the giving of the administration bond, may present his claim to the probate court at any time before the estate is fully administered; and if, on examination thereof, it appears to the court that the same is justly due from the estate, he shall order the executor or administrator to retain in his hands sufficient to satisfy the same. But if a person interested in the estate offers to give bond

Proceedings when right of action accrues after two years.  
R. S. 66, § 5.



to the alleged creditor with sufficient surety or sureties for the payment of the demand in case the same is proved to be due, the court may order such bond to be taken, instead of requiring assets to be retained as aforesaid.

Further proceedings in such case.  
R. S. 66, § 6.

SECT. 9. The decision of the probate court upon the claim of such creditor shall not be conclusive against the executor or administrator, or other person interested to oppose the allowance thereof; and they shall not be compelled to pay the same, unless it is proved to be due in an action commenced by the claimant within one year after the same becomes payable.

Same subject.  
R. S. 66, § 7.

SECT. 10. The action shall be brought against the executor or administrator, if he has been required to retain assets therefor; otherwise, upon the bond given by the persons interested in the estate.

Same subject.  
R. S. 66, § 8.  
1852, 312.

SECT. 11. If the action is brought on the bond, the plaintiff shall set forth his original cause of action against the deceased, in like manner as would be required in a declaration for the same demand against executors or administrators, and may allege the non-payment thereof as a breach of the condition of the bond; and the defendant may answer any matter of defence that would be available in law against the demand if prosecuted in the usual manner against the executor or administrator.

Administrator *de bonis non* liable to actions for two years.  
R. S. 66, §§ 20, 21, 22.  
1852, 294, § 2.

SECT. 12. When an executor or administrator dies, resigns, or is removed, without having fully administered the estate of the deceased, and a new administrator is appointed, such new administrator shall be liable to the actions of creditors for two years after he has given bond for the discharge of his trust, unless the same were barred prior to the termination of the previous administration.

to give notice of appointment.  
R. S. 66, § 23.

SECT. 13. The new administrator shall give notice of his appointment in the manner prescribed in this chapter with respect to an original administrator; and if he fails so to do he shall have no benefit of the limitations herein provided.

to be further liable, in case new assets are received.  
R. S. 66, § 24.

SECT. 14. When assets come to the hands of such new administrator after the time above limited for the commencement of actions against him, he shall account for the same, and shall be liable to an action at law, and to any suit or process in the probate court, on account of such new assets, by or in behalf of any creditor, in like manner as is provided in this chapter with respect to an original executor or administrator.

Action against heirs, &c., not barred.  
R. S. 66, § 9.

SECT. 15. Nothing herein contained shall prevent or bar the action of any creditor against the heirs, next of kin, devisees, or legatees, of the deceased, as provided in chapter one hundred and one.

No action against executor, &c., within one year, except, &c.  
R. S. 66, § 10.  
1 Met. 333.  
4 Gray, 514.

SECT. 16. No executor or administrator shall be held to answer to the suit of a creditor of the deceased, if commenced within one year after his giving bond for the discharge of his trust, unless it is for the recovery of a demand that would not be affected by the insolvency of the estate, or unless it is brought after the estate has been represented insolvent, for the purpose of ascertaining a contested claim.

Executors, &c., not liable for deficiency of assets, in case, &c.  
R. S. 66, § 11.  
1 Gray, 169.

SECT. 17. If an executor or administrator who has given notice of his appointment as prescribed in this chapter, does not within one year thereafter have notice of demands against the estate of the deceased which will authorize him to represent it insolvent, he may after the expiration of said year proceed to pay the debts due from the estate; and he shall not be personally liable to any creditor in consequence of any such payments made before notice of his demand.

on proving such payments, to be discharged.  
R. S. 66, § 12.  
1 Met. 333.  
9 Met. 180.  
11 Met. 238.

SECT. 18. If an executor or administrator pays away in manner aforesaid the whole of the estate and effects of the deceased, before notice of the demand of any other creditor, he shall not be required in consequence of such notice to represent the estate insolvent, but in an action against him he shall be discharged upon proving such payments.

may repre-

SECT. 19. If an executor or administrator pays away in manner



aforesaid so much of the estate and effects of the deceased that the remainder is insufficient to satisfy a demand of which he afterwards has notice, he shall be liable to pay on such last mentioned demand only so much as may then remain. If there are two or more such demands exhibited, which together exceed the amount of assets remaining in his hands, he may represent the estate insolvent, and shall divide and pay over what remains in his hands among such creditors as prove their debts under the commission of insolvency, pursuant to such decree as the probate court shall make in that behalf; but the creditors of the deceased who have been previously paid shall not be liable to refund any part of the amount received by them.

SECT. 20. If it appears upon the settlement of the administration account in the probate court, that the whole estate and effects which have come to the hands of the executor or administrator have been exhausted in paying the charges of administration, the allowance to the widow or minor children of the deceased, and the charges of his last sickness and funeral, or any other debts or claims entitled by law to a preference over the common creditors of the deceased, such settlement shall be a sufficient bar to any action brought against the executor or administrator by a creditor who is not entitled to such preference, although the estate has not been represented insolvent.

SECT. 21. When an executor or administrator, within two years after having given bond for the discharge of his trust, is required by a legatee or next of kin to make payment, in whole or in part of his legacy or distributive share, the probate court may require that the legatee or next of kin shall first give bond to the executor or administrator, with surety or sureties to be approved by the judge, conditioned to refund the amount so to be paid, or as much thereof as may be necessary to satisfy any demands that may be afterwards recovered against the estate of the deceased, and to indemnify the executor or administrator against all loss and damage on account of such payment.

SECT. 22. Every legatee may recover his legacy in an action at common law; and nothing contained in this chapter shall bar an action brought at any time against an executor, or an administrator with the will annexed, for the recovery of any legacy, annuity, or bequest.

SECT. 23. When by a last will and testament, or an instrument in the nature thereof, an annuity, or the use, rent, income, or interest, of any property, real or personal, or the income of any fund is given to, or in trust for the benefit of, a person for life, or until the happening of a contingent event, he shall be entitled to demand, receive, have, and enjoy, the same, from and after the decease of the testator, unless it is otherwise provided in such will or instrument; or unless the same is required for the payment of debts and other allowances having legal preference out of the estate.

SECT. 24. If a person entitled to such annuity, rent, interest, or income, dies, or if such contingent event happens at any intermediate time before the termination of a year from the time when the whole of the annual amount for the preceding year has become due, such annuity, rent, interest, or income, for the then current year, shall be apportioned, and he or his representatives shall be entitled to receive a proportional part thereof, unless it is otherwise provided in such will or instrument; but no suit shall be brought against an executor for the recovery of such annuity or interest, until the expiration of one year after he has assumed his trust by giving bonds.

SECT. 25. If an executor or administrator unreasonably delays to raise money by collecting the debts and effects of the deceased, or selling the real estate if necessary, and he can obtain a license therefor, or neglects to pay what he has in his hands; and in consequence of such delay or neglect the estate of the deceased is taken on execution by any

sent estate insolvent.  
R. S. 66, § 13.

If assets are exhausted in paying preferred debts, action against executor barred.  
R. S. 66, § 14.  
1842, 15.  
9 Met. 180.  
4 Gray, 514.  
7 Gray, 169.

When executor, &c., may demand security from legatee or next of kin, to refund.  
R. S. 66, § 15.

Legatee may sue.  
R. S. 66, § 16.  
11 Pick. 503.  
5 Met. 249.  
5 Gray, 67.

Annuity given by will, when payable.  
1848, 310, § 1.

Apportionment of annuity in certain cases  
1848, 310, § 2.

Executors, &c., liable, in case of unnecessary delay, &c.  
R. S. 66, § 17.

of his creditors, it shall be deemed unfaithful administration, and he shall be liable in an action on his administration bond for all damages occasioned thereby.

Claims of executors, &c., may be submitted to arbitration. R. S. 66, § 18. 9 Met. 239.

SECT. 26. If a debt claimed by an executor or administrator as due to him from the deceased, is disputed by any person interested in the estate, the claimant shall file in the probate [court] a statement of his claim in writing, setting forth distinctly and fully the nature and grounds thereof; and the same may then be submitted under an order of the court to one or more arbitrators, to be agreed on by the claimant and the party objecting. The court shall have like power to discharge the rule by which the claim is referred, and to reject and disallow the award, or to recommit it to the arbitrators, as might be exercised by the courts of common law with regard to cases referred by a rule of those courts. The award of such arbitrators if accepted by the probate court shall be final and conclusive.

decided by court or jury, on appeal. R. S. 66, § 19.

SECT. 27. If parties do not agree in the appointment of arbitrators, or if the award is not confirmed by the probate court, the judge shall decide on the claim, upon such evidence as shall be adduced before him. On appeal to the supreme court of probate, either party or the court may have the claim submitted to a jury, and thereupon an issue shall be made up, under the direction of the court, and tried by a jury as other issues in civil actions are tried; and the verdict thereon, being duly allowed and recorded, shall be conclusive.

Estate of deceased joint debtor, liable. R. S. 66, § 27. 2 Mass. 572. 4 Met. 544. 11 Cush. 152.

SECT. 28. When two or more persons are indebted in a joint contract, or upon a judgment founded on such contract, and either of them dies, his estate shall be liable therefor as if the contract had been joint and several, or as if the judgment had been against himself alone.

## CHAPTER 98.

### OF THE ACCOUNTS AND SETTLEMENTS OF EXECUTORS AND ADMINISTRATORS.

#### SECTION

1. Personal estate, how accounted for.
2. Executors, &c., to be charged for increase and allowed for decrease.
3. Probate court may order sale.
4. may license sale of outstanding claims which cannot be collected without delay.
5. Executors, &c., may transfer mortgages, &c.
6. not chargeable with bad debts.
7. chargeable with certain effects not inventoried.

#### SECTION

8. Executors chargeable with income of real estate, if received.
9. to render account within one year, and further accounts, &c.
10. allowances to, for services, &c.
11. how liable for not rendering accounts.
12. Accounts settled, in what cases to be opened.
13. Costs recovered against executor, &c., how paid and allowed.

Personal estate how accounted for.

R. S. 67, § 1.

Executors, &c., to be charged for increase, and allowed for decrease.

R. S. 67, § 2.

SECTION 1. Executors and administrators shall account for the personal estate at its appraisal, except as hereinafter provided.

Probate court may order sale. R. S. 67, § 3.

SECT. 2. They shall make no profit by the increase, and sustain no loss by the decrease or destruction without their fault, of any part of the estate; if they sell any of the personal estate for more than the appraised value, they shall account for the excess; and if they sell any for less than the appraised value, they shall be allowed for the loss, if it appears to the probate court that the sale was expedient and for the interest of all concerned in the estate.

SECT. 3. The probate court, on application made by the executor, administrator, or any person interested in the estate, after the return of the inventory, may order any part or all of the personal estate to be



sold by public auction or private sale, as shall be deemed most for the interest of all concerned; and the executor or administrator shall account therefor at the price for which it sells.

SECT. 4. The probate court upon petition of the executor or administrator, and after such notice thereof to the parties interested as the court may order, and a hearing thereon, may for the purpose of closing the settlement of an estate, license the executor or administrator to sell and assign any outstanding debts, claims, and assets, which cannot be collected, received, or determined, without inconvenient delay. The sale shall be conducted in such manner as the court, having regard as far as it may be thought advisable or prudent to the law in relation to sales of real estate by executors and administrators, shall order.

Probate court may license sale of outstanding claims, which cannot be collected without delay.  
1851, 136, § 1.

SECT. 5. Nothing in the preceding section shall deprive executors and administrators of the right to transfer at pleasure deeds of mortgage, and the real estate conveyed, and the debts secured, thereby, either before or after possession taken for foreclosure; and all such transfers heretofore made, and all titles to real estate held under such transfers, are ratified and confirmed.

Executors, &c., may transfer mortgages, &c.  
1849, 47.  
1852, 41, § 1.  
1 Pick. 81.  
13 Met. 126.

SECT. 6. No executor or administrator shall be accountable for debts inventoried as due to the deceased, if it appears to the probate court that they remain uncollected without his fault.

not chargeable with bad debts.  
R. S. 67, § 4.

SECT. 7. Every executor and administrator shall be chargeable in his account, with all goods, chattels, rights, and credits of the deceased, which come to his hands and which are by law to be administered, although they are not included in the inventory; also with all proceeds of real estate sold for the payment of debts or legacies, and with all interest, profit, and income, that come to his hands from the personal estate of the deceased.

chargeable with certain effects not inventoried.  
R. S. 66, § 5.  
7 Mass. 35.  
16 Mass. 280.  
1 Pick. 156.

SECT. 8. If the real estate has been used or occupied by the executor or administrator, he shall account for the income thereof, as ordered by the probate court with the assent of the executor or administrator and of such other parties interested as are present at the rendering of the account. If the parties do not agree on the sum to be allowed, it shall be determined by three disinterested persons to be appointed by the probate court, whose award being accepted by the court shall be final.

with income of real estate if received.  
R. S. 67, § 6.  
5 Greenl. 387.  
16 Mass. 280.  
1 Pick. 156.  
6 Gray, 339.

SECT. 9. Every executor and administrator shall, within one year after giving bond for the discharge of his trust, render upon oath his first account of administration; and such further accounts from time to time as may be necessary or convenient, or as the probate court may require, until the estate is wholly settled; and he may be examined on oath before the court upon any matters relating to his accounts.

to render account within one year, and further accounts, &c.  
R. S. 67, § 7.  
1 Pick. 198.  
6 Met. 553.  
See Ch. 101, §§ 6, 7.

SECT. 10. Executors and administrators shall be allowed their reasonable expenses incurred in the execution of their respective trusts, and shall have such compensation for their services as the court in which their accounts are settled considers just and reasonable.

allowances to for services, &c.  
1838, 144, § 1.

SECT. 11. When an executor or administrator, after being duly cited by the probate court, neglects to render an account of his administration, his bond may be put in suit as provided in chapter one hundred and one; and if he persists in such neglect, judgment shall be rendered against him, and he shall be liable in like manner and to the same extent as an executor in his own wrong.

how liable for not rendering accounts.  
R. S. 67, § 9.  
5 Gray, 26.

SECT. 12. When an account is settled in the absence of any person adversely interested, and without notice to him, the account may be opened, on his application at any time within six months thereafter; and upon the settlement of any account by an executor or administrator, all his former accounts may be so far opened as to correct any mistake or error therein; except that any matter in dispute between two parties, which had been previously heard and determined by the court,

Accounts settled, in what cases to be opened.  
R. S. 67, § 10.  
3 Foster, 225.  
7 Pick. 1.  
20 Pick. 510.  
6 Met. 194.  
See Ch. 101, § 7.



shall not be again brought in question by either of the same parties without leave of the court.

Costs recovered against executor, &c., how paid and allowed. R. S. 67, § 11. 16 Mass. 530.

SECT. 13. If judgment is recovered against an executor or administrator for costs in a suit commenced or prosecuted by him in that capacity, the estate in his hands shall not be taken on execution therefor, but execution shall be awarded against him as for his own debt; and the amount paid by him thereupon shall be allowed in his administration account, unless it appears to the probate court that the suit was commenced or prosecuted unnecessarily or without reasonable cause.

## CHAPTER 99.

### OF INSOLVENT ESTATES.

#### SECTION

1. Debts entitled to preference.
2. Representation of insolvency, and appointment of commissioners.
3. Commissioners to give notice of meetings.
4. to make report in six or eighteen months.
- 5, 6, 7. Provision for contingent debts.
8. Claims to be decided at common law, upon appeal.
9. Notice to be given on appeal, and when.
10. Trial and judgment, but no execution thereon.
11. Claim may be submitted to arbitration.
12. Costs upon appeal.
13. Remedy when appeal is omitted by accident, &c.
14. Allowance of appeal not to disturb prior dividends.
15. Commissioners, &c., may examine claimant on oath.
16. may administer oaths.

#### SECTION

17. Copartnership and individual claims to be separate.
18. Distribution among creditors after commissioners' return.
19. Further distribution.
20. Actions by creditors after representation of insolvency.
21. Claims not proved to be barred, unless, &c.
22. If assets sufficient, debts paid in full. Surplus.
23. Surplus, how divided.
24. Administrator liable only for assets in his hands.
25. Creditor may sue after eighteen months, in case, &c.
26. Penalty on executor, &c., neglecting to settle accounts.
27. Dividends unclaimed for twenty years, to be distributed among creditors, &c.
28. Administration on estates of creditors entitled to such dividend.

Debts entitled to preference. R. S. 68, § 1. 1852, 139. 16 Mass. 308. 4 Met. 317. 9 Met. 189, 507. See § 18. Ch. 127, § 4.

SECTION 1. When the estate of a person deceased is insolvent or insufficient to pay all his debts, it shall, after discharging the necessary expenses of his funeral, last sickness, and administration, be applied to the payment of his debts in the following order:—

First. Debts entitled to a preference under the laws of the United States:

Second. Public rates, taxes, and excise duties:

Third. Debts due to all other persons.

If there is not enough to pay all the debts of any class, the creditors of that class shall be paid ratably upon their respective debts; and no payment shall be made to creditors of any class until all those of the preceding class or classes, of whose claims the executor or administrator has notice, are fully paid.

Representation of insolvency, and appointment of commissioners. R. S. 68, § 2. 16 Mass. 308. 6 Pick. 481.

SECT. 2. When it appears to the probate court from the representation of an executor or administrator, that the estate of the deceased will probably be insufficient for the payment of his debts, the court shall appoint two or more fit persons to be commissioners to receive and examine all claims of creditors against the estate, and to return a list of all claims laid before them, with the sum allowed on each claim. The commissioners shall be sworn before entering on the duties of their office.

Commissioners

SECT. 3. They shall appoint convenient times and places for their

meetings to receive and examine claims of creditors, and shall by mail or otherwise give to all known creditors at least seven days' written notice of the time and place of each meeting, and also such other notice thereof as the court shall order; and the executor or administrator shall, fourteen days at least before the first meeting, furnish to the commissioners the names and residences of all known creditors.

to give notice of meetings.  
R. S. 68, § 3.  
1854, 92.

SECT. 4. Six months after the appointment of the commissioners shall be allowed for the creditors to present and prove their claims; and the court may allow such further time for this purpose, not exceeding eighteen months from the date of the commission, as shall be deemed necessary; and at the expiration of the time for the proof of debts, the commissioners shall make their return to the probate court.

Commissioners to make report.  
R. S. 68, § 4.  
6 Pick. 458.  
See § 18.

SECT. 5. If at the return of the commission any person is liable as a surety for the deceased, or has any other contingent claim against his estate which could not be proved as a debt under the commission, the court upon proof thereof shall, in ordering a dividend, leave in the hands of the executor or administrator a sum sufficient to pay to such contingent creditor a proportion equal to what shall then be paid to the other creditors.

Provision for contingent debts.  
R. S. 68, § 5.  
7 Met. 132.

SECT. 6. If such contingent debt becomes absolute within four years after the date of the administration bond, it may be allowed by the probate court if not disputed by the executor or administrator; and if disputed, it may be proved before the commissioners already appointed or others to be appointed by the judge, in like manner as if presented before the first return of the commissioners.

Same subject.  
R. S. 68, § 6.

SECT. 7. Upon the allowance of such claim, the creditor shall be entitled to a dividend thereon equal to what has been paid to the other creditors, so far as the same can be paid without disturbing the former dividend; and if his claim is not finally established, or if the dividend due to him does not exhaust the assets in the hands of the executor or administrator, the residue of the assets shall be divided among all creditors who have proved their debts.

Same subject.  
R. S. 68, § 7.

SECT. 8. Any person whose claim is disallowed in whole or in part, and any executor or administrator who is dissatisfied with the allowance of a claim, may appeal from the decision of the commissioners, and the claim shall thereupon be determined at common law in the county in which the probate or administration is granted. If the demand exceeds the sum of three thousand dollars in the county of Suffolk, or one thousand dollars in any other county, the appeal shall be directly to the supreme judicial court; otherwise to the superior court; and in either case it shall be tried and determined in like manner as if an action had been brought therefor by the supposed creditor against the executor or administrator.

Claims to be decided at common law, upon appeal.  
R. S. 68, § 8.  
1856, 303.  
1859, 196.  
6 Met. 271.  
8 Met. 132.

SECT. 9. Such appeal shall be claimed and notice thereof given at the probate office within thirty days after the return of the commissioners. If the appeal is by an executor or administrator, he shall give notice thereof to the creditor within said thirty days. The appeal shall be entered at the court appealed to, held next after the expiration of said thirty days.

Notice to be given on appeal, and when.  
R. S. 68, § 9.

SECT. 10. At the term of the court at which the appeal is entered, the supposed creditor shall file a statement in writing of his claim, setting forth briefly and distinctly all the material facts which would be necessary in a declaration for the same cause of action; and like proceedings shall be thereupon had in the pleadings, trial, and determination, of the cause, as in an action at law prosecuted in the usual manner; except that no execution shall be awarded against the executor or administrator for a debt found due to the claimant. The final judgment shall be conclusive, and the list of debts allowed by the commissioners shall be altered, if necessary to conform thereto.

Trial and judgment, but no execution thereon.  
R. S. 68, § 10.

Claim may be submitted to arbitration.  
R. S. 68, § 11.  
12 Cush. 220.

SECT. 11. After the claiming of such appeal, the parties may waive a trial at law and submit the claim to the determination of arbitrators to be agreed on between them, and appointed accordingly by a rule of the probate court; in which case the appeal shall not be entered at the court appealed to; and the award of such arbitrators, if accepted by the court, shall be conclusive in like manner as is provided in the preceding section with regard to a judgment in a court of common law.

Costs upon appeal.  
R. S. 68, § 12.

SECT. 12. The party prevailing upon such appeal shall be entitled to costs, which if recovered against the executor or administrator may be allowed to him in his administration account.

Remedy when appeal is omitted by accident, &c.  
R. S. 68, § 13.  
7 Met. 211.

SECT. 13. Any person whose claim is disallowed by the commissioners, and who, for other cause than his own neglect, omits to claim or prosecute his appeal as before provided, may, upon his petition therefor to the supreme judicial court holden in any county, be allowed to claim and prosecute an appeal in manner aforesaid, upon such terms as the court imposes, if it appears that justice requires a further examination of his claim; but no such petition shall be sustained unless presented within two years after the return of the commissioners, and within four years after the date of the administration bond.

Allowance of appeal not to disturb prior dividends.  
R. S. 68, § 14.

SECT. 14. The allowance of such appeal and the judgment thereon shall not disturb any distribution ordered before notice of the petition, or notice of the intention to present the same has been given in writing at the probate office or to the executor or administrator; but the debts thus proved and allowed shall be paid only out of such assets as remain in or come to the hands of the executor or administrator after payment of the sums due on such prior decree of distribution.

Commissioners, &c., may examine claimant on oath.  
R. S. 68, § 15.

SECT. 15. The commissioners may require the claimant to make true answers under oath to all questions relating to his claim; and if he refuses to take such oath or to answer fully all questions, they may disallow his claim. On appeal from their award, the court shall have like power to examine the claimant and disallow his claim.

may administer oaths.  
R. S. 68, § 16.

SECT. 16. Either of the commissioners may administer oaths to claimants and to witnesses.

Distribution among creditors, after commissioners' return.  
R. S. 68, § 17.  
1 Greenl. 251.  
4 Met. 317.

SECT. 17. After the expiration of thirty days from the return of the commissioners, the probate court shall make such decree for the distribution of the effects among the creditors, as the case according to the provisions of this chapter requires. If before making the decree the court has notice of an appeal from the commissioners, then claimed or pending, the decree may be suspended until the determination of the appeal, or a distribution may be ordered among the creditors whose debts are allowed, leaving in the hands of the executor or administrator a sum sufficient to pay the claimant whose demand is disputed a proportion equal to that of the other creditors.

Copartnership and individual claims to be separate.  
10 Met. 305.  
See Ch. 118,  
§ 109.

SECT. 18. If the deceased had been a member of a copartnership, and copartnership and individual claims are proved against his estate, the commissioners shall make separate lists of said claims. In making a dividend the court shall order the joint and separate estate to be distributed in the same manner, and among the same classes of creditors, as provided in the case of insolvent debtors under chapter one hundred and eighteen.

Further distribution.  
R. S. 68, § 10.  
3 Pick. 365.

SECT. 19. If the whole assets are not distributed upon the first decree, or if further assets come to the hands of the executor or administrator, the probate court shall make such further decrees for distribution as the case requires.

Actions by creditors after representation of insolvency.  
R. S. 68, § 19.  
1 Mass. 502.  
4 Mass. 624.

SECT. 20. No action shall be maintained against an executor or administrator after an estate is represented insolvent, unless for a demand entitled to a preference and which would not be affected by the insolvency of the estate, or unless the assets prove more than sufficient to pay all the debts allowed by the commissioners. If the estate is repre-



sented insolvent while an action is pending for any demand that is not entitled to such preference, the action may be discontinued without payment of costs; or, if the demand is disputed, the action may be tried and determined and judgment rendered thereon in the same manner and with the same effect as is provided in the case of an appeal from the award of commissioners; or the action may be continued without costs until it appears whether the estate is insolvent, and if not insolvent the plaintiff may prosecute the action as if no such representation had been made.

6 Pick. 330.  
9 Met. 180.

SECT. 21. Every creditor of an insolvent estate who does not present his claim for allowance in the manner herein prescribed, shall be barred from recovering the same unless further assets of the deceased come to the hands of the executor or administrator after the decree of distribution; in which case his claim may be proved, allowed, and paid, in the manner and with the limitations provided in this chapter for contingent debts.

Claims not proved to be barred, unless, &c.  
R. S. 68, § 20.  
15 Mass. 140,  
148, 264.  
1 Cush. 461.  
3 Cush. 465.

SECT. 22. If after the report of the commissioners, the assets prove sufficient to pay all debts allowed, the executor or administrator shall pay them in full; and if any other debt is afterwards recovered against him, he shall be liable therefor only to the extent of the assets then remaining.

If assets sufficient, debts paid in full. Surplus.  
R. S. 68, § 21.

SECT. 23. If there are two or more such creditors, the assets, if insufficient to pay their demands in full, shall be divided among them in proportion to their debts.

Surplus, how divided.  
R. S. 68, § 22.

SECT. 24. The executor or administrator, in an action brought against him on such demand, may prove the amount of assets in his hands, and thereupon judgment shall be rendered in the usual form; but execution shall not issue for more than the amount of such assets; and if there are two or more judgments, the court shall apportion the amount between them.

Administrator liable only for assets in his hands.  
R. S. 68, § 23.

SECT. 25. If it is not ascertained, at the end of eighteen months after the granting of letters testamentary or of administration, whether an estate represented insolvent is or is not so in fact, any creditor whose claim has not been presented before the commissioners may commence an action therefor against the executor or administrator, which may be continued without costs for the defendant until it appears whether the estate is insolvent. If it appears solvent, the plaintiff may prosecute the action as if no such representation had been made.

Creditor may sue after eighteen months, in case, &c.  
R. S. 68, § 24.  
1852, 294, § 1.

SECT. 26. If an executor or administrator neglects to render and settle his accounts in the probate court within six months after the return made by the commissioners or the final liquidation of the demands of the creditors, or within such further time as the court shall allow, and thereby delays a decree of distribution, such neglect shall be deemed unfaithful administration; and he may be forthwith removed, and shall be liable in a suit on his bond for all damages occasioned by his default.

Penalty on executor, &c., neglecting to settle accounts.  
R. S. 68, § 25.  
6 Greenl. 268.  
3 Met. 109.

SECT. 27. After twenty years from the decree of distribution of an insolvent estate, the probate court, upon application by any creditor whose claim was proved and allowed, and after notice of such application published for not less than two years on such days as the court shall direct, in one or more newspapers of the county, may order any unclaimed dividends, with the interest received thereon, after deducting all expenses and charges of administration since the decree of distribution, to be distributed anew among the creditors who have received their dividends. If there is a surplus after satisfying the claims of such creditors with interest, it shall be distributed to the heirs of the deceased.

Dividends unclaimed for twenty years, to be distributed among creditors, &c.  
1844, 115, § 1.

SECT. 28. If a creditor who has failed to receive his dividend as aforesaid has deceased, the probate court for the county in which ad-

Administration on estates of creditors enti-

filed to such dividends. 1844, 115, § 2.

ministration on his estate might have been granted, shall, at any time before passing a decree to distribute the unclaimed dividends, grant administration upon his estate, although more than twenty years may have elapsed since his death, and the administrator may receive and administer such dividend.

## CHAPTER 100.

### OF TRUSTS.

#### SECTION

1. Testamentary trustees to give bond.
2. except in certain cases.
3. further exception.
4. neglecting.
5. may resign.
6. executor of, not bound to accept.
7. Probate courts may appoint trustee when necessary.
8. Trustee may be removed and new appointed in certain cases.
9. appointment of new, when trustee resigns, &c.
10. Courts may order conveyances to new trustee.
11. Trustee appointed by court to give bond.
12. proceedings in suits on bonds of.
13. Appraisers, when appointed.

#### SECTION

14. Probate courts, &c., may authorize sales and investments.
15. Property held in trust by minors, &c., may be sold and conveyed in certain cases.
16. Power, &c., of S. J. C. as to sale, &c., of trust estates.
17. Probate courts may terminate trusts created by persons deceased for benefit of creditors.
18. Preceding section not to apply in certain cases.
19. Certain trusts to be declared in writing.
20. not to affect purchasers, without notice.
21. Recording declaration of trust, equivalent to notice.
22. Trusts under wills. Equity powers, &c.

Testamentary trustees to give bond. R. S. 69, § 1. 1850, 196. 22 Pick. 215. 9 Met. 535.

SECTION 1. Every trustee under a will, except such as are exempted as hereinafter provided, shall before entering on the duties of his trust give bond with sufficient surety or sureties to the judge of the probate court for the county in which the will is proved, and in such sum as the judge orders, with condition substantially as follows, (except as provided in chapter one hundred and one: ) —

First. To make a true inventory of all the real estate, goods, chattels, rights, and credits, belonging to him as trustee, and which shall come to his possession or knowledge, and to return the same into the probate court at such time as the court directs :

Second. To dispose of and manage all such estate and effects, and faithfully discharge his trust in relation thereto, according to law and the will of the testator :

Third. To render an account on oath of the property in his hands and of the management and disposition thereof, within one year and at any other times when required by the probate court : and

Fourth. At the expiration of his trust, to settle his accounts with the probate court, and pay over and deliver all the estate and effects remaining in his hands or due from him on such settlement, to the person or persons entitled thereto according to law and the will of the testator.

except in certain cases. R. S. 69, § 2.

SECT. 2. He shall be exempt from giving bond when the testator in the will appointing him has so ordered or requested, unless from a change in his situation or circumstances, or other sufficient cause, the court deems it proper to require a bond; and he shall also be exempted when all persons interested in the trust fund, being of full age and legal capacity, certify to the court their consent that such bond shall not be required.

further exception. R. S. 69, § 3.

SECT. 3. No trustee who has heretofore undertaken a trust, shall be required to give bond in any case in which it was not required by laws in force at the time of his undertaking the trust, unless, from a change in his situation or circumstances, or other sufficient cause, the probate court deems it proper to require a bond.

SECT. 4. Every trustee under a will who neglects to give bond as aforesaid within such time as the probate court allows, shall be considered as having declined the trust.

Trustee neglecting, &c.  
R. S. 69, § 4.

SECT. 5. Every such trustee may, upon his own request, be allowed to resign his trust, when it appears to the probate court proper to allow the same.

may resign.  
R. S. 69, § 5.

SECT. 6. No person succeeding to such trust as executor or administrator of a former trustee, shall be required to accept the same against his will.

executor of, not bound to accept.  
R. S. 69, § 6.

SECT. 7. If in a will the testator has omitted to appoint a trustee in this commonwealth, and if such appointment is necessary to carry into effect the provisions of the will, the probate court may, after notice to all persons interested, appoint a trustee who shall have the same powers, rights, and duties, and in whom the estate shall vest in like manner as if he had been originally appointed by the testator.

Probate courts may appoint trustee when necessary.  
1845, 158.  
1855, 307, § 1.

SECT. 8. The probate courts in the several counties, as well as the supreme judicial court, upon application of the parties, (other than the trustee,) beneficially interested in a trust estate created by will, deed, indenture, or other instrument, may, if it appears essential to the interests of the applicants, remove the trustee after he has had notice of the application, and an opportunity to be heard and show cause why the removal should not be made. The probate court, after notice to the trustee and all other persons interested, may also remove any such trustee who becomes insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor.

Trustee may be removed and new appointed in certain cases.  
R. S. 69, § 7.  
1843, 19.  
1852, 212.  
11 Met. 104.  
1 Gray, 239.

SECT. 9. When a trustee under a written instrument, declines, resigns, dies, or is removed, before the objects thereof are accomplished, if no adequate provision is made therein for supplying the vacancy, the probate court or supreme judicial court shall, after notice to all persons interested, appoint a new trustee, to act alone or jointly with the others as the case may be. Such new trustee, upon giving the bonds and security required, shall have and exercise the same powers, rights, and duties, whether as a sole or joint trustee, as if he had been originally appointed, and the trust estate shall vest in him in like manner as it had or would have vested in the trustee in whose place he is substituted.

appointment of new, when trustee resigns, &c.  
R. S. 69, §§ 7, 8.  
1843, 19.  
1852, 212.  
12 Pick. 445.  
4 Met. 330.  
12 Cush. 41.  
1 Gray, 230.  
5 Gray, 336.

SECT. 10. Upon the appointment of a trustee under the preceding section, the court may order such conveyances to be made by the former trustee or his representatives, or by the other remaining trustees, as may be proper or convenient to vest in such trustee, either alone or jointly with the others, the estate and effects to be held in trust.

Court may order conveyances to new trustee.  
R. S. 69, § 8.  
1843, 19.

SECT. 11. Every trustee appointed by the probate court under a will, shall, before entering on the duties of his trust, give bond as prescribed in section one; except that the court may dispense with the making and returning of an inventory by a new trustee when it appears unnecessary; in which case the condition of the bond shall be altered accordingly.

Trustee appointed by court, to give bond.  
R. S. 69, § 9.

SECT. 12. Bonds given by trustees under this chapter may be put in suit by order of the probate court for the use and benefit of any person interested in the trust estate; and the proceedings in such suit shall be conducted as provided in chapter one hundred and one with respect to bonds given by executors or administrators.

proceedings in suits on bonds of.  
R. S. 69, § 13.

SECT. 13. When an inventory is required to be returned by a trustee, the estate and effects shall be appraised by three suitable persons, to be appointed and sworn as prescribed by law with respect to the estate of a deceased person.

Appraisers, when appointed.  
R. S. 69, § 10.

SECT. 14. The probate courts, in the several counties, and the supreme judicial court, may, on application of the trustee under a will or of any person interested in the trust estate, after notice to all other persons interested therein, authorize or require such trustee to sell any

Probate courts, &c., may authorize sales and investments.  
R. S. 69, § 11.



personal estate or effects held by him in trust, and invest the proceeds and any other trust money in his hands, in real estate or in any other manner most for the interest of all concerned therein; and said courts may from time to time give such further directions as the case may require for managing, investing, and disposing of, the trust fund, subject to the provisions of the will.

Property held in trust by minors, &c., may be sold and conveyed in certain cases.  
1845, 64.  
1853, 371, § 1.  
1855, 194, § 2.  
1856, 38, § 2.

SECT. 15. When a person seised or possessed of an estate, real or personal, or any interest therein, upon a trust, express or implied, is under the age of twenty-one years, insane, *feme covert*, or out of the commonwealth, or not amenable to the process of any court therein having equity powers, and in the opinion of the supreme judicial court it is fit that a sale be made of such estate, or of any interest therein, or that a conveyance be made thereof, in order to carry into effect the objects of the trusts; the court may by decree direct such sale or conveyance, and appoint some suitable person in the place of the trustee to sell or convey the same in such manner as it may require. If a person so seised or possessed of an estate, or entitled thereto upon a trust, is within the jurisdiction of the court, he or his guardian may be ordered to make such conveyances as the court may deem proper.

Power, &c., of S. J. C. as to sale, &c., of trust estates.  
1846, 242.  
1853, 371, § 1.  
1855, 194, § 2.  
1856, 38, § 2.

SECT. 16. The supreme judicial court, when a sale and conveyance of any trust estate have become necessary or expedient, upon a suit in equity brought by a party interested therein, may decree such sale and conveyance, and the investment, reinvestment, and application, of the proceeds thereof, upon such security and in such manner as shall best effect the objects of the trust, and be most safe and beneficial for all interested therein.

Probate courts may terminate trusts created by persons deceased for benefit of creditors.  
1850, 241, § 1.

SECT. 17. When it appears upon petition or otherwise to the probate court of the county where letters testamentary or of administration have been granted on the estate of a person deceased, that such person in his lifetime made a conveyance of real estate in this state in trust for the benefit of his creditors, and the trustee certifies that all the debts secured thereby (due to other persons than himself) have been paid, or otherwise adjusted to the satisfaction of the creditors so far as known, and that he is desirous to settle his trust account and terminate the trust, the court shall appoint a time and place for hearing all persons interested therein; notice of which shall be given by advertisement in some newspaper printed in the county or otherwise as the court may order. Upon such hearing the court may terminate the trust so far as the creditors and persons claiming under them are concerned, and discharge such real estate therefrom; and may settle the trust account, and make any further order as to the disposition, distribution, or partition, of the remaining trust estate, not inconsistent with the provisions of the original instrument creating the trust.

Preceding section not to apply in certain cases.  
1850, 241, § 3.

SECT. 18. The preceding section shall not apply to any case where the instrument creating the trust does not bear date more than six years previous to the time appointed for the hearing. Nor shall it affect the operation of the insolvent laws of this state.

Certain trusts to be in writing.  
R. S. 59, § 30.  
4 Met. 537.  
10 Cush. 471.  
7 Gray, 369.

SECT. 19. No trust concerning lands, except such as may arise or result by implication of law, shall be created or declared, unless by an instrument in writing signed by the party creating or declaring the same, or his attorney.

not to affect purchasers without notice.  
R. S. 59, § 31.

SECT. 20. No such trust, whether implied by law or created or declared by the parties, shall defeat the title of a purchaser for a valuable consideration and without notice of the trust, nor prevent a creditor who has no notice of the trust from attaching the premises or taking them on execution, in like manner as if no such trust had existed.

Recording declaration of trust equivalent to notice.

SECT. 21. When a trust is created or declared by any such instrument in writing, the recording thereof in the registry of deeds for the county or district where the lands lie, shall be deemed equivalent to

actual notice to every person claiming under a conveyance, attachment, or execution, made or levied after such record. R. S. 59, § 32.

SECT. 22. The probate courts in the several counties, concurrently with the supreme judicial court, may hear and determine in equity all matters in relation to trusts created by will, not particularly mentioned in this chapter. Trusts under wills. Equity powers, &c. R. S. 69, § 12.

CHAPTER 101.

SPECIAL PROVISIONS RELATING TO ESTATES, TRUSTS, AND GUARDIANSHIPS.

<p>DEATH, REMOVAL, &amp;c., OF EXECUTOR, &amp;c.</p> <p>SECTION</p> <p>1. When executor, &amp;c., dies, administration <i>de bonis non</i> granted.</p> <p>2. Executor, &amp;c., removable for cause, &amp;c.</p> <p>3. acts of, before removal, valid.</p> <p>4. Marriage of executrix, &amp;c., extinguishes authority.</p> <p>5. Executor, &amp;c., may resign, &amp;c.</p> <p>ACCOUNTS, DISCHARGES, COMPROMISES, RELEASES.</p> <p>6. Accounts of joint executors, &amp;c.</p> <p>7. Final discharge of executor, &amp;c., and evidence thereof perpetuated.</p> <p>8. Money due, if not claimed, to be deposited, &amp;c.</p> <p>9. How paid afterwards.</p> <p>10. Executors, &amp;c., may be authorized to compromise claims, &amp;c.</p> <p>11. to release certain interests in real or personal estates, &amp;c.</p> <p>BONDS.</p> <p>12. Sureties in bonds to be inhabitants of state, &amp;c. Bonds to be approved.</p> <p>13. Executors, &amp;c., when exempt from giving bond, &amp;c.</p> <p>14. bonds of, may be joint or several.</p> <p>15. When sureties or penalty insufficient, new bond required.</p> <p>16. Surety may be discharged upon petition, &amp;c.</p> <p>17. Principal to give new bond, &amp;c.</p> <p>18. Prior sureties liable until, &amp;c.</p>	<p>SECTION</p> <p>19. When bond may be put in suit by creditor.</p> <p>20. when estate is insolvent.</p> <p>21. when for benefit of next of kin.</p> <p>22. or of any other person interested.</p> <p>23. How bond sued when judge is obligor.</p> <p>24. Register may authorize suit.</p> <p>25. Writ how indorsed and who liable for costs of suit.</p> <p>26. Process to bring in principal obligor.</p> <p>27. Same subject.</p> <p>28. Proceedings in suit on bond. Judgment and execution.</p> <p>29. Moneys received thereon, how disposed of.</p> <p>30. <i>Scire facias</i> to recover further damages.</p> <p>LIABILITY OF HEIRS, &amp;c., FOR DEBTS OF DECEASED.</p> <p>31. Estate of deceased in hands of heirs, &amp;c., liable for certain debts.</p> <p>32. Mode of proceeding in such case.</p> <p>33. Estate of heir, &amp;c., liable after death.</p> <p>34. When two or more liable, creditor may proceed in equity.</p> <p>35. Case of insolvency, &amp;c., of heir or devisee.</p> <p>36. New defendants may be summoned in, and amendments allowed.</p> <p>37. Heirs, &amp;c., liable to contribute between themselves.</p> <p>ESTATES OF PERSONS NOT INHABITANTS OF THIS STATE.</p> <p>38. Administration of estate of foreigner, &amp;c.</p> <p>39. Settlement of such estate.</p> <p>40, 41, 42. if estate is insolvent.</p>
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DEATH, REMOVAL, &c., OF EXECUTOR, &c.

SECTION 1. When a sole or surviving executor or administrator dies without having fully administered an estate, if there is personal estate of the deceased not administered to the amount of twenty dollars, or debts to that amount remaining due from the estate, or any thing remaining to be performed in execution of the will, the probate court shall grant letters of administration, with the will annexed or otherwise as the case may require, to some suitable person to administer the goods and estate of the deceased not already administered. When executor, &c., dies, administration *de bonis non* granted. R. S. 63, § 10. R. S. 64, § 14. 2 Pick. 361. 3 Met. 187. See Ch. 95, § 16.

SECT. 2. When an executor or administrator residing out of this state, having been duly cited by the probate court, neglects to render his accounts and settle the estate; or when an executor or administrator becomes insane or otherwise incapable of discharging the trust, or evidently unsuitable therefor; the probate court may remove him; and thereupon the other executor or administrator, if there is any, may

Executor, &c., removable for cause, &c. 1 Allen 330  
 R. S. 63, § 7.  
 R. S. 64, § 15.  
 11 Met. 104.

proceed in discharging the trust as if the one removed were dead. If there is no other executor or administrator, the court may commit administration of the estate not already administered, to such person as shall be deemed fit, in like manner as if the executor or administrator removed were dead.

Executor's acts before removal, valid.  
R. S. 70, § 20.

SECT. 3. When an executor or administrator is removed, or letters of administration are revoked, all previous sales, whether of real or personal estate, made lawfully by the executor or administrator, and with good faith on the part of the purchaser, and all other lawful acts done by such executor or administrator, shall remain valid and effectual.

Marriage of executrix, &c.  
R. S. 63, § 9.  
R. S. 64, § 17.  
14 Mass. 295.  
17 Mass. 341.  
6 Met. 194.

SECT. 4. When an unmarried woman who is executrix or administratrix, either alone or with another person, marries, her husband shall not be executor or administrator in her right, but the marriage shall operate as an extinguishment of her authority; and the other executor or administrator, if there is any, may proceed in discharging the trust as if she were dead. If there is no other executor or administrator, administration may be granted of the estate not already administered.

Executor, &c., may resign, &c.  
1843, 97.  
3 Met. 187.  
11 Met. 104.

SECT. 5. An executor or administrator may upon his request be allowed to resign his trust, when it appears to the probate court to be proper; and upon such resignation the court shall grant letters of administration, with the will annexed or otherwise as the case may require, to some suitable person, to administer the goods and estate not already administered.

#### ACCOUNTS, DISCHARGES, COMPROMISES, RELEASES.

Accounts of joint executors, &c.  
R. S. 70, § 31.  
R. S. 79, § 33.

SECT. 6. Probate courts may allow the account of two or more joint executors, administrators, guardians, or trustees, upon the oath of one of them.

Final discharge of executor, &c.; and evidence thereof perpetuated.  
R. S. 70, § 32.  
See Ch. 98.

SECT. 7. When an executor, administrator, guardian, or trustee, has paid or delivered over to the persons entitled thereto, the money or other property in his hands, as required by a decree of a probate court, he may perpetuate the evidence thereof by presenting to said court, within one year after the decree is made, an account of such payments or of the delivery over of such property; which being proved to the satisfaction of the court, and verified by the oath of the party, shall be allowed as his final discharge and ordered to be recorded. Such discharge shall forever exonerate the party and his sureties from all liability under such decree, unless his account is impeached for fraud or manifest error.

Money due, if not claimed, to be deposited, &c.  
R. S. 70, § 33.

SECT. 8. If any sum of money directed by a decree of the probate court to be paid over, remains for six months unclaimed, the executor, administrator, guardian, or trustee, who was ordered to pay over the same, may deposit it in some savings bank or other like institution, or invest it in bank stock or other stocks, as the probate court directs, to accumulate for the benefit of the person entitled thereto. Such deposit or investment shall be made in the name of the judge of the probate court for the time being, and shall be subject to the order of the judge and his successors in office as hereinafter provided. The person making such deposit or investment shall file in the probate court a memorandum thereof, with the original certificates or other evidence of title thereto, which shall be allowed as a sufficient voucher for such payment.

How paid afterwards.  
R. S. 70, § 34.

SECT. 9. When the person entitled to the money deposited satisfies the judge of his right to receive the same, the judge shall cause it to be paid over and transferred to him.

Executors, &c., may compromise claims, &c.  
1855, 432.

SECT. 10. Probate courts may authorize executors, administrators, guardians, and trustees, to adjust by arbitration or compromise, any demands in favor of or against the estates by them represented.

to release cer-

SECT. 11. They may authorize executors, administrators, guardians,



and trustees to release and discharge, upon such terms and conditions as appear proper, any vested, contingent, or possible right or interest belonging to the persons or estates by them represented, in or to any real or personal estate, whenever it appears to be for the benefit of the persons or estates in trust.

tain interests in real or personal estates, &c. 1855, 307, § 2.

BONDS.

SECT. 12. The sureties in every bond given to the judge of a probate court shall be inhabitants of this state, and such as the judge approves; and no bond required to be given to the judge of the probate court, or filed in the probate office, shall be sufficient, unless examined and approved by the judge, and his approval thereof under his official signature is written thereon.

Sureties in bonds to be inhabitants of state, &c. Bonds to be approved. R. S. 70, § 2. R. S. 83, § 32.

SECT. 13. Executors, administrators, guardians, trustees, and other persons, may be exempted by the probate court from giving bond for the proceeds of sales of real estate, except when authorized to make such sales.

Executors, &c., when exempt from giving bond, &c. 1850, 190.

SECT. 14. When two or more persons are appointed executors, administrators, or testamentary trustees, the probate court may take a separate bond with sureties from each, or a joint bond with sureties from all.

bonds of, may be joint or several. R. S. 70, § 2.

SECT. 15. When the sureties or the penal sum in any bond given to the judge of a probate court are insufficient, the supreme judicial court or the probate court, on the petition of any person interested and after notice to the principal in the bond, may require a new bond, with such surety or sureties, and in such penal sum, as the court shall direct.

When sureties or penalty insufficient, new bond required. R. S. 70, § 27. 1851, 31. 3 Cush. 465.

SECT. 16. Any surety in a bond given to the judge of a probate court may, upon his petition to the supreme judicial court or the probate court, be discharged from all further responsibility, if the court, after due notice to all persons interested, deems it reasonable and proper; and the principal shall thereupon give a new bond, with such surety or sureties as the court shall order.

Surety may be discharged upon petition, &c. R. S. 70, § 28. 1843, 56, § 1.

SECT. 17. If, in the cases specified in the two preceding sections, the principal does not give such new bond within such time as is ordered by the court, he shall be removed from his trust, and some other person appointed in his stead.

Principal to give new bond. R. S. 70, § 29. 1843, 56, § 2. 1851, 31.

SECT. 18. When a new bond is required as above provided, the sureties in the prior bond shall be liable for all breaches of the condition committed before the new bond is approved by the judge.

Prior sureties liable until, &c. R. S. 70, § 30. 1843, 56, § 3.

SECT. 19. The bond given by executors or administrators for the discharge of their trust may be put in suit by any creditor of the deceased for his own benefit, when he has recovered judgment for his debt against the executors or administrators, and they have neglected upon demand made by the creditor to pay the same, or show sufficient goods or estate of the deceased to be taken on execution for that purpose.

When bond may be put in suit by creditor. R. S. 70, § 3. 20 Pick. 53. 21 Pick. 58. 1 Met. 333. 9 Met. 525. 1 Gray, 305.

SECT. 20. If the estate is insolvent, a suit on the bond may be brought by a creditor, when the amount due to him has been ascertained by the decree of distribution, if the executor or administrator neglects to pay the same when demanded.

when estate is insolvent. R. S. 70, § 4.

SECT. 21. A suit may be so brought by a person who is next of kin, to recover his share of the personal estate, after a decree of the probate court ascertaining the amount due to him, if the executor or administrator neglects to pay the same when demanded.

when for benefit of next of kin. R. S. 70, § 5.

SECT. 22. When it appears to the probate court, on the representation of any person interested in an estate, that the executor or administrator has failed to perform his duty in any particular not before specified, the court may authorize any creditor, next of kin, legatee, or

or of any other person interested. R. S. 70, § 6. 16 Mass. 524. 9 Met. 525.

7 Cush. 470.  
2 Gray, 154, 176.

How bond sued,  
when judge is  
obligor.  
1838, 184, § 1.

Register may  
authorize suit.  
1838, 184, § 2.

Writ, how in-  
dorsed, and who  
liable for costs  
of suit.  
R. S. 70, § 7.

Process to  
bring in princi-  
pal obligor.  
R. S. 70, § 8.

Same subject.  
R. S. 70, § 9.

Proceedings in  
suit on bond.  
Judgment and  
execution.  
R. S. 70, § 10.  
8 Cush. 291.

for the benefit  
of creditor.

of next of  
kin.

for breach in  
not accounting.

for other  
breach.

for use of two  
or more per-  
sons.

for costs as  
well as dam-  
ages;

other person, aggrieved by such maladministration, to bring an action on the bond.

SECT. 23. When the judge of a probate court is obligor as principal or surety in a bond given to a former judge of the court, any suit authorized by this chapter may be brought upon such bond in the name of the judge mentioned therein, his executors or administrators.

SECT. 24. The register of the probate court for the county in which such bond was given may authorize a suit thereon in like manner and upon the same conditions as the court may in other cases.

SECT. 25. In all the preceding cases the writ shall be indorsed by the persons for whose benefit or at whose request the action is brought, or by their attorney, and the indorsers shall be liable for the costs of suit, and execution therefor shall be issued against them, and not against the judge. When the action is brought for the benefit of any persons as creditors or next of kin as before provided, there shall be a further indorsement on the writ, specifying that it is brought for the use or benefit of such creditors or next of kin.

SECT. 26. If the principal in such bond is resident within this state at the commencement of the action, and is not made a defendant therein, or is not served with process, the court may, at the request of any of the sureties, continue or postpone the action so long as may be necessary to summon or bring in the principal as provided in the following section.

SECT. 27. The sureties may thereupon take out a writ, in such form as the court prescribes, to arrest the principal or to attach his goods or estate, and summon him to appear and answer as defendant in the original action. If, after being served with such process fourteen days at least before the time appointed for him to appear and answer to the suit, he neglects so to do, and judgment is for the plaintiff, it shall be rendered against the principal obligor with the other defendants, in the same manner as if he had been originally a party to the suit. Any attachment or bail on such process shall be liable to respond to the judgment in like manner as if made or taken in the original suit.

SECT. 28. Every suit on an administration bond shall be brought in the supreme judicial court held for the county in which the bond is taken; and when it appears that the condition of the bond has been broken, the court upon a hearing in equity shall award execution in the name of the plaintiff as follows:—

First. If the action is brought for the benefit of a creditor, execution shall be awarded for the use of the creditor, for the amount due to him upon the judgment that he has recovered, or upon the order of distribution in his favor:

Second. If for the benefit of a person who is next of kin, it shall be awarded for the use of such person, for the amount due to him according to the decree of the probate court:

Third. If for a breach of the condition in not accounting for the estate as required in chapter ninety-eight, it shall be awarded without expressing that it is for the use of any person:

Fourth. If for any other breach of the condition of the bond, it shall be awarded without expressing that it is for the use of any particular person, for the full value of all the estate of the deceased that has come to the hands of the executor or administrator, and for which he shall not satisfactorily account, and for all damages occasioned by his neglect or maladministration:

Fifth. If there are two or more persons for whose use execution is to be awarded as provided in this section, a separate execution shall be issued for the sum due to each of them:

Sixth. The execution shall include the costs of suit, as well as debt or damages; and if there is more than one execution, the costs shall be equally divided between them:



Seventh. The person for whose use the execution is expressed to be awarded, shall be considered as the judgment creditor, and may cause it to be levied in his name and for his benefit, as if the action had been brought and the judgment recovered in his name.

Execution, how served.

SECT. 29. All money received on such execution (unless it is awarded for the use of a creditor or person next of kin as provided in the first and second subdivisions of the preceding section) shall be paid to the co-executor or co-administrator, if there is any, or to whomsoever is then the rightful executor or administrator, and shall be assets in his hands, to be administered according to law.

Moneys received thereon, how disposed of.  
R. S. 70, § 11.  
6 Met. 198.

SECT. 30. If the executor or administrator commits a new breach of the condition of the bond, or if a creditor, next of kin, legatee, or other person interested in the estate, has a claim for further damages on account of any neglect or maladministration of the executor or administrator, a writ of *scire facias* on the original judgment may be sued out in like manner as is provided for the commencement of the original suit; and the court shall thereupon proceed to award a new execution in like manner as might have been done in the original suit.

*Scire facias* to recover further damages.  
R. S. 70, § 12.

LIABILITY OF HEIRS, &c., FOR DEBTS OF DECEASED.

SECT. 31. After the settlement of an estate by an executor or administrator, and after the expiration of the time limited for the commencement of actions against him by the creditors of the deceased, the heirs, next of kin, devisees, and legatees, of the deceased, shall be liable, in the manner provided in the following sections, for all debts which could not have been sued for against the executor or administrator, and for which provision is not made in chapter ninety-seven.

Estate of deceased in hands of heirs, &c., liable for certain debts.  
R. S. 70, § 13.  
13 Mass. 384.

SECT. 32. A creditor whose right of action accrues after the expiration of said time of limitation, and whose claim has not been presented to the probate court, or if presented has not been allowed as provided in chapter ninety-seven, may by action commenced within one year next after the time when such right of action accrues, recover the same against the heirs and next of kin of the deceased, and the devisees and legatees under his will; each one of whom shall be liable to the creditor to an amount not exceeding the value of real or personal estate that he has received from the deceased. But if by the will of the deceased, any part of his estate, or any one or more of the devisees or legatees, is made exclusively liable for the debt in exoneration of the residue of the estate, or the other devisees or legatees, such provisions of the will shall be complied with; and the persons and estate so exempted shall be liable for only so much of the debt as cannot be recovered from those who are first chargeable therewith.

Mode of proceeding in such case.  
R. S. 70, § 14.  
1 Met. 387.

SECT. 33. If any heir, next of kin, devisee, or legatee, dies without having paid his just proportion of such debt, his executors and administrators shall be liable therefor as for his proper debt, to the extent to which he would have been liable if living.

Estate of heir, &c., liable after death.  
R. S. 70, § 15.

SECT. 34. If in the case specified in the two preceding sections more than one person is liable for the debt, the creditor may recover the same by a suit in equity in the supreme judicial court against all persons so liable, or as many of them as are within reach of process. The court shall determine, by the verdict of a jury if either party requires it, what sum is due to the plaintiff, and shall decide according to the course of proceedings in equity, how much each one of the defendants is liable to pay towards the debt, and may award execution and other proper process therefor.

When two or more liable, creditor may proceed in equity.  
R. S. 70, § 16.  
1855, 194, § 2.  
1856, 38, § 2.  
10 Mass. 450.  
22 Pick. 503.  
1 Met. 387.  
12 Met. 405.

SECT. 35. If any heir, devisee, or other person, who was originally liable for the debt, is insolvent, or unable to pay his proportion thereof, or beyond reach of process, the others shall be liable to the creditor

Case of insolvency, &c., of heir or devisee.  
R. S. 70, § 17.



for the whole amount of his debt: but no one shall be compelled to pay more than the amount received by him from the estate of the deceased.

New defendants may be summoned in, and amendments allowed.  
R. S. 70, § 18.

SECT. 36. Such suit shall not be dismissed or barred for want of including as defendants all the persons who might have been so included; but in any stage of the cause the court may, upon such terms as shall be deemed reasonable, award proper process to bring in other parties, and allow such amendments as may be necessary to charge them as defendants.

Heirs, &c., liable to contribute between themselves.  
R. S. 70, § 19.

SECT. 37. If in consequence of insolvency, absence, or any other cause, any person liable for such debt fails to pay his just proportion thereof to the creditor, he shall be liable to indemnify all who by reason of such failure on his part pay more than their just proportion of the debt. Such indemnity may be recovered at their election, by all of them jointly or in separate actions by any one or more of them for his or their parts respectively.

#### ESTATES OF PERSONS NOT INHABITANTS OF THIS STATE.

Administration of estate of foreigner, &c.  
R. S. 70, § 21.  
1838, 2.  
1847, 92.  
9 Mass. 355.  
11 Mass. 264  
3 Met. 109.

SECT. 38. When administration is taken in this state on the estate of any person who was an inhabitant of any other state or country, his estate found here, after payment of his debts, shall be disposed of according to his last will, if he left any duly executed according to law; otherwise his real estate shall descend according to the laws of this state, and his personal estate shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant.

Settlement of such estate.  
R. S. 70, § 22.

SECT. 39. Upon the settlement of such estate, and after the payment of all debts for which the same is liable in this state, the residue of the personal estate may be distributed and disposed of in manner aforesaid by the probate court; or in the discretion of the court it may be transmitted to the executor or administrator, if there is any, in the state or country where the deceased had his domicil, to be disposed of according to the laws thereof.

If estate is insolvent.  
R. S. 70, § 23.  
3 Pick. 128.  
6 Pick. 481.  
8 Pick. 475.

SECT. 40. If such person died insolvent, his estate found in this state shall as far as practicable be so disposed of that all his creditors here and elsewhere may receive each an equal share in proportion to their respective debts.

Same subject.  
R. S. 70, §§ 24, 25.

SECT. 41. To this end, his estate shall not be transmitted to the foreign executor or administrator until all his creditors who are citizens of this state have received the just proportion that would be due to them if the whole estate of the deceased wherever found, that is applicable to the payment of common creditors, were divided among all the creditors in proportion to their respective debts, without preferring any one species of debt to another; in which case no creditor who is not a citizen of this state shall be paid out of the assets found here, until all those who are citizens have received their just proportion as provided in the preceding section.

Same subject.  
R. S. 70, § 26.

SECT. 42. If there is any residue after such payment to the citizens of this state, it may be paid to any other creditors who have duly proved their debts here, in proportion to the amount due to each of them, but no one shall receive more than would be due to him if the whole estate were divided ratably among all the creditors as before provided. The balance may be transmitted to the foreign executor or administrator; or if there is none, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all creditors, both citizens and others, who have proved their debts in this state.

## TITLE V.

### OF TITLE TO REAL PROPERTY BY SPECIAL PROVISIONS OF LAW.

CHAPTER 102.—Of the Sale of Lands by Executors, Administrators, and Guardians.

CHAPTER 103.—Of taking Land to satisfy Executions for Debt.

CHAPTER 104.—Of Homesteads.

## CHAPTER 102.

### OF SALES OF LANDS BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

**SALES BY EXECUTORS AND ADMINISTRATORS.**

- SECTION**
1. Real estate may be sold to pay debts, &c.
  2. What courts may license sale.
  3. Petition for license, &c.
  4. Whole sold when partial sale would injure residue.
  5. Probate court to certify facts.
  6. Bond to be given in such case.
  7. Case of devise for payment of debts, &c.
  8. Notice of petition to be given to all interested.
  9. Persons interested may give bond and prevent sale.
  10. Upon obtaining license, executor or administrator may convey.
  11. What lands may be sold.
  12. Lands fraudulently conveyed may be first recovered by executor, &c.
  13. Action therefor, how brought.
  14. Oath to be taken by executor, &c., before sale.
  15. Notice of sale, how given.
  16. Evidence thereof, how perpetuated.
  17. Sale by public auction, &c.
  18. Notice of adjournment, how given.
  19. Real estate, when to be sold for payment of legacies.

**BY FOREIGN EXECUTORS, &C.**

20. Foreign executor, &c., may be licensed to sell real estate.
21. to give bond, unless already bound.
22. to give further bond to account for surplus, &c.
23. Oath, notice of sale, and perpetuating evidence of notice.

**BY GUARDIANS FOR PAYMENT OF DEBTS.**

24. Real estate of ward may be sold by guardian for payment of debts.
25. Whole sold when partial sale would injure residue.

**FOR MAINTENANCE AND INVESTMENT.**

26. Real estate of wards may be sold for maintenance, &c.
27. License to be granted on petition of guardian, and to specify purpose of sale.

**SECTION**

28. Guardian to give bond.
29. When sold for maintenance, proceeds, how disposed of.
30. How when sold for investment.
31. Minor's real estate may be sold for investment on petition of, or by, any friend, in certain cases.
32. How proceeds of sale disposed of.

**BY FOREIGN GUARDIANS.**

33. Foreign guardian may be licensed to sell estate of ward.
34. Upon license to sell for payment of debts, guardian to give bond, unless already bound.
35. To give further bond when he sells more than necessary.
36. Upon license to sell for maintenance, &c., guardian to give additional bond.

**PROVISIONS COMMON TO SALES BY GUARDIANS.**

37. What courts may license sales by guardians.
38. When overseers of poor to assent.
39. Notice to be given to persons interested.
40. Who entitled to notice.
41. Oath by guardian, notice of sale, and perpetuating evidence.

**PROVISIONS COMMON TO SALES BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.**

42. Proceedings by foreign executors, &c., where had.
43. License, how long in force.
44. Surplus of sales considered real estate.
45. When costs may be awarded.
46. Actions for lands sold by executor, administrator, or guardian, limited to five years, unless, &c.
47. Requisites of valid sale, as against heir or ward.
48. as against claimants adverse to heir or ward.
49. Persons making sales may be examined upon oath as to such sales. Liability for misconduct, &c.

## SALES BY EXECUTORS AND ADMINISTRATORS.

Real estate may be sold to pay debts, &c.

R. S. 71, § 1.  
2 Pick. 567.  
15 Pick. 423.  
2 Cush. 184.

What courts may license.

R. S. 71, § 2.  
1859, 196.  
5 Pick. 140.

Petition for license, &c.

R. S. 71, § 3.  
6 Mass. 149.  
15 Pick. 23.  
7 Met. 451.  
8 Met. 54.  
5 Cush. 524.

Whole sold, when partial sale would injure residue.

R. S. 71, § 4.  
13 Mass. 162.  
15 Mass. 55.  
6 Gray, 535.

Probate court to certify facts.

R. S. 71, § 5.  
1859, 196.

Bond to be given.

R. S. 71, § 6.  
3 Greenl. 282.  
38 Maine, 48.  
8 Pick. 526.  
11 Met. 529.  
11 Cush. 18.

Case of devise for payment of debts, &c.

R. S. 71, § 7.  
6 Mass. 149.

Notice of petition to be given to all interested.

R. S. 71, § 8.  
8 Met. 51, 355.  
5 Cush. 524.

Persons interested may give bond and prevent sale.

R. S. 71, § 9.  
2 Gray, 160.

SECTION 1. When the personal estate of a deceased person is insufficient to pay his debts with the charges of administration, his executor or administrator may sell his real estate for that purpose, upon obtaining a license therefor and proceeding as herein provided.

SECT. 2. The license may be granted by the supreme judicial court or superior court in any county, or by the probate court in which the letters testamentary or of administration issued.

SECT. 3. To obtain such license, the executor or administrator shall present to the court a petition, setting forth the amount of debts due from the deceased as nearly as they can be ascertained, the amount of charges of administration, and the value of the personal estate in his hands. If it is necessary to sell only part of the real estate, he may also set forth the value, description, and condition, of the estate, or of such part thereof as he proposes to sell; and the court may direct what specific part shall be sold.

SECT. 4. If it is represented in the petition and appears to the court, that it is necessary to sell some part of the real estate, and that by such partial sale the residue of the estate or of some specific part or piece thereof would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof as it deems necessary and most for the interest of all concerned.

SECT. 5. The petition, when made to the supreme judicial court or superior court in any county, shall be accompanied by a certificate from the probate court of the county where the executor or administrator was appointed, setting forth the amount of debts due from the deceased so far as they are ascertained, and the value of his real and personal estate; and when the petitioner prays for the sale of more than is necessary for the payment of debts, the probate court shall further certify whether it is necessary that the whole or a part of the estate should be sold, and if part only, what part.

SECT. 6. When the executor or administrator is licensed to sell more than is necessary for the payment of debts, he shall before the sale give bond with sufficient surety or sureties to the judge of the probate court for the county in which he was appointed, conditioned to account for and dispose of according to law all proceeds of the sale remaining after payment of the debts and charges.

SECT. 7. If there is in the last will of the deceased any disposition of his estate for the payment of debts, or any provision which may require or induce the court to marshal the assets in any manner different from that which the law would otherwise prescribe, such devises or parts of the will shall be set forth in the petition, and a copy of the will shall be exhibited to the court; and the assets shall be marshalled accordingly, so far as can be done consistently with the rights of the creditors.

SECT. 8. License shall not be granted until notice of the petition and of the time and place appointed for hearing the same has been served personally on all persons interested in the estate, at least fourteen days before the time appointed for the hearing, or by publication three weeks successively in such newspaper as the court shall order, that they may appear and show cause why the same should not be granted; but if all persons interested signify in writing their assent to the sale, notice may be dispensed with.

SECT. 9. License shall not be granted if any of the persons interested in the estate give bond to the executor or administrator, in a sum and with sureties approved by the court, with condition to pay all debts mentioned in the petition that shall eventually be found due from the estate, with the charges of administering the same, so far as the goods,



chattels, rights, and credits, of the deceased shall be insufficient therefor.

SECT. 10. If the facts set forth in the petition are proved, and no sufficient cause is shown to the contrary, the court shall grant the license; and the executor or administrator shall be thereupon authorized to execute conveyances which shall be effectual to pass to the purchaser all the estate, right, title, and interest, in the granted premises, which the deceased had therein at the time of his death, or which was then chargeable with the payment of his debts.

SECT. 11. The real estate so liable to be sold shall include all lands of the deceased, and all rights of entry and of action, and all other rights and interests in lands, which by law would descend to his heirs, or which would have been liable to attachment or execution by a creditor of the deceased in his lifetime. No claim to such lands by entry or action shall be made more than five years after the decease of the grantor.

SECT. 12. An executor or administrator, licensed to sell lands fraudulently conveyed by the deceased, or fraudulently held by another person for him, or to which he had a right of entry or of action, or a right to a conveyance, may first obtain possession thereof by entry or by action, and may sell the same at any time within one year after so obtaining possession.

SECT. 13. He may make a formal entry upon the premises and bring the action on his own seisin acquired by such entry, demanding the land as executor or administrator.

SECT. 14. An executor or administrator licensed to sell real estate shall, before fixing on the time and place of sale, take and subscribe an oath in substance as follows: that in disposing of the estate which he is licensed to sell he will use his best judgment in fixing on the time and place of sale, and will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested therein.

SECT. 15. He shall give public notice of the time and place of such sale, by causing notifications thereof to be posted, thirty days at least before the sale, in some public place in the city or town where the deceased last dwelt, and in two adjoining cities or towns, if there are so many in the county, and also in the city or town where the lands lie; or by publishing the same three weeks successively in a newspaper; as the court granting the license may order.

SECT. 16. An affidavit of the executor or administrator, or person employed by him to give such notice, being made and filed and recorded with a copy of the notice in the probate office within one year after the sale, or at any time afterwards by permission of the court upon petition of the executor or administrator and satisfactory evidence furnished that the notice was given as ordered, shall be admitted as evidence of the time, place, and manner, of giving the notice. And it shall be the duty of the several registers to record such affidavits, filed as provided in this section.

SECT. 17. The sale shall be made by public auction; and if at the time appointed therefor the executor or administrator deems it for the interest of all persons concerned therein that the sale be postponed, he may adjourn it for any time not exceeding fourteen days.

SECT. 18. Notice of such adjournment shall be given by a public declaration at the time and place first appointed for the sale; and if the adjournment is for more than one day, further notice thereof shall be given by posting or publishing, as time and circumstances may admit.

SECT. 19. When a testator has given a legacy, which with his debts and the charges of administration, his goods, chattels, rights, and credits, are insufficient to pay, the executor, or administrator with the will

Upon obtaining license, executor or administrator may convey. R. S. 71, § 10. 8 Greenl. 220.

What real estate may be sold. R. S. 71, § 11. 1844, 107, § 1. 1855, 453, § 1. 11 Mass. 379. 14 Mass. 137. 5 Cush. 524. See Ch. 103, § 1.

Lands fraudulently conveyed may be first recovered by executor, &c. R. S. 71, § 12. 1844, 107, § 1. 1855, 453, § 1. 8 Met. 51.

Action therefor, how brought. R. S. 71, § 13.

Oath to be taken by executor, &c., before sale. R. S. 71, § 14. 4 Cush. 54.

Notice of sale, how given. R. S. 71, § 15.

Evidence thereof, how perpetuated. R. S. 71, § 16. 1853, 393.

Sale by public auction, &c. R. S. 71, § 17. 5 Greenl. 240. 4 Cush. 54.

Notice of adjournment, how given. R. S. 71, § 18.

Real estate, when to be sold for payment of legacies.

R. S. 71, § 20.  
14 Mass. 421.  
7 Cush. 161.

annexed, may be licensed to sell real estate for that purpose, in the same manner and upon the same terms and conditions as are prescribed in the case of a sale for the payment of debts.

BY FOREIGN EXECUTORS, &C.

Foreign executor, &c., may be licensed to sell real estate.  
R. S. 71, § 21.  
1859, 196.  
3 Mass. 514.

SECT. 20. An executor or administrator appointed in another state or in a foreign country on the estate of a person dying out of this state, upon whose estate there is no executor or administrator appointed in this state, may file an authenticated copy of his appointment in the probate court for any county in which there is real estate of the deceased; after which he may be licensed by the same probate court, or the supreme judicial court or superior court in any county, to sell real estate for the payment of debts, legacies, and charges of administration, in the same manner and upon the same terms and conditions as are prescribed in the case of an executor or administrator appointed in this state, except as hereinafter provided.

to give bond, unless already bound.  
R. S. 71, § 22.

SECT. 21. When it appears to the court granting the license, that such foreign executor or administrator is bound with sufficient surety or sureties, in the state or country in which he was appointed, to account for the proceeds of such sale, and a copy of such bond duly authenticated is filed in the probate court where the copy of his appointment is filed, no further bond for that purpose shall be required of him here; otherwise, before making such sale he shall give bond, with sufficient surety or sureties to the judge of the probate court for the same county, with condition to account for and dispose of said proceeds in the payment of debts, legacies, and charges of administration, according to the law of the state or country in which he was appointed.

to give further bond to account for surplus, &c.  
R. S. 71, § 23.

SECT. 22. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies, and charges of administration, he shall before making the sale give bond with sufficient surety or sureties to the judge of the probate court conditioned to account before the same court for all proceeds of the sale remaining after payment of said debts, legacies, and charges, and to dispose of the same according to law.

Oath, notice of sale, and perpetuating evidence of notice.  
R. S. 71, § 24.

SECT. 23. Every foreign executor or administrator licensed to sell real estate shall, before fixing on the time and place of sale, be sworn and give notice of the time and place of sale, and otherwise proceed as is prescribed for an administrator appointed here when making such sale; and the evidence of such notice may be perpetuated in the same manner.

BY GUARDIANS FOR THE PAYMENT OF DEBTS.

Real estate of ward may be sold by guardian, for payment of debts.  
R. S. 71, § 26.  
5 Pick. 482.

SECT. 24. When the goods, chattels, rights, and credits, in the hands of a guardian are insufficient to pay all the debts of the ward, with the charges of managing the estate, the guardian may be licensed to sell his real estate for that purpose, in like manner and upon like terms and conditions as are prescribed in this chapter in the case of a sale by executors or administrators, except as hereinafter provided.

Whole sold, when partial sale would injure residue.  
R. S. 71, § 27.

SECT. 25. If it is represented in the petition and appears necessary to sell some part of the real estate of the ward, and that by such partial sale the residue of the estate, or of some specific piece or part thereof, would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof as it deems necessary and most for the interest of all concerned; the guardian giving bond to account for the surplus of the proceeds of the sale in like manner as is prescribed in this chapter in case of a like sale by an executor or administrator.



FOR MAINTENANCE AND INVESTMENT.

SECT. 26. When the income of the estate, of a ward is insufficient to maintain him and his family, or when it appears that it would be for the benefit of a ward that his real estate or any part thereof be sold and the proceeds put out on interest or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor and proceeding therein as hereinafter provided.

Real estate of wards may be sold for maintenance, &c.  
R. S. 72, § 1, 2.

SECT. 27. To obtain such license, the guardian shall present to the court a petition setting forth the condition of the estate and the facts and circumstances on which the petition is founded. If after a full examination, on the oath of the petitioner or otherwise, it appears either that it is necessary or that it would be for the benefit of the ward that the real estate or any part of it should be sold, the court may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or that the proceeds may be put out or invested as aforesaid.

License to be granted on petition of guardian, and to specify purpose of sale.  
R. S. 72, § 7.

SECT. 28. Guardians licensed to sell real estate for maintenance of a ward or investment, shall before the sale give bond, with sufficient surety or sureties to the judge of the probate court for the county in which they are appointed, with condition to sell the same in the manner prescribed for sales of real estate by executors and administrators, and to account for and dispose of the proceeds in the manner provided by law.

Guardian to give bond.  
R. S. 72, § 10.  
11 Met. 529.  
11 Cush. 18.

SECT. 29. If the estate is sold for the maintenance of the ward and his family, the guardian shall apply the proceeds so far as necessary to that purpose, and shall put out the residue on interest, or invest it in the best manner in his power, until the capital is wanted for such maintenance; in which case the capital may be used for that purpose in like manner as if it had been personal estate.

When sold for maintenance, proceeds, how disposed of.  
R. S. 72, § 3.

SECT. 30. If the estate is sold in order to put out and invest the proceeds, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made relating thereto by the probate or supreme judicial court, as provided in chapter one hundred and nine.

How, when sold for investment.  
R. S. 72, § 4.  
See Ch. 109, § 22.

SECT. 31. The estate of a minor may be sold for the purpose of investing the proceeds as provided in this chapter, upon the petition and representation of any friend of the minor; and in such case the court may authorize the guardian or any other suitable person to convey the estate. When a sale for such purpose is ordered on the petition of the guardian of a minor, the court may authorize any suitable person other than the guardian to sell and convey the estate. The provisions of this chapter in relation to licenses and sales on the petitions of guardians, except as provided in the following section, shall apply to licenses and sales under this section.

Minor's real estate may be sold for investment on petition of, or by, any friend in certain cases.  
1838, 190, § 1.

SECT. 32. Upon a sale by a person other than the guardian, the proceeds shall be forthwith paid to the guardian upon his giving bond, with sufficient sureties, to the judge of the probate court for the county where the real estate is situate, conditioned to account therefor. If there is no guardian, the proceeds shall be put out and invested by the person authorized to sell the estate, in like manner as is required of a guardian.

How proceeds of sale disposed of.  
1838, 190, § 2.  
1850, 45.

BY FOREIGN GUARDIANS.

SECT. 33. When a minor, insane person, or spendthrift, residing out of this state, is under guardianship in the state or country in which he resides, and has no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the probate court for any county in which there is real estate of the ward; after which he may be licensed to sell the real estate of the ward in any

Foreign guardian may be licensed to sell estate of ward.  
R. S. 71, § 31.  
R. S. 72, § 14.



county, in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in this state, except as hereinafter provided.

Guardian to give bond, unless already bound, upon license to sell for payment of debts.  
R. S. 71, § 32.

SECT. 34. When it appears to the probate court that a foreign guardian, licensed to sell real estate for the payment of the debts of his ward, is bound with sufficient surety or sureties, in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond is filed in said court, no further bond shall be required; otherwise he shall give bond in like manner as is prescribed in this chapter in case of sales by foreign executors or administrators.

to give further bond when he sells more than necessary.  
R. S. 71, § 33.

SECT. 35. When such foreign guardian is licensed to sell more than is necessary to pay debts and charges, he shall, before making the sale, give bond with sufficient surety or sureties to the judge of the probate court, conditioned to account before the same court for all proceeds of the sale remaining after payment of said debts and charges, and to dispose of the same according to law.

to give additional bond upon license to sell for maintenance, &c.  
R. S. 72, § 17.  
11 Met. 529.  
11 Cush. 18.

SECT. 36. Every foreign guardian licensed to sell real estate for the maintenance of his ward or investment, shall before making the sale give bond with sufficient surety or sureties to the judge of the probate court, conditioned, in addition to the condition required in the bond of other guardians in such case, that he will account for and dispose of the proceeds or so much thereof as may remain upon the final settlement of his accounts, to such persons, and in such proportions, as the real estate would have descended or been disposed of according to the laws of this state if it had not been sold.

#### PROVISIONS COMMON TO SALES BY GUARDIANS.

What courts may license sales by guardians.  
R. S. 71, § 30.  
R. S. 72, § 6.

SECT. 37. The license to a guardian may be granted by the supreme judicial court, or the superior court in any county, or by the probate court for the county in which he is appointed. The application when not made to the probate court shall be accompanied by a certificate of that court as to the necessity or expediency of making the sale.

When overseers of poor to assent.  
R. S. 71, § 28.  
R. S. 72, § 9.

SECT. 38. No license shall be granted to a guardian except in case of minors, unless the overseers of the poor of the place where the ward is an inhabitant or resides certify in writing their approbation thereof.

Notice to persons interested.  
R. S. 71, §§ 8, 29.  
R. S. 72, § 8.  
7 Met. 457.  
8 Met. 51, 355.  
2 Gray, 160.

SECT. 39. No license shall be granted to a guardian until after notice, by public advertisement or otherwise as the court shall order, to the next of kin of the ward and all persons interested in the estate, to appear and show cause why the same should not be granted; but such notice may be dispensed with if all persons interested signify in writing their assent to the sale.

Who entitled to notice.  
R. S. 71, § 29.

SECT. 40. All who are next of kin, and heirs apparent or presumptive, of the ward, shall be considered as interested in the estate, and may appear as such, and answer to the petition of the guardian.

Oath by guardian, notice of sale, and perpetuating evidence.  
R. S. 71, § 35.  
R. S. 72, §§ 11, 12, 15.

SECT. 41. Guardians appointed in this state or elsewhere, when licensed to sell real estate, shall, before fixing on the time and place of sale, take and subscribe the oath, give notice of the time and place of sale, and otherwise proceed therein, as prescribed in like cases for executors and administrators; and the evidence of giving notice may be perpetuated in the same manner.

#### PROVISIONS COMMON TO SALES BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

Proceedings by foreign executors, &c., where had.  
R. S. 71, § 25.  
R. S. 72, § 16.

SECT. 42. All proceedings in probate courts respecting sales by a foreign executor, administrator, or guardian, shall be had in the court for the county in which an authenticated copy of his appointment is first filed.

SECT. 43. No license shall be in force for more than one year after the granting thereof, except when a sale is made of land recovered by an executor or administrator as provided in sections twelve and thirteen.

License, how long in force.  
R. S. 71, § 19.  
R. S. 72, § 13.  
2 Cush. 184.

SECT. 44. In all sales by executors, administrators, or guardians, appointed in this state or elsewhere, of part or the whole of the real estate of a deceased person or ward, the surplus of the proceeds remaining on the final settlement of the accounts shall be considered as real estate, and be disposed of to the same persons and in the same proportions as the real estate would descend or be disposed of by the laws of this state if not sold.

Surplus of sales considered real estate.  
R. S. 71, § 34.  
R. S. 72, §§ 5, 17.  
3 Mass. 518.  
9 Pick. 130.

SECT. 45. If a person appears and objects to the granting of a license to sell real estate, and it appears to the court that either the petition or the objection thereto is unreasonable, they may award costs to the prevailing party.

When costs may be awarded.  
R. S. 71, § 36.  
R. S. 72, § 18.

SECT. 46. No action for the recovery of any estate sold by an executor or administrator under this chapter shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale; and no action for any estate so sold by a guardian shall be maintained by the ward or by any person claiming under him, unless commenced within five years next after the termination of the guardianship; except that persons out of the state, and minors and others under legal disability to sue at the time when the right of action first accrues, may commence such action at any time within five years after the removal of the disability or their return to the state. No entry, unless by judgment of law, shall be made upon lands so sold, with a view to avoid the sale, unless within the times of limitation before prescribed for the commencement of an action.

Actions for lands sold by executor, administrator, or guardian, limited to five years, unless, &c.  
R. S. 71, § 37.  
R. S. 72, § 19.  
9 Cush. 223.

SECT. 47. No action relating to an estate sold under this chapter, in which an heir or other person claiming under the deceased, or in which the ward or a person claiming under him, contests the validity of the sale, shall be avoided on account of the deed not having been executed and delivered within one year after the granting of the license, nor on account of any irregularity in the proceedings, provided it appears:—

Requisites of valid sale, as against heir or ward.  
R. S. 71, § 38.  
R. S. 72, § 20.  
1840, 97.  
2 Cooley, 506.  
9 Pick. 285.  
2 Cush. 184.

First. That the executor, administrator, guardian, or other person, was licensed to make the sale by a court of competent jurisdiction:

Second. That he gave a bond which was approved by the judge of the probate court, in case a bond was required upon granting the license:

*Rep. 1860 ch. 60.*

Third. That he took the oath prescribed in this chapter:

Fourth. That he gave notice of the time and place of sale as prescribed herein: and,

Fifth. That the premises were sold accordingly by public auction, and are held by one who purchased them in good faith.

SECT. 48. If the validity of a sale is drawn in question by a person claiming adversely to the title of the deceased or the ward, or claiming under a title that is not derived from or through the deceased or ward, the sale shall not be void on account of any irregularity in the proceedings, if it appears that the executor, administrator, or guardian, was licensed to make the sale by a court of competent jurisdiction, and that he accordingly executed and acknowledged in legal form a deed for the conveyance of the premises.

as against claimants adverse to heir or ward.  
R. S. 71, § 40.  
R. S. 72, § 22.

SECT. 49. Every person authorized to make sale of lands under this chapter shall be required upon application to the probate court by an heir, creditor, ward, or other person, interested in the estate, to make answer upon oath to all matters touching his exercise and fulfilment of said license, including all proceedings under it from its first grant, as fully as he is liable to account and be examined in reference to personal estate. If, in relation to the exercise of such license or a sale under it, there is

Persons making sales may be examined upon oath as to such sales. Liability for misconduct, &c.  
R. S. 71, § 39.  
R. S. 72, § 21.  
1857, 71, § 1.

any neglect or misconduct in the proceedings of such person, by which a person interested in the estate suffers damage, he may recover compensation therefor on the probate bond or otherwise as the case may require.

## CHAPTER 103.

### OF TAKING LAND TO SATISFY EXECUTIONS FOR DEBT.

#### LEVY AND SET-OFF.

##### SECTION

1. Lands and rights thereto may be taken on execution.
2. Estates tail may be taken, &c.
3. Land to be appraised, &c.
4. Appraisers to view land, certify, &c.
5. Land, how described in certificate, &c.
6. in separate pieces, how appraised.
7. Certificate by two appraisers, when sufficient.
8. Estate to be valued as a fee simple, unless otherwise expressed.
9. Execution, how levied on estate of joint tenant or tenant in common.
10. how levied on estates incapable of division.
11. on estates for life.
12. Proceedings when levied on rents and profits of estates for life.
13. Lessee to pay rent to creditor after notice.
14. When part is taken, rent apportioned.
15. Seisin to be delivered to creditor, or right assigned to him.
16. Momentary seisin when debtor has right of entry only.
17. Execution and return to be recorded in registry of deeds.
18. Record of justice's execution, &c., *prima facie* evidence of regularity.
19. Levy not recorded, how far effectual.
20. not returned, &c., valid against creditor, except, &c.
21. If void, creditor may waive it if not returned and recorded.
22. Alias execution on *scire facias* if levy not effectual.
23. Proceedings. Costs.
24. Debtor to have notice. Levy to take effect from seizure. Return, &c.
25. Matters to be contained in officer's return.
26. Debtor may redeem land within one year.
27. Amount due for redemption may be ascertained by three justices of peace, and tender made.
28. If land is not released to debtor, he may recover it in writ of entry.
29. Debtor may bring suit in equity.
30. Proceedings in such suit.
31. Costs therein, how awarded.
32. Estate for life, how redeemed when levy is on rents and profits.

#### SET-OFF, &C., OF MORTGAGED LANDS.

##### SECTION

33. Right of redemption may be set off on execution.
34. When mortgage is not fully allowed for, creditor to hold premises, &c.
35. When mortgaged estates set off may be redeemed.
36. Mortgage paid by creditor, how redeemed.
37. If not redeemed, creditor to hold premises.
38. If right levied on is not redeemed.

#### SALE, &C., OF MORTGAGED LANDS.

39. Right of redemption may be sold on execution.
40. Sale, how made.
41. Notice of time and place of sale, how given and published.
42. Officer may adjourn sale.
43. Levy, when to take effect; return may be completed afterwards.
44. Mortgaged estates sold on execution may be redeemed within one year.
45. Mortgage, if paid by purchaser, how redeemed by debtor.
46. Estate, if not released, may be recovered.
47. Right of redemption of land in different counties.

#### SPECIAL PROVISIONS.

48. If levy is on land the record title to which is in name of other than debtor, &c., action for possession to be brought, &c.
49. Fees and charges of levy to be added to debt.
50. Proceedings by heirs, executors, administrators, &c., of debtor.
51. by heirs, &c., of creditor.
52. Right of redeeming land set off on execution, may be taken and sold on another execution. Proceedings.
53. Land of deceased persons may be taken on execution.
54. may be redeemed as if taken during life.
55. After redemption, not to be taken for other debts.
56. Land may be taken on execution in favor of executor, &c.
57. Dower in lands taken on execution.
58. Executions in favor of state, how served.
59. Redemption of lands so taken.

#### LEVY AND SET-OFF.

SECTION 1. All the lands of the debtor in possession, remainder, or reversion, all his rights of entry into lands and of redeeming mortgaged lands, and all lands and rights above described fraudulently conveyed by him with intent to defeat, delay, or defraud his creditors, or pur-

Lands and rights thereto may be taken on execution. R. S. 73, § 1. 1844, 107, § 1.



chased, or directly or indirectly paid for by him, the record title to which is retained in the vendor, or is conveyed to a third person with intent to defeat, delay, or defraud the creditors of the debtor or on a trust for him, express or implied, whereby he is entitled to a present conveyance, may, except as provided in chapter one hundred and four, be taken on execution for his debts in the manner hereinafter provided.

1855, 453, § 1.  
1857, 298.  
1 Met. 528.  
3 Met. 26.  
2 Gray, 538.

SECT. 2. Estates tail which could be lawfully barred by the person entitled thereto, may be taken on execution in the same manner as estates in fee simple; and whoever lawfully holds such premises under the execution shall have an estate in fee simple therein.

Estates tail may be taken, &c.  
R. S. 73, § 2.  
4 Mass. 195.

SECT. 3. Upon the levy of an execution on the debtor's land, the officer shall cause the estate to be appraised by three disinterested and discreet men, of whom one shall be appointed by the creditor, one by the debtor whose land is taken, or, if the debtor is absent from or not resident in the state, by his agent or attorney if he has any known to the officer, and the third by the officer. If the debtor is absent from or not resident in this state, and has no agent or attorney known to the officer, or neglects to appoint an appraiser, the officer shall appoint one for him. The persons thus appointed shall be sworn before a justice of the peace or the officer, faithfully and impartially to appraise the real estate shown to them as taken on the execution.

Land to be appraised, &c.  
R. S. 73, § 3.  
1848, 317.  
1852, 1.  
1852, 256.  
7 Greenl. 14.  
7 Mass. 71.  
8 Mass. 113.  
11 Mass. 408, 515.  
17 Mass. 434.  
2 Pick. 382, 443.  
3 Met. 251.  
2 Cush. 32.  
10 Cush. 247.

SECT. 4. The appraisers shall proceed with the officer to view the land, and shall examine it so far as is necessary to form a just estimate of its value; and a certificate of their appraisement shall be indorsed on the execution and signed by them.

Appraisers to view land, certify, &c.  
R. S. 73, § 4.  
14 Mass. 28.  
2 Pick. 382, 564.

SECT. 5. The land levied upon, whether it is an entire piece or an undivided part thereof, and whether the debtor's estate therein is a fee simple or any less estate, and whether it is in possession, reversion, or remainder, shall be described by metes and bounds, or otherwise, with as much precision as is necessary in a common conveyance of land, and in such manner that the premises may be known and identified. Such description may be contained in the certificate of the appraisers or return of the officer, and in either of them may be referred to and adopted in the other.

Land, how described in certificate, &c.  
R. S. 73, § 5.  
9 Mass. 92.  
11 Mass. 163.  
9 Pick. 35.  
4 Met. 404.

SECT. 6. If the execution is levied at the same time upon several pieces of land, each piece may be separately appraised, or all may be appraised together. When several pieces are taken successively on the same execution, a distinct set of appraisers may be appointed for each piece, or all may be appraised by the appraisers first appointed.

in separate pieces, how appraised.  
R. S. 73, § 6.  
7 Mass. 71.  
11 Mass. 515.  
2 Pick. 382.

SECT. 7. The dissent of one appraiser and his refusal to sign the certificate of appraisement, if he was sworn and acted with the others, shall not vitiate the levy of the execution; but in such case the certificate of the other two shall be sufficient.

Certificate by two appraisers, when sufficient.  
R. S. 73, § 7.  
8 Mass. 284.  
14 Mass. 143.  
2 Pick. 331.

SECT. 8. In estimating the value of the estate of the debtor, the appraisers shall value it as an estate in fee simple in possession, unless it is expressly stated in the description indorsed on the execution to be a less estate; and in every case all the freehold estate and interest which the debtor has in the premises, shall be taken and pass by the levy, unless it is a larger estate than is mentioned in said description.

Estate to be valued as a fee simple, unless otherwise expressed.  
R. S. 73, § 8.  
14 Mass. 404.  
1 Met. 345.

SECT. 9. When land is held by a debtor in joint tenancy or in common, the part or share thereof belonging to the debtor may be taken on execution and shall be thereafter held in common with the co-tenant. If the whole share of the debtor is more than sufficient to satisfy the execution, the levy shall be made upon an undivided portion of that share, to be determined by the appraisers and to contain as much as they deem sufficient to satisfy the execution; the portion thus taken to be held in common with the debtor and the other co-tenant.

Execution, how levied on estate of joint tenant, or tenant in common.  
R. S. 73, § 9.  
12 Mass. 348.  
13 Mass. 57.

SECT. 10. When the premises levied upon consist of a mill, mill-privilege, or other real estate, which cannot be divided without damage

how levied on estates incapable of division.

R. S. 73, § 10.

to the whole, and which is more than sufficient to satisfy the execution, the levy shall be made upon an undivided portion of the whole, to be determined by the appraisers, and to contain as much as they deem sufficient to satisfy the execution; and the portion thus taken shall be held in common with the debtor.

Execution, how levied on estates for life.  
R. S. 73, § 11.  
10 Mass. 260.  
15 Mass. 439.

SECT. 11. When the execution is levied on an estate for life, the value thereof may be estimated by the appraisers, and the same may be taken and set off to the creditor at the appraised value, like other real estate; or the execution may be levied on the rents and profits of the premises, at the election of the creditor.

Proceedings, when levied on rents and profits of estates for life.  
R. S. 73, § 12.

SECT. 12. In the latter case, the annual value of the rents and profits shall be estimated by the appraisers, and the premises shall be set off to the creditor for such length of time as is sufficient to satisfy the execution at the rate of rents and profits as estimated by the appraisers, if the life estate endures so long; computing interest on the sum due on the execution, and deducting the rents and profits as so much paid from time to time as the rents and profits fall due. If the life estate expires before the end of the term so fixed by the appraisers, the creditor may have a new action on the judgment to recover the sum then remaining due thereon.

Lessee to pay rent to creditor after notice.  
R. S. 73, § 13.

SECT. 13. When the premises levied upon are under lease to a third person, and the reversion of the whole is taken on the execution, the lessee shall be bound to pay to the creditor the rent accruing from the time of the levy, except such part thereof as he has paid before notice of the levy.

When part is taken, rent apportioned.  
R. S. 73, § 14.  
17 Mass. 440.

SECT. 14. When the premises are under lease as aforesaid, and the reversion of a part of them only is taken, it shall be ascertained and determined by the appraisers what portion of the whole annual rent shall be paid to the creditor in consequence of the levy; and the lessee shall be bound to pay the same accordingly.

Seisin to be delivered to creditor, or right assigned to him.  
R. S. 73, § 15.  
14 Mass. 27.

SECT. 15. The officer who serves the execution shall deliver to the creditor, or his attorney, seisin and possession of the premises so taken, so far as the nature of the estate and the title of the debtor will admit; but when the estate so taken consists of a remainder, reversion, or right of redemption, the officer shall not oust the person who is lawfully in possession of the land, but shall only assign to the creditor the right which the debtor had therein, and may make his return accordingly.

Momentary seisin, when debtor has right of entry only.  
R. S. 73, § 16.  
3 Mass. 538.

SECT. 16. When the execution is levied on land of which any person other than the debtor is actually seised, the officer shall deliver to the creditor or his attorney a momentary seisin and possession of the land, so far as to enable the creditor to maintain an action therefor upon his own seisin; but he shall not actually expel and keep out the tenant then in possession, against his will.

Execution and return to be recorded in registry of deeds.  
R. S. 73, § 17.  
1853, 269.  
11 Mass. 207.  
15 Mass. 200.  
5 Pick. 170.

SECT. 17. The officer shall return the execution, with a certificate of his doings indorsed thereon, into the clerk's office, or court to which the same is returnable, or, if a justice's execution, to the justice who issued the same; and shall also, within three months after the levy is completed, cause the execution and return to be recorded in the registry of deeds for the county or district in which the land lies; the expense of which shall be added to the charge of levying the execution.

Record of justice's execution, &c., *prima facie* evidence of regularity.  
1853, 269, § 2.  
Levy not recorded, how effectual.

SECT. 18. Such record in the registry of deeds of an execution issued by a justice of the peace or police court, and of the levy thereon, shall be *prima facie* evidence of the regularity of the judgment and prior proceedings in the case in which the execution issued.

SECT. 19. If the levy of an execution is not recorded in the registry of deeds within three months as aforesaid, it shall be void as against a creditor who has attached the same premises, or taken them



on execution, without notice of such levy, and also as against any person who has purchased them in good faith and for a valuable consideration, without such notice; but if the levy is recorded, although after the expiration of the three months, it shall be valid and effectual as against any conveyance, attachment, or levy made after such recording.

R. S. 73, § 18.  
5 Greenl. 197.  
4 Mass. 402.  
15 Mass. 137.  
3 Pick. 331.  
5 Pick. 170.

SECT. 20. The levy of the execution, although neither returned nor recorded as aforesaid, shall be so far valid and effectual as against the creditor, that he shall not be permitted to waive the levy and have a new execution of his judgment, except as is provided in the following section.

Levy not returned, &c., valid against creditor, except, &c.  
R. S. 73, § 19.

SECT. 21. If, before the execution is returned and recorded, it appears that there is a defect or error in the proceedings that would defeat and render void the levy, or that the estate levied upon cannot for any reason be held thereby, the creditor may waive the levy, and it shall thereupon be null and void, and he may resort to any other remedy for the satisfaction of his judgment.

if void, creditor may waive it, if not returned and recorded.  
R. S. 73, § 20.  
10 Met. 82.

SECT. 22. If, after the execution is returned or recorded, it appears to the creditor that the estate levied on, or any part thereof, cannot be held thereby, the creditor may sue out of the clerk's office of the court from which the execution issued a writ of *scire facias* to the debtor, requiring him to appear and show cause why another execution should not be issued on the same judgment, and the writ may be sued out though there is a subsequent judgment for a part thereof not satisfied by the levy. If the debtor, after being duly summoned, does not show sufficient cause to the contrary, the levy of the former execution may be set aside and another execution issued for the amount then due on the original judgment, and not included in a subsequent judgment, without interest or further costs.

if not effectual, creditor may have *alias* execution on *scire facias*.  
R. S. 73, § 21.  
5 Greenl. 103.  
14 Mass. 57.  
19 Pick. 433.  
11 Met. 231.  
12 Met. 449.  
2 Gray, 326.

SECT. 23. If it appears at the hearing, that a part only of the estate levied on is held thereby, and the creditor desires it, a warrant may be issued to the officer who made the levy, or to the sheriff or his deputy, requiring him to cause the part not held thereby to be appraised at a sum which, if added to the value at the time it was taken, according to the best judgment of the appraisers, of the part held by the levy separate from the part not held thereby, would make the amount of the former appraisement; and the officer shall cause appraisers to be appointed, and such appraisement made, as required on the levy of the former execution; and on return thereof, the levy may be set aside so far as relates to the part not held thereby, and if duly recorded, be valid as respects the remaining part; and another execution may be issued for the amount of the appraisement returned by the officer, without further interest or costs. If, in either case, it appears to the court that the creditor had no just cause for such suit, the debtor shall recover costs.

Proceedings. Costs.

SECT. 24. The officer, after taking the land on execution, shall give notice thereof to the debtor, if found within his precinct, allow him a reasonable time to appoint an appraiser, and then proceed without unnecessary delay to have the estate appraised and complete the levy thereon. The levy shall be considered as made at the time when the land is taken; and the subsequent proceedings and officer's return shall be valid, although made and done after the return day, or after the removal or other disability of the officer.

Debtor to have notice; levy to take effect from seizure; return.  
R. S. 73, § 22.  
6 Greenl. 162.  
11 Mass. 158.  
3 Met. 245.  
8 Met. 599.  
9 Met. 23, 476.

SECT. 25. The officer in the return or certificate of his doings indorsed on the execution, shall set forth substantially the following facts and circumstances, to wit:—

Officer's return, contents thereof.

First. The time when the premises were taken on execution:

R. S. 73, § 23.  
1852, 1, § 3.  
1852, 256.  
6 Gray, 520.  
2 Mass. 155.  
7 Mass. 74.  
9 Met. 413, 476.  
2 Cush. 32, 417.  
10 Cush. 247.

Second. That the appraisers were appointed by himself and the creditor and debtor; or that the debtor was absent from or not resident in this state, and had no agent or attorney known to the officer, or



neglected to appoint an appraiser, and the officer appointed one for him, as the case may be :

Third. That the appraisers were duly sworn, unless a certificate of the oath is indorsed on the execution and signed by the justice or officer who administered it :

Fourth. That they appraised and set off the premises at the price specified :

Fifth. That the officer delivered seisin thereof to the creditor or some person as his attorney, or assigned the same to him, as prescribed in case of a remainder or incorporeal estate :

Sixth. The description of the premises; unless they are sufficiently described in the certificate of the appraisers, in which case the officer may refer to and adopt that description : and

Seventh. If the appraisement is signed by only two of the appraisers, the return shall show that all three of them were present and acted therein.

SECT. 26. When lands are taken and set off to a creditor on execution, the debtor may redeem the same at any time within one year after the levy, by paying or tendering to the creditor the sum for which the premises were set off, with interest thereon from the time of the levy, all sums paid for lawful taxes and assessments, such reasonable expenses as have been incurred in repairing and improving the premises, and all sums lawfully paid on account of any mortgage or other lien recoverable under section thirty-four; deducting from the amount of the debt, interest, and expenses, the rents and profits received by the creditor, or the rents and profits which he might have received, and with which he is justly chargeable. The creditor shall thereupon execute, acknowledge, and deliver, to the debtor, a good and sufficient deed of release of the estate taken on execution, which deed shall be prepared by the debtor, or at his expense.

SECT. 27. The debtor may in all cases, at his own expense, cause the amount due for redemption to be ascertained by three justices of the peace for the county where the land lies, in the manner following : one of the justices shall be chosen by the debtor, one by the creditor, and the third by the two first chosen ; or if the creditor neglects to choose one, the justice chosen by the debtor shall appoint the other two. After a hearing and examination of the case before the three justices, they or any two of them shall make and sign a certificate of the sum which they adjudge to be due for the redemption of the premises, which certificate shall be final and conclusive between the parties. The debtor may then make a tender of the sum so adjudged to be due, which shall be valid and effectual notwithstanding he has made a previous tender of a different sum.

SECT. 28. If the debtor tenders the sum justly due for redemption, whether there has been such an adjudication by three justices or not, and the creditor does not within seven days after the tender release the premises as before provided, the debtor may recover them with costs of suit, in a writ of entry on his own seisin against the creditor as a disseisor ; in which case he shall before the judgment is entered bring into court for the use of the creditor the sum so tendered.

SECT. 29. The debtor within one year after the levy of the execution, whether he has made a previous tender or not, may, instead of a writ of entry, bring a suit in equity for redemption in the county where the land lies, either in the supreme judicial court, or superior court ; and it shall be conducted as provided in the two following sections.

SECT. 30. He shall in his bill or writ offer to pay such sum as shall be found due for redemption of the premises, and may set forth any tender he has made. The court shall ascertain and determine the amount due, unless the same has been already ascertained by three

11 Mass. 207,  
515.  
13 Mass. 361.  
2 Pick. 382.  
9 Mass. 92.  
2 Pick. 443.

Mass. 284.  
14 Mass. 143.  
2 Pick. 331.

Debtor may re-  
deem land with-  
in one year.  
R. S. 73, § 24.  
2 Met. 510.  
3 Met. 536.

Amount due for  
redemption  
may be ascer-  
tained by three  
justices of the  
peace, and ten-  
der made.  
R. S. 73, § 25.

If land is not re-  
leased to debt-  
or, he may re-  
cover it in writ  
of entry.  
R. S. 73, § 26.

Debtor may  
bring suit in  
equity.  
R. S. 73, § 27.  
1856, 38, § 2.  
1859, 196.

Proceedings in  
such suit.  
R. S. 73, § 28.  
1856, 38, § 2.

justices of the peace as before provided, and shall require the debtor, within such time as they may order, to bring into court, or deposit with the clerk for the use of the creditor, the amount due for redemption. Upon the debtor's complying with the order, he shall be entitled to judgment and execution for seisin of the premises, as at common law.

SECT. 31. The court may upon such suit award costs to either party as equity requires. But the creditor shall not be required to pay costs, unless it appears that he has unreasonably neglected to render, when requested, a just and true account of the amount due on the judgment, and of the money expended in repairing and improving the premises, and also of the rents and profits thereof; or unless it appears that a sufficient sum was tendered to him for the redemption of the premises, and he neglected for seven days thereafter to execute and deliver a release thereof as before required. And if the creditor has, before the commencement of the suit, tendered such a deed of release, and alleges such tender and brings the deed into court to be delivered to the debtor, he shall recover costs.

Costs in suit in equity for redemption, how awarded.  
R. S. 73, § 29.  
1856, 38, § 2.

SECT. 32. When an execution is levied on the rents and profits of an estate for life, the debtor may redeem the same at any time before the debt with interest thereon is fully satisfied, by paying or tendering to the creditor the sum then remaining due to him; and the proceedings with regard to such redemption shall be in all other respects the same as are prescribed for the redemption of other real estate.

Estate for life, how redeemed when levy is on rents and profits.  
R. S. 73, § 30.

SET-OFF, &C., OF MORTGAGED LANDS.

SECT. 33. When any rights mentioned in section one of redeeming mortgaged lands, are taken and set off on execution, the appraisers shall deduct the value of the encumbrance, or the amount of the mortgage debt, when known, from the estimated value of the premises, and the sum so deducted shall be stated in the return of the execution.

Right of redemption may be set off.  
R. S. 73, § 31.  
11 Mass. 226.  
16 Mass. 400.  
22 Pick. 390.  
4 Met. 404.  
10 Cush. 526.  
When mortgage is not fully allowed for, creditor to hold premises, &c.  
R. S. 73, § 32.  
22 Pick. 390.

SECT. 34. If, after an execution is levied in the common form, there proves to be a mortgage or any other lien on the premises, or a right or estate of homestead therein, not known, or allowed for, or not fully allowed for, by the appraisers, the creditor shall nevertheless be entitled to hold the premises, except the right or estate of homestead, by force of the execution as against the debtor, and may recover, in a new action against the debtor, the amount of the homestead right or estate and the amount which he shall lawfully pay on account of such mortgage or other lien or so much thereof as has not been deducted and allowed for in the estimate of the appraisers.

SECT. 35. An estate taken and set off as mentioned in the two preceding sections, may be redeemed at any time within one year after the levy of the execution, in the same manner, and the debtor shall have the same remedies in that behalf, as provided in this chapter for the redemption of lands not mortgaged.

When mortgaged estates set off may be redeemed.  
R. S. 73, § 33.  
22 Pick. 390.

SECT. 36. If the creditor pays the debt due on the mortgage, the judgment debtor may redeem the mortgage from the creditor, at the time and upon the terms prescribed for redeeming the same from the mortgagee if no execution had been levied thereon.

Mortgage paid by creditor, how redeemed.  
R. S. 73, § 34.  
22 Pick. 390.  
5 Met. 90.

SECT. 37. If the debtor does not redeem the mortgage from the creditor as provided in the preceding section, the creditor shall hold the premises as an assignee of the mortgage and free from any right of redemption, notwithstanding the debtor has redeemed or offered to redeem the right that was taken under the execution.

if not redeemed, creditor to hold premises.  
R. S. 73, § 35.  
5 Met. 90.

SECT. 38. If the debtor does not within one year after the levy redeem the right that was taken on the execution, the creditor shall hold the premises against the debtor, notwithstanding the debtor may have redeemed or offered to redeem the mortgage.

If right levied on is not redeemed.  
R. S. 73, § 36.



## SALE, &amp;C., OF MORTGAGED LANDS.

Right of redemption may be sold on execution.  
 R. S. 73, § 37.  
 R. S. 97, § 32.  
 2 Cush. 141.  
 2 Gray, 326.

SECT. 39. All rights of redeeming mortgaged lands mentioned in section one, may, if the creditor prefers it, be sold on the execution in the manner hereinafter prescribed, instead of being appraised and set off to the creditor; and the surplus of the proceeds of the sale, after satisfying the execution with the costs and charges, shall be applied and disposed of in like manner as is provided in the case of sale of goods on execution by chapter one hundred and thirty-three.

Sale, how made.  
 R. S. 73, § 38.  
 3 Met. 147.  
 10 Met. 81, 138.  
 2 Gray, 329.  
 4 Gray, 468, 486.

SECT. 40. When the creditor elects to have the right of redemption sold, the officer authorized to serve the execution shall sell it by public auction to the highest bidder, and shall execute, acknowledge, and deliver, to the purchaser, a sufficient deed thereof; which, being recorded in the registry of deeds for the county or district where the land lies, within three months after the sale, shall give to the purchaser all the debtor's right of redemption.

Notice of time and place of sale, how given and published.  
 R. S. 73, § 39.  
 7 Greenl. 376.  
 12 Mass. 521.  
 1 Pick. 351.

SECT. 41. The officer shall give notice in writing of the time and place of sale to the debtor, if found within his precinct, and shall also cause notifications thereof to be posted up in some public place in the city or town where the land lies, and also in two adjoining cities or towns, if there be so many in the county; all which notices shall be given thirty days at least before the sale. The officer shall also cause an advertisement of the time and place of sale to be published three weeks successively before the sale, in some public newspaper printed in the county where the land lies, if any such paper is there printed.

Officers may adjourn sale.  
 R. S. 73, § 40.  
 4 Pick. 354.

SECT. 42. If at the time appointed for the sale the officer deems it expedient and for the interest of all persons concerned therein to postpone the sale, either for want of purchasers or for other sufficient cause, he may adjourn it for any time not exceeding seven days, and so from time to time for like good cause, until the sale is completed, giving notice of every such adjournment by a public proclamation thereof at the time and place previously appointed for the sale.

Levy when to take effect; return may be completed afterwards.  
 R. S. 73, § 41.  
 2 Cush. 141.

SECT. 43. The levy shall be considered as made at the time of first giving the notice, whether given to the debtor, or by posting up a notification thereof in any city or town, or by publishing the same as before prescribed; and shall hold the estate by force of the attachment made thereon, although the levy is not completed within thirty days after the judgment; and the subsequent proceedings and officer's return thereof shall be valid, although made and done after the return day, or after the removal or other disability of the officer.

Mortgaged estates sold on execution may be redeemed within one year.  
 R. S. 73, § 42.  
 1 Pick. 485.  
 2 Cush. 141.

SECT. 44. Rights of redemption taken and sold as before provided, may be redeemed by the judgment debtor from the purchaser or the person holding under him at any time within one year after such sale, by paying or tendering to the purchaser, or the person holding under him, the sum for which the premises were sold, with the same allowance for interest, repairs, improvements, and taxes, and the same deduction for rents and profits, as are provided in case of the redemption of land set off on execution; and the purchaser or person holding under him shall thereupon execute, acknowledge, and deliver, to the debtor, a sufficient deed of release of the right of redemption so taken and sold; such deed to be prepared by the debtor, or at his expense.

Mortgage, if paid by purchaser, how redeemed by debtor.  
 R. S. 73, § 43.

SECT. 45. If the purchaser pays the debt due on the mortgage, the judgment debtor may redeem the mortgage, and also the estate or right of redemption sold under the execution, in the same manner and upon the same terms as are before prescribed for redemption from the judgment creditor when the right is set off to him and the mortgage debt paid by him, and not otherwise.

Estate, if not released, may be recovered.

SECT. 46. If the purchaser, or the person holding under him, does not within seven days after a tender by the debtor release the right of



redemption as before provided, or if there has been no tender, the debtor may have like remedies for recovering the right of redemption as are before provided in like cases for the redemption of land that is not under mortgage.

R. S. 73, § 44.  
19 Pick. 467.  
2 Cush. 141.

SECT. 47. When the right of redemption is of lands in different counties, the same may be taken and set off or sold on execution by an officer of either county; and for that purpose executions issued by justices of the peace and police courts may run into any county.

Right of redemption of land in different counties.  
See Ch. 133, § 21.

SPECIAL PROVISIONS.

SECT. 48. When the execution is levied on lands or rights, the record title to which fraudulently stands in the name of a person other than the debtor, in either manner mentioned in section one, and such other person is in possession claiming title thereto, the levy shall be void unless the judgment creditor to whom the land is set off or the purchaser of the right of redemption, as the case may be, commences his suit to recover possession thereof, within one year after the return of the execution.

If levy is on land the record title to which is in name of other than debtor, &c., action for possession to be brought, &c.  
1844, 107, § 4.  
1855, 453.

SECT. 49. The lawful fees and charges of levying an execution in any of the modes before provided, shall in all cases be added to the amount due on the execution and considered as part thereof, in the setting off and sale of estates on execution, and also in the redemption thereof, and in every thing relating to the proceedings under the execution.

Fees and charges of levy to be added to debt.  
R. S. 73, § 45.

SECT. 50. Every thing required in this chapter to be done by a debtor in relation to the redemption of an estate taken and set off or sold on execution, may be done by his heirs or assigns, or his executors or administrators, or by any person lawfully claiming under him or them, in like manner and with like effect as if done by himself; except that in case of a recovery of the premises by an executor or administrator, the recovery shall operate only as a discharge of the lien or encumbrance on the land, and the heir or other person entitled thereto shall be deemed to be seised thereof accordingly.

Proceedings by heirs, executors, administrators, &c., of debtor.  
R. S. 73, § 46.  
19 Pick. 467.

SECT. 51. Every thing required in this chapter to be done by or to a creditor in relation to such redemption, shall and may be done by or to his heirs or assigns, or his executors or administrators, as the case may be, or by or to any person lawfully claiming under him or them, in like manner and with like effect as if done by or to such creditor.

by heirs, &c., of creditor.  
R. S. 73, § 47.

SECT. 52. All rights of redeeming land taken and set off on execution may be taken and sold on another execution, in like manner as the right of redeeming mortgaged land may be taken and sold; and the debtor and those claiming under him may redeem the right sold under such second execution, in like manner as if it had been a right of redeeming mortgaged land. All proceedings in levying such second execution, and the redemption of the right sold under it, and all the rights and obligations of the several parties in relation to such levy and redemption, shall be substantially the same as if the property so taken had been a right of redeeming mortgaged land.

Right of redeeming land, set off on execution, may be taken and sold on another execution.  
Proceedings.  
R. S. 73, § 48.  
12 Mass. 387.  
1 Pick. 493.

SECT. 53. The real estate of a deceased testator or intestate may be taken on execution on a judgment recovered against his executor or administrator for the proper debt of the deceased, with costs of suit and the fees and charges of levying the execution, and shall be appraised and set off, or sold, in like manner as it might have been if the judgment had been rendered and the execution issued and served against the testator or intestate in his lifetime.

Land of deceased persons may be taken on execution.  
R. S. 73, § 49.

SECT. 54. An estate taken as provided in the preceding section may be redeemed by the executor or administrator, or by the heir of the deceased, or by any person lawfully claiming under him or them, in like

may be redeemed as if taken during life.  
R. S. 73, § 50.

manner as if the estate had been taken on an execution against the deceased in his lifetime.

After redemption, not to be taken for other debts of deceased.  
R. S. 73, § 51.  
3 Mass. 542.

SECT. 55. If any real estate of a deceased person taken on execution as provided in section fifty-three, is redeemed by his heir or devisee, or by the assigns of either of them, as provided in the preceding section, the same estate shall not be again taken on execution for any other debts of the deceased, nor be in any way liable therefor.

Land may be taken on execution in favor of executor, &c.  
R. S. 73, § 52.

SECT. 56. When an executor or administrator recovers judgment in right of his testator or intestate, the execution may be levied on the land of the debtor; and in such case the executor or administrator shall be seised of the estate set off to him, upon the trusts in that behalf expressed in chapter ninety-six.

Dower in lands taken on execution.  
R. S. 73, § 53.

SECT. 57. Every widow shall be entitled to her dower in lands taken by execution from her husband, or by execution upon a judgment against his executor or administrator, in like manner as if the same had been conveyed by the husband in his lifetime without release of dower by her.

Executions in favor of state, how served.  
R. S. 73, § 55.

SECT. 58. When land is taken to satisfy an execution in favor of the commonwealth, it shall not be appraised and set off; but shall be sold by public auction in like manner as the right to redeem mortgaged lands is sold; and the officer who serves the execution shall proceed in all respects in the manner prescribed for the sale of such right of redemption.

Redemption of lands so taken.  
R. S. 73, § 56.

SECT. 59. All lands sold by force of the preceding section may be redeemed within one year, in like manner and upon the same terms as are prescribed in the case of a sale on execution of the right of redeeming mortgaged lands.

## CHAPTER 104.

### OF HOMESTEADS.

#### SECTION

1. Estates of homesteads, to value of \$800, exempt from levy on execution, sale, &c.
2. how acquired.
3. Rights of homestead under former laws saved.
4. Mortgaged property subject to rights of homestead, except, &c.
5. Homestead property not exempt from levy for taxes, ground rent, &c.
6. Previous liens, &c., not defeated.
7. Homestead and rights may be conveyed and released.
8. Same subject.

#### SECTION

9. Partition of property subject to homestead.
10. Homestead estate may be set off in case of insolvency of owner.
11. Mode of levying execution upon property above value of \$800 in which homestead exists.
12. Homestead to continue after death of householder, for benefit of widow and minor children.
13. may be set off in same manner as dower.
14. Rights of widow and children may be sold.
15. Confirmation of conveyances under repealed laws.

Estates of homestead to value of \$800 exempt from levy on execution, sale, &c.  
1857, 298, § 1.

SECTION 1. Every householder having a family shall be entitled to an estate of homestead, to the extent in value of eight hundred dollars, in the farm or lot of land and buildings thereon owned, or rightly possessed by lease or otherwise, and occupied by him as a residence, and such homestead and all right and title therein shall be exempt from attachment, levy on execution, sale for the payment of his debts or other purposes, and from the laws of conveyance, descent, and devise, except as hereinafter provided.

how acquired.  
1857, 298, § 3.

SECT. 2. To constitute such estate of homestead and to entitle property to such exemption, it shall be set forth in the deed of conveyance

by which the property is acquired, that it is designed to be held as a homestead; or after the title has been acquired such design shall be declared by writing duly signed, sealed, acknowledged, and recorded, in the registry of deeds for the county or district where the property is situated. But the acquisition of a new estate of homestead in either of said modes, shall operate to defeat and discharge any estate or right of homestead previously existing.

SECT. 3. All existing estates or rights of homestead which have been acquired under any law heretofore in force, shall continue to be held and enjoyed notwithstanding the repeal of such law; and the preceding section shall not require the design so to hold the same to be declared and recorded anew. But no person shall hold exempted as a homestead, property to the value of more than eight hundred dollars.

Rights of homestead under former laws saved. 1851, 340. 1855, 238. 1857, 298, §§ 1, 18. 13 Gray, 21.

SECT. 4. Property which is subject to a mortgage executed before an estate or right of homestead was acquired therein, or executed afterwards and containing a release thereof, shall be subject to any estate or right of homestead provided for in this chapter, except against the mortgagee and those claiming under him, in the same manner as if the property were unencumbered: *provided*, that when in such case a party becoming the owner of the residue above an estate of homestead and a mortgagee, redeems the mortgage, he shall not be allowed to set up the same against the owner of the estate of homestead, his widow, heirs, or assigns, unless such owner of the estate of homestead, his widow, heirs, or assigns, offer to redeem such residue in case of set-off or sale on execution.

Mortgaged property subject to rights of homestead, except, &c.

SECT. 5. No property shall by virtue of this chapter be exempt from levy for taxes, or for a debt contracted for the purchase thereof, or for a debt contracted before the deed or writing required by section two is recorded, or before the rights of homestead mentioned in section three were acquired; nor shall buildings on land not owned by the householder be exempt from sale or levy for the ground rent of the lot of land whereon they stand.

Homestead property not exempt from levy for taxes, ground rent, &c. 1857, 298, § 4.

SECT. 6. Such estates and rights of homestead shall not defeat or otherwise affect any mortgage, or other encumbrance, or lien, previously existing by virtue of any deed, attachment, policy of insurance, or otherwise.

Previous liens, &c., not defeated. 1857, 298, § 5.

SECT. 7. The property in which an estate or right of homestead exists may be conveyed or released by a deed duly acknowledged and recorded, in which the wife of the householder, or her guardian under a license from the probate court if she is insane, joins for the purpose of releasing the right of homestead, in the same manner as she may join in releasing dower.

Homestead and rights may be conveyed and released. 1857, 298, §§ 1, 7, 10. See Ch. 90, § 8; Ch. 108, §§ 19, 20.

SECT. 8. No conveyance of property in which an estate or right of homestead exists, and no release or waiver thereof, shall operate to convey that part so held and exempted, or to defeat the right of the owner or his wife and children to have a homestead therein, except by deed acknowledged and recorded, in which the wife of the owner, if he has any, joins for the purpose of releasing the same in the manner in which she may release her dower, or unless the same is released as provided in chapter one hundred and eight. But any deed duly executed without such release, shall be valid to pass according to the terms of the instrument any title or interest in the property beyond the estate or right of homestead and the wife's right of dower.

Same subject. 1857, 298, §§ 1, 3, 6, 7, 10, 12. 2 Gray, 383. See Ch. 90, § 8.

SECT. 9. When an estate or right of homestead exists in property in which other parties have an interest, the party entitled to the homestead, or any other party interested, may upon petition have partition thereof like tenants in common.

Partition of property subject to homestead. 1857, 298, § 14.

SECT. 10. When the property of a debtor is assigned under the laws in relation to insolvent debtors, and such debtor claims, and it appears

Homestead estate may be set



off, in case of  
insolvency of  
owner.  
1857, 298, § 16.

to the court wherein the proceedings in insolvency are pending, that he is entitled to hold any part thereof as a homestead, and that the property in which such estate of homestead exists is of greater value than eight hundred dollars, the court shall cause the property to be appraised by three impartial and discreet men, one of whom shall be appointed by the insolvent, one by the assignee, and the third by the court; or in case either the assignee or insolvent neglects to appoint, the court shall appoint for him. The persons appointed shall be duly sworn faithfully and impartially to appraise the property, and shall proceed to appraise and set off an estate of homestead in the same to the insolvent debtor, in the manner prescribed in the following section in case of a judgment debtor; and the residue shall vest in and be disposed of by the assignee in the same manner as property not exempt by law from levy on execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in insolvency, as are allowed to appraisers of real estate seized upon execution.

Mode of levy-  
ing execution  
upon property  
above value of  
\$800, in which  
homestead ex-  
ists.  
1857, 298, § 15.  
1858, 62.

SECT. 11. If a judgment creditor requires an execution to be levied on property claimed by the debtor to be exempt from levy as a homestead, and the officer holding such execution is of opinion that the premises are of greater value than eight hundred dollars, appraisers shall be appointed to appraise the property in the manner provided by law for the levy of executions on real estate. If in their judgment the premises are of greater value than eight hundred dollars, they shall set off to the judgment debtor so much of the premises, including the dwelling-house in whole or in part, as shall appear to them to be of the value of eight hundred dollars; and the residue of the property shall be levied upon and disposed of in like manner as real estate not exempt from levy on execution: *provided*, that if the property is subject to a mortgage, it may be set off or sold subject to the mortgage and the estate of homestead, in like manner as land subject to mortgage.

Homestead to  
continue after  
death of house-  
holder, for ben-  
efit of widow  
and minor chil-  
dren.  
1857, 298, § 2.

SECT. 12. The estate or right of homestead of any householder, existing at his death, shall continue for the benefit of his widow and minor children, and be held and enjoyed by them, if some one of them occupies the premises, until the youngest child is twenty-one years of age, and until the marriage or death of the widow, and shall upon the death of such householder be limited to that period. But all the right, title, and interest of the deceased in the premises in which such estate or right exists, except the estate of homestead thus continued, shall be subject to the laws relating to devise, descent, dower, and sale for payment of debts against the estate of the deceased.

may be set off  
in same manner  
as dower.  
1857, 298, § 14.

SECT. 13. When a widow or minor children are entitled to an estate or right of homestead as provided in the preceding section, the same may be set off to the parties entitled thereto in the same manner as dower may be set off to a widow.

Rights of wid-  
ow and children  
may be sold.

SECT. 14. The widow, and the guardian of the minor children, when he has obtained a license therefor from the probate court as in the case of sales of real estate of minors, may join in a sale of such estate of homestead; or, if there is no widow entitled to such rights therein, the guardian upon such license may make sale thereof; and the widow may make such sale if there are no minor children. The purchaser shall have the right to enjoy and possess the premises for the full time that the widow and children or either of them might have continued to hold and enjoy the same if no sale had been made. The probate court may apportion the proceeds of the sale among the parties entitled thereto.

Confirmation of  
conveyances  
under repealed  
laws.  
1857, 298, §§ 7, 13.

SECT. 15. The conveyances and titles confirmed and established by the seventh and thirteenth sections of chapter two hundred and ninety-eight of the acts of eighteen hundred and fifty-seven, shall not be impaired or affected by the repeal of that act.

# TITLE VI.

## CHAPTER 105.

### OF THE PREVENTION OF FRAUDS AND PERJURIES.

*Allen 338.403*

**SECTION**

- 1. No action to be brought on certain contracts, unless in writing.
- 2. Consideration need not be in writing.
- 3. New promise by debtor discharged in insolvency, &c., not binding unless in writing, &c.

**SECTION**

- 4. No action on representation of another's credit, &c., unless in writing.
- 5. on contract for goods of value of \$50, unless, &c.
- 6. Contracts for sale of certain stocks void, unless vendor is owner, &c., at time of contracting.

**SECTION 1.** No action shall be brought in any of the following cases, that is to say:—

First. To charge an executor, administrator, or assignee under any insolvent law of this commonwealth, upon a special promise to answer damages out of his own estate:

Second. To charge a person upon a special promise to answer for the debt, default, or misdoings of another:

Third. Upon an agreement made upon consideration of marriage:

Fourth. Upon a contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them: or

Fifth. Upon an agreement that is not to be performed within one year from the making thereof:

Unless the promise, contract, or agreement, upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized.

**SECT. 2.** The consideration of such promise, contract, or agreement, need not be set forth or expressed in the writing signed by the party to be charged therewith, but may be proved by any other legal evidence.

**SECT. 3.** No promise for the payment of any debt made by an insolvent debtor who has obtained his discharge from said debt under proceedings in bankruptcy or insolvency, shall be evidence of a new or continuing contract, whereby to deprive a party of the benefit of relying upon such discharge in bar of the recovery of a judgment upon such debt, unless such promise is made by or contained in some writing signed by the party sought to be charged, or by some person thereunto by him lawfully authorized: but this section shall not apply to such promise made prior to the fifteenth day of March in the year eighteen hundred and fifty-six.

**SECT. 4.** No action shall be brought to charge a person upon or by reason of any representation or assurance made concerning the character, conduct, credit, ability, trade, or dealings, of any other person, unless such representation or assurance is made in writing and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

**SECT. 5.** No contract for the sale of goods, wares, or merchandise, for the price of fifty dollars or more, shall be good or valid, unless the purchaser accepts and receives part of the goods so sold, or gives something in earnest to bind the bargain, or in part payment; or unless some

Certain contracts to be in writing.  
 R. S. 74, § 1.  
 1848, 252.  
 1 Met. 313, 483.  
 3 Met. 396.  
 4 Met. 580.  
 4 Met. 319.  
 7 Met. 46, 57.  
 8 Met. 34, 59.  
 11 Met. 411.  
 13 Met. 385, 520.  
 1 Cush. 78.  
 4 Cush. 42.  
 5 Cush. 488.  
 8 Cush. 223.  
 1 Gray, 131, 391.  
 5 Gray, 41, 42, 492.  
 6 Gray, 32, 500.  
 7 Gray, 35.

Consideration not in writing.  
 R. S. 74, § 2.  
 5 Cranch, 142.  
 4 B. & A. 595.  
 17 Mass. 122.  
 New promise by debtor discharged in insolvency, &c., to be in writing, &c.  
 1856, 18, §§ 1, 2.  
 7 Gray, 460.

No action on representation of another's credit, &c., unless in writing.  
 R. S. 74, § 3.  
 6 Met. 246.

on contract for goods of value of \$50, unless, &c.  
 R. S. 74, § 4.  
 20 Pick. 9, 134.

21 Pick. 205, 384.  
1 Met. 283.  
3 Met. 365, 486.  
9 Met. 177.  
12 Met. 353.

Contracts for  
sale or transfer  
of certain  
stocks void, un-  
less vendor is  
owner, &c.  
1836, 279.  
7 Gray, 160.

note or memorandum in writing of the bargain is made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

13 Met. 453. 4 Cush. 497. 9 Cush. 116. 3 Gray, 331. 7 Gray, 557.

SECT. 6. Every contract, written or oral, for the sale or transfer of a certificate or other evidence of debt due from the United States, or a separate state, or of any stocks, or any share or interest in the stock of a bank, company, city, or village, incorporated under a law of the United States or an individual state, shall be void, unless the party contracting to sell or transfer the same, is, at the time of making the contract, the owner or assignee thereof, or authorized by the owner or assignee, or his agent, to sell or transfer the certificate or other evidence of debt, share, or interest, so contracted for.

## TITLE VII.

### OF THE DOMESTIC RELATIONS.

CHAPTER 106. — Of Marriage.

CHAPTER 107. — Of Divorce.

CHAPTER 108. — Of Certain Rights and Liabilities of Husband and Wife.

CHAPTER 109. — Of Guardians and Wards.

CHAPTER 110. — Of the Adoption of Children and Change of Names.

CHAPTER 111. — Of Masters, Apprentices, and Servants.

## CHAPTER 106.

### OF MARRIAGE.

#### SECTION

- 1, 2, 3. Marriage between certain relations prohibited.
4. Polygamy forbidden.
5. Marriages of idiots, &c., void.
6. of persons marrying out of state to evade, &c.
7. Intention of marriage to be entered with town clerk, &c.
8. Certificate to be given to parties by clerk, &c.
9. not to issue to certain minors except on application of parents, &c.
10. Clerk may require affidavit of age.
11. Penalty for wilful deception.
12. Parties living in state and married out of it to file certificate.

#### SECTION

13. Minors not to be married without consent of parents, &c.
14. Marriages, by whom to be solemnized, and in what place.
15. among Quakers.
16. Persons solemnizing marriages to keep record and make returns.
17. Penalty for not making returns.
18. on justice, &c., for unlawfully marrying.
19. on person not authorized to marry.
20. Certain marriages valid, though irregularly solemnized.
21. Record of marriage, &c., to be presumptive evidence thereof.
22. Admission of respondent, &c.
23. Marriages by consul, &c., valid.

Marriage be-  
tween certain

SECTION 1. No man shall marry his mother, grandmother, daughter, granddaughter, step-mother, sister, grandfather's wife, son's wife, grand-



son's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister.

relations prohibited.  
R. S. 75, § 1.  
See Ch. 165, § 7.

SECT. 2. No woman shall marry her father, grandfather, son, grandson, step-father, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, or mother's brother.

Same subject.  
R. S. 75, § 2.  
See Ch. 165, § 7.

SECT. 3. In all cases mentioned in the two preceding sections in which the relationship is founded on marriage, the prohibition shall continue notwithstanding the dissolution of such marriage by death or divorce, unless the divorce is for a cause which shows the marriage to have been originally unlawful or void.

Same subject.  
R. S. 75, § 3.

SECT. 4. All marriages contracted while either of the parties has a former wife or husband living, except as is provided in chapter one hundred and seven, shall be void.

Polygamy forbidden.  
R. S. 75, § 4.  
1841, 83.  
1855, 426, § 1.

1 Pick. 136. 8 Pick. 433. 4 Cnsh. 51. 8 Cnsh. 386.

SECT. 5. No insane person or idiot shall be capable of contracting marriage.

Marriages of idiots, &c., void.

SECT. 6. When persons resident in this state, in order to evade the preceding provisions and with an intention of returning to reside in this state, go into another state or country and there have their marriage solemnized, and afterwards return and reside here, the marriage shall be deemed void in this state.

of persons marrying out of state to evade, &c.  
R. S. 75, § 6.  
16 Mass. 157.  
1 Pick. 506.

SECT. 7. Persons intending to be joined in marriage shall before their marriage cause notice thereof to be entered in the office of the clerk or registrar of the city or town in which they respectively dwell, if within the state. If there is no such clerk or registrar in the place of their residence, the entry shall be made in an adjoining city or town.

Intention of marriage to be entered with town clerk, &c.  
1849, 202, §§ 1, 2.  
1850, 121, § 1.

SECT. 8. The clerk or registrar shall deliver to the parties a certificate under his hand, specifying the time when notice of the intention of marriage was entered with him, together with all facts in relation to the marriage required by law to be ascertained and recorded, except those respecting the person by whom the marriage is to be solemnized. Such certificate shall be delivered to the minister or magistrate in whose presence the marriage is to be contracted, before he proceeds to solemnize the same.

Certificate to be given to parties by clerk, &c.  
1844, 159, § 1.  
1849, 202, § 1.  
1850, 121, § 2.  
See Ch. 21.

SECT. 9. If a clerk or registrar issues such certificate to a male under the age of twenty-one years, or a female under the age of eighteen years, having reasonable cause to suppose the person to be under such age, except upon the application or consent in writing of the parent, master, or guardian, of such person, he shall forfeit a sum not exceeding one hundred dollars; but if there is no parent, master, or guardian, in this state competent to act, a certificate may be issued without such application or consent.

not to issue to certain minors except on application of parent, &c.  
1853, 335, § 1.

SECT. 10. The clerk or registrar may require of any person applying for such certificate, an affidavit sworn to before a justice of the peace for the county where the application is made, setting forth the age of the parties; which affidavit shall be sufficient proof of age to authorize the issuing of the certificate.

Clerk may require affidavit of age.  
1853, 335, § 2.

SECT. 11. Whoever applying for such certificate wilfully makes a false statement in relation to the age or residence, parent, master, or guardian, of either of the parties intending marriage, shall forfeit a sum not exceeding two hundred dollars.

Penalty for wilful deception.  
1857, 34.

SECT. 12. When a marriage is solemnized in another state between parties living in this state, and they return to dwell here, they shall within seven days after their return file with the clerk or registrar of the city or town where either of them lived at the time, a certificate or declaration of their marriage, including the facts concerning mar-

Parties living in state and married out of it to file certificate.  
1839, 155.  
1850, 121, § 3.  
See Ch. 21.

riages required by law, and for every neglect they shall forfeit ten dollars.

Minors not to be married without consent of parents, &c.  
R. S. 75, § 15.  
1 Gray, 119.  
7 Gray, 483.

Marriages, by whom to be solemnized, and in what place.  
R. S. 75, § 16.

among Quakers.  
R. S. 75, § 22.

Persons solemnizing marriages to keep record and make returns.  
R. S. 75, § 17.  
1844, 159, § 3.  
See Ch. 21.

Penalty for not making returns.  
R. S. 75, § 18.  
1844, 159, § 3.

on justice, &c., for unlawfully marrying.  
R. S. 75, § 19.  
1 Gray, 119.  
7 Gray, 483.

on person not authorized to marry.  
R. S. 75, § 20.  
13 Pick. 111.

Certain marriages valid, though irregularly solemnized.  
R. S. 75, § 24.  
6 Greenl. 143.  
7 Mass. 43.  
1 Pick. 235.

Record of marriage, &c., to be presumptive evidence thereof.  
R. S. 75, § 25.

Admission of respondent, &c.  
1840, 84.  
1841, 20.  
12 Met. 361.  
13 Met. 144.  
1 Cush. 391.  
5 Gray, 95.

SECT. 13. No magistrate or minister shall solemnize a marriage, having reasonable cause to suppose either of the parties to be under the age mentioned in section nine, without the consent of the parent or guardian having the custody of the minor, if there is any in the state competent to act.

SECT. 14. Marriages may be solemnized by a justice of the peace in the county for which he is appointed, when either of the parties resides in the same county; and throughout the state by any minister of the gospel ordained according to the usage of his denomination, who resides within the state and continues to perform the functions of his office; but all marriages shall be solemnized in the city or town in which the person solemnizing them resides, or in which one or both of the persons to be married reside.

SECT. 15. Marriages among the people called Friends or Quakers may be solemnized in the manner heretofore used and practised in their societies.

SECT. 16. Every justice of the peace, minister, and clerk, or keeper of the records of the meeting wherein any marriages among the Friends or Quakers are solemnized, shall make a record of each marriage solemnized before him, together with all facts relating to the marriage required by law to be recorded. He shall also between the first and tenth days of each month return a copy of the record for the month next preceding, to the clerk or registrar of the city or town in which the marriage was solemnized, and shall, when neither of the parties to a marriage resides in the city or town in which the marriage is solemnized, return a copy of the record of such marriage to the clerk or registrar of the city or town in which one or both of said parties reside. All marriages so returned shall be recorded by the clerk or registrar.

SECT. 17. Every person neglecting to make the returns required by the preceding section shall forfeit for each neglect not less than twenty nor more than one hundred dollars.

SECT. 18. A justice of the peace or minister who joins persons in marriage contrary to the provisions of this chapter, knowing that the marriage is not duly authorized, shall forfeit not less than fifty nor more than one hundred dollars.

SECT. 19. Whoever undertakes to join persons in marriage knowing that he is not authorized so to do, shall be imprisoned in the jail or confined to hard labor for a term not exceeding six months, or pay a fine of not less than fifty nor more than two hundred dollars.

SECT. 20. No marriage solemnized before a person professing to be a justice of the peace or minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, by want of jurisdiction or authority in such person, or by an omission or informality in the manner of entering the intention of marriage, if the marriage is in other respects lawful, and is consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

SECT. 21. The record of a marriage, made and kept as prescribed by law by the person before whom the marriage is solemnized, or by the clerk or registrar of any city or town, or a copy of such record duly certified, shall be received in all courts and places as presumptive evidence of such marriage.

SECT. 22. When the fact of marriage is required or offered to be proved before any court, evidence of the admission of such fact by the party against whom the process is instituted, or of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent.

SECT. 23. Marriages solemnized in a foreign country by a consul or diplomatic agent of the United States, shall be valid in this state; and a copy of the record or a certificate from such consul or agent shall be presumptive evidence of such marriage.

Marriages by consul, &c., valid.

CHAPTER 107.

OF DIVORCE.

SECTION

1. Certain marriages void without decree.
2. Validity of marriage not to be tried upon collateral issue, &c.
3. Marriage of parties under age of consent, when void, &c.
4. Certain marriages may be declared void by decree of nullity.
5. Marriage may be declared valid by decree.
6. Divorce from bond of matrimony, for what causes decreed.
7.     may be decreed for desertion.
8. Libel not defeated by temporary return, &c.
9. Divorce from bed and board, for what causes.
10.     from bond of matrimony, may be decreed in certain cases after divorce from bed and board.
11.     when libellant has resided in state five years.
12.     not decreed unless parties have lived together in state, &c.
- 13, 14. Libels for divorce, in what courts to be brought.
15. Either party may have trial by jury.
16. Libel, how to be signed.
- 17, 18, 19.     how to be filed and notice served.
20. Court may order further notice.
21. Guardian for insane respondent.
22. Allowance to wife, and alimony pending suit.
23. Woman divorced, allowed to resume former name.
24. Penalty for cohabiting after divorce.
25. Innocent party may marry again, &c.
26. Party residing in this state, divorced except for adultery, may be authorized to marry again.
27. Issue of marriage in case of divorce for adultery of wife.
28.     of marriage prohibited.

SECTION

29. Issue of marriage dissolved for insanity, &c.
30.     of marriage dissolved on account of prior marriage.
31. Wife protected during pendency of libel.
32. Custody of children pending libel.
33.     after divorce.
34.     of minor children of parents divorced in another state, &c.
35. Infant children of divorced persons, natives of this state, not to be removed therefrom, except, &c.
36. Children of parents living separately.
37. Rules as to custody of children.
38. In what cases wife entitled to dower.
39. Upon divorce for adultery of wife, husband to hold her estate, &c.
40. Upon divorce except for adultery of wife, she shall hold her real estate, &c.
41. Court may appoint trustee of property awarded to wife.
42. Husband may be examined on oath as to personal estate of wife.
43. In certain cases wife may be allowed alimony upon decree of divorce, &c.
44. Alimony, &c., in certain cases.
45.     court may in equity enforce decrees of.
46. Security for payment of alimony.
47. Decree respecting alimony, &c., may be revised and altered.
48.     may be made or revised at any time after decree of divorce.
49. Costs on petitions, &c.
50. On certain libels for divorce, husband's property may be attached.
51. Attachment may be made on summons or order of notice in certain cases, &c.
52. Laws relating to attachments to apply.
53. Course of proceedings in suits under this chapter.
- 54, 55. Divorces obtained out of this state.

SECTION 1. All marriages solemnized within this state, which are prohibited by law on account of consanguinity or affinity between the parties, or on account of either of them having a former wife or husband then living, or when either party was insane or an idiot, shall be void without any decree of divorce or other legal process.

Certain marriages void without decree. R. S. 76, § 1. 1843, 5. 12 Mass. 363.

SECT. 2. The validity of a marriage shall not be questioned in the trial of a collateral issue, on account of the insanity or idiocy of either party, but only in a process duly instituted in the lifetime of both parties for determining such validity.

Validity of marriage not to be tried upon collateral issue, &c. 1845, 222.

SECT. 3. If the parties to a marriage solemnized when either of them was under the age of consent, separate during such nonage, and do not

Marriage of parties under



age of consent, when void, &c.  
R. S. 76, § 2.

Certain marriages may be declared void by decree of nullity.  
R. S. 76, § 3.  
1846, 197.  
1855, 27.

Marriage may be declared valid by decree.  
R. S. 76, § 4.

Divorce from bond of matrimony, for what causes decreed.  
R. S. 76, § 5.  
1850, 100, § 1.

may be decreed for desertion.  
1857, 228, § 2.  
3 Met. 257.  
5 Met. 233.  
4 Cush. 51.  
7 Gray, 279.  
See § 44.

Libel not defeated by temporary return, &c.  
1855, 137, § 8.

Divorce from bed and board, for what causes.  
R. S. 76, § 6.  
2 Mass. 150.

from bond of matrimony, may be decreed in certain cases after divorce from bed and board.  
1857, 228, § 1.  
See § 44.

when libellant has resided in state five years.  
1843, 77.  
14 Pick. 181.  
5 Met. 233.

not decreed unless parties have lived together in state, &c.

afterwards cohabit, the marriage shall be void without a decree of divorce or other legal process.

SECT. 4. When a marriage is supposed to be void, or the validity thereof is doubted, for fraud or other cause, either party may file a libel for annulling the same, in the manner hereinafter prescribed in the case of a libel for divorce. Upon proof of the fraud or other cause of nullity, the marriage shall be declared void by a sentence of divorce or nullity, notwithstanding such marriage was solemnized out of this state, if the libellant had his domicile here when the marriage was so solemnized and when the libel was filed.

SECT. 5. When the validity of a marriage is denied or doubted by either [party,] the other party may file a libel in manner aforesaid for affirming the marriage, and upon due proof of its validity, it shall be affirmed and declared valid by a decree of the court; and such decree shall be conclusive upon all persons concerned.

SECT. 6. A divorce from the bond of matrimony may be decreed for adultery or impotency of either party; or when either party has separated from the other without his or her consent and united with a religious sect or society that professes to believe the relation of husband and wife void or unlawful, and has continued united with such sect or society for three years, refusing during that term to cohabit with the party who has not united with such sect or society; or when either party is sentenced to confinement to hard labor in the state prison, or in any jail or house of correction, for the term of life, or for five years or more; and no pardon granted after a divorce for that cause to the party so sentenced shall restore such party to his or her conjugal rights.

SECT. 7. A divorce from the bond of matrimony may be decreed in favor of either party when one party has deserted the other for five years consecutively: *provided*, that when the libel is filed by the party deserting, it appears that the desertion was caused by extreme cruelty of the other party, or that the desertion by the wife was caused by the gross or wanton and cruel neglect of the husband to provide suitable maintenance for her, he being of sufficient ability so to do.

SECT. 8. No libel brought under the preceding section shall be defeated by a temporary return or other act done by the party deserting, with the intent to defeat the operation of said section, if it appears that such return or other act was not made or done in good faith.

SECT. 9. A divorce from bed and board may be decreed for extreme cruelty, utter desertion, gross and confirmed habits of intoxication contracted after marriage, or cruel and abusive treatment by either of the parties; and on the libel of the wife, when the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her.

SECT. 10. When a divorce from bed and board has been decreed for any cause mentioned in the preceding section, and the parties have lived separately for five consecutive years next after the decree, a divorce from the bonds of matrimony may be decreed upon the petition of the party in whose favor the decree was granted; or after the parties have lived separately for ten consecutive years, a divorce from the bond of matrimony may be decreed in favor of either party.

SECT. 11. When the libellant has resided in this state five consecutive years next preceding the time of filing the libel, a divorce may be decreed for any cause allowed by law, whether it occurred in this commonwealth or elsewhere; unless it appears that the libellant has removed into this state for the purpose of procuring a divorce.

SECT. 12. Except as aforesaid, no divorce shall be decreed for any cause, if the parties have never lived together as husband and wife in this state; nor for any cause occurring in any other state or country, unless before such cause occurred the parties had lived together as

husband and wife in this state, and one of them lived in this state when the cause occurred.

SECT. 13. Libels for divorce shall be heard and determined in the supreme judicial court held for the county in which, or for two or more counties in either of which, the parties or one of them live. When heard before a single judge, either party may take exceptions in the same manner and with the same effect as in suits at common law.

SECT. 14. When the libellant has left the county in which the parties have lived together, the adverse party still living therein, the libel shall be heard and determined in the court held for that county.

SECT. 15. Either party to a libel for divorce, at any time before the trial is commenced, and if at a jury term, before the jurors are dismissed, may make and file with the clerk of the court a demand in writing for a trial by jury; and the questions of fact arising upon such libel, shall be so tried under the direction of the court. In such case the proceedings shall be conducted as nearly as may be in the manner of conducting suits at common law; and a decree may be entered in conformity with the verdict.

SECT. 16. Every libel shall be signed by the libellant, if of sound mind and of legal age to consent to marriage; otherwise it may be signed by his or her guardian, or by any person admitted by the court to prosecute the same as next friend of the libellant.

SECT. 17. When the party complained of is within the state, the libel may be filed in the office of the clerk of the court in vacation, and a summons to appear and answer thereto issued by the clerk and served on the adverse party fourteen days at least before the sitting of the court.

SECT. 18. The service shall be made by delivering to the adverse party an attested copy of the libel and summons, or by leaving such copy at the place of his or her abode; but the service by leaving a copy at the place of abode shall not be deemed sufficient, if it appears that the party had not been there after the same was left, unless it also appears that such party had personal notice of the suit.

SECT. 19. The libel, whether the adverse party is within or without the state, may be presented to the supreme judicial court in any county; and the adverse party shall be summoned to appear and answer at the court having jurisdiction of the cause, either by a publication of the libel or the substance thereof with the order of the court thereon in one or more newspapers to be designated in the order, or by delivering to the party an attested copy of the libel and summons, or in such other manner as the court shall consider to be most proper and effectual.

SECT. 20. When the adverse party does not appear, and the notice of the pendency of the libel is considered by the court defective or insufficient, it may order such further notice as it considers proper.

SECT. 21. If, at any time during the pendency of the suit, the respondent is insane, the court shall appoint some suitable person as guardian to appear and answer in like manner as a guardian is appointed for an infant defendant in a suit at law.

SECT. 22. In all cases of libel, the court may require the husband to pay into court, for the use of the wife during the pendency of the libel, such sum of money as may enable her to maintain or defend the libel, although exceeding the taxable costs; and in every case of libel for divorce, the wife, when it is just and equitable, shall be entitled to alimony during the pendency of the suit.

SECT. 23. The court, upon granting to a woman a divorce from the bond of matrimony, may allow her to resume her maiden name, or the name of any former husband.

SECT. 24. If persons divorced from the bond of matrimony cohabit

R. S. 76, §§ 9, 10, 11.  
5 Met. 233.  
Libels for divorce, in what courts to be brought.  
R. S. 76, § 7.  
1851, 82, § 2.

Same subject.  
R. S. 76, § 8.

Either party may have trial by jury.  
1855, 56, §§ 2, 3, 4, 5.  
1857, 255.

Libel, how to be signed.  
R. S. 76, § 12.  
4 Mass. 506.  
7 Mass. 96.  
13 Mass. 412.  
1 Met. 382.  
how to be filed, and notice served.  
R. S. 76, § 13.

Same subject.  
R. S. 76, § 14.  
7 Mass. 502.  
8 Mass. 383.

Same subject.  
R. S. 76, §§ 15, 16.  
12 Mass. 312.

Court may order further notice.  
R. S. 76, § 17.

Guardian for insane respondent.  
R. S. 76, § 18.  
13 Mass. 412.

Allowance to wife pending suit.  
1851, 82, § 1.  
1855, 65.  
1855, 137, § 6.  
8 Cush. 405.  
2 Gray, 282.  
6 Gray, 341.

Woman divorced may resume former name.  
1849, 141.

Penalty for co-



habiting after divorce.

R. S. 76, § 19.

Innocent party may marry, &c.

R. S. 75, § 4.

1841, 83.

1 Pick. 136.

8 Pick. 433.

4 Cush. 51.

8 Cush. 386.

In what cases either party may be authorized to marry again.

1855, 426, § 1.

Issue of marriage in case of divorce for adultery of wife.

R. S. 76, § 20.

of marriage prohibited.

R. S. 76, § 21.

1843, 5.

of marriage dissolved for nonage, &c.

R. S. 76, § 22.

of marriage dissolved on account of prior marriage.

R. S. 76, § 23.

of marriage dissolved on account of prior marriage.

R. S. 76, § 24.

of marriage dissolved on account of prior marriage.

R. S. 76, § 25.

of marriage dissolved on account of prior marriage.

R. S. 76, § 26.

of marriage dissolved on account of prior marriage.

R. S. 76, § 27.

of marriage dissolved on account of prior marriage.

R. S. 76, § 28.

of marriage dissolved on account of prior marriage.

R. S. 76, § 29.

of marriage dissolved on account of prior marriage.

R. S. 76, § 30.

of marriage dissolved on account of prior marriage.

R. S. 76, § 31.

of marriage dissolved on account of prior marriage.

R. S. 76, § 32.

of marriage dissolved on account of prior marriage.

R. S. 76, § 33.

of marriage dissolved on account of prior marriage.

R. S. 76, § 34.

of marriage dissolved on account of prior marriage.

R. S. 76, § 35.

of marriage dissolved on account of prior marriage.

R. S. 76, § 36.

of marriage dissolved on account of prior marriage.

R. S. 76, § 37.

of marriage dissolved on account of prior marriage.

R. S. 76, § 38.

of marriage dissolved on account of prior marriage.

R. S. 76, § 39.

of marriage dissolved on account of prior marriage.

R. S. 76, § 40.

of marriage dissolved on account of prior marriage.

R. S. 76, § 41.

of marriage dissolved on account of prior marriage.

R. S. 76, § 42.

of marriage dissolved on account of prior marriage.

R. S. 76, § 43.

of marriage dissolved on account of prior marriage.

R. S. 76, § 44.

of marriage dissolved on account of prior marriage.

R. S. 76, § 45.

of marriage dissolved on account of prior marriage.

R. S. 76, § 46.

of marriage dissolved on account of prior marriage.

R. S. 76, § 47.

of marriage dissolved on account of prior marriage.

R. S. 76, § 48.

of marriage dissolved on account of prior marriage.

R. S. 76, § 49.

of marriage dissolved on account of prior marriage.

R. S. 76, § 50.

as husband and wife or live together in the same house, they shall be liable to all penalties against adultery.

SECT. 25. In cases of divorce from the bond of matrimony, the innocent party may marry again as if the other party were dead. Any marriage contracted by the guilty party, during the life of the other party, except as provided in the following section, shall be void, and such party shall be adjudged guilty of polygamy.

SECT. 26. When a divorce from the bond of matrimony, except for the cause of adultery, has been granted under the laws of this state or any state or territory in the United States, the justices of the supreme judicial court, or either of them, upon petition filed by the party against whom the divorce was granted, (if the party resided within this state at the time of granting the divorce,) and upon such [notice] as the court shall order, may authorize such party to marry again.

SECT. 27. A divorce for adultery committed by the wife shall not affect the legitimacy of the issue of the marriage, but such legitimacy, if questioned, shall be tried and determined according to the course of the common law.

SECT. 28. The issue of a marriage dissolved by a divorce or sentence of nullity on account of consanguinity or affinity between the parties, shall be deemed to be illegitimate.

SECT. 29. The issue of a marriage dissolved on account of the nonage, insanity, or idiocy, of either party, shall be deemed to be the legitimate issue of the parent who was capable of contracting the marriage.

SECT. 30. When a marriage is dissolved on account of a prior marriage of either party, and it appears that the second marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, that fact shall be stated in the decree of divorce or nullity; and the issue of the second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent capable of contracting the marriage.

SECT. 31. The supreme judicial court sitting in any county may, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of a libel.

SECT. 32. The court may in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties during the pendency of the libel, as shall be deemed expedient and for the benefit of the children.

SECT. 33. Upon a decree of nullity or divorce, the court may make such further decree as it deems expedient, concerning the care, custody, and maintenance of the minor children of the parties, and determine with which of the parents the children or any of them shall remain; and the court may, from time to time afterwards, on the petition of either of the parents, revise and alter such decree, and make a new decree, as the circumstances of the parents and the benefit of the children require.

SECT. 34. After a divorce decreed in any other state or country, if minor children of the marriage are inhabitants of this state, the justices of the supreme judicial court, on the petition of either parent or of a next friend in behalf of the children, such notice being given to both parents as the court shall direct, may make like decrees concerning their care, custody, education, and maintenance, as if the divorce had been decreed in this state.

SECT. 35. When the justices of the supreme judicial court have jurisdiction over the custody and maintenance of the infant children of divorced persons, and such children are natives of this state, or have resided five years within its limits, they shall not be removed out of the

Infant children of divorced persons, natives of this state, not to be removed



jurisdiction, against their own consent, if of suitable age to signify the same, nor while under that age, without the consent of both parents, unless the court upon cause shown otherwise orders. The court, upon application of any person in behalf of such infants, may require such security and issue such writs and processes as they shall deem proper to effect the purposes of this and the preceding section.

therefrom except, &c.  
1842, 83, § 2.

SECT. 36. Where the parents of minor children live separately, the justices of said court, upon the petition of either parent, shall have the same power to make decrees concerning their care, custody, education, and maintenance, as concerning children whose parents are divorced.

Children of parents living separately.  
R. S. 76, § 26.  
1856, 24.

SECT. 37. In making an order or decree relative to the custody of children pending a controversy between their parents, or in regard to their final possession, the rights of the parents in the absence of misconduct shall be held to be equal, and the happiness and welfare of the children shall determine the custody or possession. The court may make the necessary orders and decrees from time to time in relation to such custody or possession.

Rules as to custody of children.  
1855, 137, § 7.

SECT. 38. When a divorce is decreed for the cause of adultery committed by the husband, or because of his sentence to confinement at hard labor, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce from the bond of matrimony. A divorcee from bed and board shall not bar her claim to dower.

In what cases wife entitled to dower.  
R. S. 76, § 32.  
13 Mass. 231.

SECT. 39. When a divorce is decreed for the cause of adultery committed by the wife, the husband shall hold her personal estate forever, and her real estate so long as they both live; and if he survives her and there has been issue of the marriage born alive, he shall hold her real estate for his own life, as tenant by the curtesy; but the court may decree to the wife, for her subsistence, as much of her personal or real estate, or of the income thereof, as it deems necessary.

Upon divorce for adultery of wife, husband to hold her estate, &c.  
R. S. 76, §§ 33, 34.

SECT. 40. Upon the dissolution of a marriage by a decree of nullity or divorce, for any cause except that of adultery committed by the wife, and upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead; and the court may make a decree restoring to the wife the whole or any part of the personal estate that has come to the husband by reason of the marriage, or awarding to her the value thereof in money to be paid by the husband.

Upon divorce, except for adultery of wife, she shall hold her real estate, &c.  
R. S. 76, §§ 27, 28.

SECT. 41. When personal estate of the wife, or money in lieu thereof, is awarded to her under the preceding section, the court in its discretion may order it to be delivered or paid to a trustee appointed by the court, upon trust, to invest the same and apply the income thereof in such manner as the court directs to the support and maintenance of the wife and minor children of the marriage, or any of them; and also to pay over the principal sum to the wife and children, in such proportions and at such times as shall be ordered by the final decree of the court. The trustee shall give such bonds for the faithful performance of his trust as the court shall require.

Court may appoint trustee of property awarded to wife.  
R. S. 76, § 29.

SECT. 42. When the court deems it proper to award to the wife any personal estate, or money in lieu thereof, it may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how it has been disposed of, and what portion thereof remains in his hands.

Husband may be examined on oath as to personal estate of wife.  
R. S. 76, § 30.

SECT. 43. Upon every divorce for adultery committed by the husband, or for impotency on his part, or for his uniting with any sect or society that believes or professes to believe the relation between husband and wife void or unlawful, or because of his sentence to confinement at hard labor; and upon every divorce from bed and board, if the estate and effects restored and assigned to the wife are insufficient for

In certain cases wife may be allowed alimony, upon decree of divorce, &c.  
R. S. 76, § 31.  
1844, 129.  
1850, 160, § 3.

the suitable support and maintenance of herself and such children of the marriage as are committed to her care and custody; the court may further decree to her such part of the personal estate of the husband and such alimony out of his estate as it deems just and reasonable.

Alimony, &c.,  
in certain cases.  
1857, 228, § 3.

SECT. 44. When a divorce is decreed for any of the causes mentioned in sections seven and ten, the court granting it may decree alimony to the wife, or any share of her estate in the nature of alimony to the husband.

court may in  
equity enforce  
decrees of.  
1858, 47.

SECT. 45. The court may enforce decrees made for allowance, alimony, or allowance in the nature of alimony pending libels, or upon or after final decrees of divorce, in the same manner as decrees are enforced in equity.

security for  
payment of.  
R. S. 76, § 35.

SECT. 46. When alimony or other annual allowance is decreed for the wife or children, the court may require sufficient security to be given for its payment according to the terms of the decree.

Decree respect-  
ing alimony,  
&c., may be re-  
vised and alter-  
ed.  
R. S. 76, § 36.

SECT. 47. After a decree for alimony or other annual allowance for the wife or children, and also after a decree for the appointment of trustees to receive and hold any property in trust for the use of the wife or children as before provided, the court may, from time to time, on the petition of either party, revise and alter its decree respecting the amount of such alimony or other annual allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting said matters which it might have made in the original suit.

may be made  
or revised at  
any time after  
decree of di-  
vorce.  
1853, 23, § 1.

SECT. 48. The supreme judicial court, after a decree of divorce has been granted on the libel of a married woman, may at any time, upon petition therefor, make such decree respecting alimony, or other provision for her maintenance, or for the benefit of the children of the parties, as it might have made in the original suit; although no such decree of alimony or other provision was made in the original decree of divorce, or prayed for in such libel; and it may from time to time revise and alter such decree, as the circumstances of the parties and the benefit of the children may require.

Costs on peti-  
tions, &c.  
R. S. 76, § 27.  
1853, 23, § 2.

SECT. 49. Upon petitions for a decree under the preceding section, and upon petitions to revise and alter a decree under this chapter, the court may award costs to either party as justice and equity require.

On certain  
libels for di-  
vorce, hus-  
band's prop-  
erty may be  
attached.  
1855, 137, § 1.

SECT. 50. Upon libels for divorce for adultery committed by the husband, or because of his sentence to confinement at hard labor, and upon libels for divorce from bed and board, in order to secure a suitable support and maintenance to the wife and such children as may be committed to her care and custody, an attachment of the husband's real and personal estate may be made by the officer serving the libel.

Attachment  
may be made on  
summons or  
order of notice,  
&c.  
1855, 137, §§ 2,  
3, 5.

SECT. 51. When the libel is filed in vacation in the office of the clerk of the court, such attachment may be made upon the summons issued thereon, in the same manner as attachments are made upon writs in actions at common law. When the libel is in the first instance presented to the court, the attachment may be made in like manner upon the order of notice issued thereon. The amount for which the attachment may be made, shall be expressed in the summons or order of notice.

Laws relating  
to attachments  
to apply.  
1855, 137, § 4.

SECT. 52. All laws relating to attachments of real or personal estate, shall apply to attachments herein provided for, so far as the same are not inconsistent with the two preceding sections.

Course of pro-  
ceedings in  
suits under this  
chapter.  
R. S. 76, § 38.

SECT. 53. The supreme judicial court may in all cases where the course of proceeding is not specially prescribed, hear and determine all matters coming within the purview of this chapter, according to the course of proceeding in ecclesiastical courts and in courts of equity, and may issue process of attachment and of execution, and all other proper and necessary processes.



SECT. 54. When an inhabitant of this state goes into another state or country to obtain a divorce for any cause occurring here, and whilst the parties resided here, or for any cause which would not authorize a divorce by the laws of this state, a divorce so obtained shall be of no force or effect in this state.

Divorce out of state.  
R. S. 76, § 39.  
1 Johns. R. 424.  
15 Johns. R. 121.  
10 Mass. 266.  
14 Mass. 227.  
8 Cush. 385.  
2 Gray, 367.  
6 Gray, 157.  
Same subject.  
R. S. 76, § 40.

SECT. 55. In all other cases, a divorce decreed in any other state or country according to the laws thereof, by a court having jurisdiction of the cause and both the parties, shall be valid and effectual in this state.

## CHAPTER 108.

### OF CERTAIN RIGHTS AND LIABILITIES OF HUSBAND AND WIFE.

SECTION

1. Married women may hold property and earnings to sole and separate use, &c.
2. Real estate of wife, how conveyed.
3. Married women may convey separate property, &c., carry on business, sue, &c.
4. Trustee may be appointed, on petition of wife, to take charge of her separate estate, &c.
5. Husband not liable for contracts of wife, relating to her separate property, &c.
6. Wages, &c., of married woman may be paid to her, &c.
7. Property standing in name of wife, in certain cases, not liable for debts of husband.
8. Liability of husband and wife upon causes of action existing before marriage.
9. Married woman may make will, &c.
10. Marriage settlements and rights by curtesy not invalidated. Husband not to convey, &c., to wife.
11. Wife may release dower, &c., on sale of land by guardian of husband.
12. may join with guardian in sale of her real estate.
13. Proceeds of such sales, how disposed of.
14. Damages awarded when land of married woman is taken for railroad, &c., how disposed of.
15. Wife or husband of ward may join with guardian in making partition of real estate.
16. Married woman having property may be put under guardianship.
17. Guardian of married woman not to have custody, &c., of ward, except, &c.
18. not to apply property to her support without leave of probate court.
19. may be appointed to insane married woman having rights of dower, &c.

SECTION

20. How such dower and homestead may be released.
21. When dower is released, part of proceeds may be reserved for use of wife.
22. So when estate of homestead is released.
- 23, 24. Provision for wife in lieu of dower.
25. In what county proceedings are to be had, and where orders and decrees are to be recorded.
26. Allowance to wife out of estate of insane husband, how made.

MARRIAGE CONTRACTS.

27. Marriage contracts may be made by parties before marriage. Nature of such contracts.
28. Schedule and description of property to be recorded with contract in registry of deeds, &c.

MARRIED WOMEN COMING FROM OTHER STATES, &c.

29. Rights of married woman coming into state without husband.
30. of parties married out of state and coming here to reside.

MARRIED WOMEN ABANDONED BY THEIR HUSBANDS, &c.

31. Wife, if abandoned by husband or he is sent to state prison, may be authorized to convey property.
32. to make contracts, &c.
33. Continuance of such authority, &c.
34. Suits in which she is party not to abate by his return, &c.
35. Proceedings on petition, &c., by married woman, abandoned, &c.

SECTION 1. The property both real and personal which any married woman now owns as her sole and separate property, that which comes to her by descent, devise, bequest, gift, or grant, that which she acquires by her trade, business, labor, or services, carried on or performed on her sole and separate account, or received by her for releasing her dower by a deed executed subsequently to a conveyance of the estate of her husband, that which a woman married in this state owns at the time of her marriage, and the rents, issues, profits, and proceeds, of all such property, shall, notwithstanding her marriage, be and remain her sole and separate property, and may be used, collected, and invested, by her in her own name, and shall not be subject to the interference or control of her husband, or liable for his debts.

Married women may hold property and earnings to their sole and separate use, &c.  
1845, 208, § 3.  
1846, 209, § 1.  
1855, 304, § 1.  
1857, 249, § 1.  
6 Gray, 562.  
7 Gray, 337.



Real estate of wife, how conveyed.

R. S. 59, § 2.  
4 Mason, 45.  
7 Mass. 19, 291.  
3 Pick. 521.  
2 Gray, 161.

Married women may convey separate property, &c., carry on business, &c.  
R. S. 59, § 2.  
1855, 304, §§ 3, 4, 7.  
1857, 249, §§ 2, 3.  
4 Mason, 45.  
7 Mass. 19, 291.  
3 Pick. 521.  
13 Met. 154.  
2 Gray, 161, 447.  
See Ch. 89, § 29.

Trustee may be appointed on petition of wife to take charge of her separate estate, &c.  
1845, 268, § 8.  
11 Met. 349.

Husband not liable for certain contracts of wife.  
1855, 304, § 7.  
1857, 249, § 6.

Wages, &c., of married woman may be paid to her, &c.  
1846, 209, §§ 1, 2.  
1852, 292.

Property standing in name of wife not liable for debts of husband.  
1855, 304, § 6.

Liability of husband and wife upon causes of action existing before marriage.  
1845, 268, § 5.  
1855, 304, § 2.

Married woman may make will, &c.  
1855, 304, § 5.  
1857, 249, § 4.

Marriage settlements and

SECT. 2. A husband and wife may, by their joint deed, convey the real estate of the wife which is not her separate property, in like manner as she might do by her separate deed if she were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

SECT. 3. A married woman may bargain, sell, and convey, her separate real and personal property, enter into any contracts in reference to the same, carry on any trade or business, and perform any labor or services on her sole and separate account, and sue and be sued in all matters having relation to her separate property, business, trade, services, labor, and earnings, in the same manner as if she were sole. But no conveyance by her of shares in a corporation or of any real property, except a lease for a term not exceeding one year, and a release of dower executed subsequently to a conveyance of the estate of her husband, shall be valid, without the assent of her husband in writing, or his joining with her in the conveyance, or the consent of one of the judges of the supreme judicial court, superior court, or the probate court, granted on her petition in any county on account of the sickness, insanity, or absence from the state, of her husband, or other good cause; and the husband if within the state shall have such notice of the petition as the judge may order.

SECT. 4. A trustee may be appointed by the supreme judicial court on the petition of a married woman having separate property, to hold the same in trust for her, and she may thereupon convey the same to the trustee upon such trusts and to such uses as she may declare. The trustee may prosecute and defend all actions in relation to such property brought by or against her, founded on any cause of action relating to the same; and the property in his hands shall be liable to be attached or taken on execution in any such action.

SECT. 5. The contracts made by a married woman in respect to her separate property, trade, business, labor, or services, shall not be binding on her husband, nor render him or his property liable therefor; but she and her separate property shall be liable for such contracts in the same manner as if she were sole.

SECT. 6. Payment may be made to a married woman for wages earned by her labor, and her receipt for the income of property held in trust for her, or for the principal when the same is payable to her, or for the payment to her of money deposited by or due to her, before or after marriage, shall be a valid receipt and discharge, although her husband does not join therein.

SECT. 7. The real estate and shares in any corporation standing in the name of a married woman, which were her property at the time of her marriage, or which become her property by devise, bequest, or gift, of any person except her husband, shall not be liable to be taken on execution against her husband for any debt contracted or cause of action arising after the third day of June in the year eighteen hundred and fifty-five.

SECT. 8. A married woman having separate property may be sued for any cause of action which originated against her before marriage, and her property may be attached and taken on execution in the same manner and with the same effect as if she were sole. The husband of a woman married in this state after the third day of June in the year eighteen hundred and fifty-five shall not be liable to be sued for any cause of action which originated against her before marriage; but she shall be liable to be sued for the same in the manner aforesaid.

SECT. 9. A married woman may make a will of her real and separate personal estate, in the same manner as if she were sole, but such will shall not operate to deprive her husband of more than one-half of her personal property, without his consent in writing.

SECT. 10. Nothing contained in the preceding sections shall invali-

date any marriage settlement or contract, or authorize the husband to convey or give property to his wife, or destroy or impair his rights as tenant by the curtesy, or enable a married woman to destroy or impair the same by any will or conveyance without his written assent.

rights by curtesy. Husband not to convey, &c., to wife. 1855, 304, §§ 1, 9, 1857, 249, § 5.

SECT. 11. When the guardian of a married man is licensed to sell real estate of his ward, the wife of the ward may join with the guardian in the conveyance, and thereby release her right of dower and the estate or right of homestead in the granted premises, in like manner as she might have done by joining in a conveyance thereof made by her husband if he had been under no legal disability.

Wife may release dower, &c., on sale by guardian of husband. R. S. 77, § 14. 1857, 298.

SECT. 12. When such guardian is licensed to sell the interest of the ward in any real estate of his wife, the wife may join with the guardian in the conveyance, and thereby sell and convey all her estate and interest in the granted premises, in like manner as she might have done by a conveyance thereof made jointly with her husband, if he had been under no legal disability.

may join with guardian in sale of her real estate. R. S. 77, § 15. 1857, 298.

SECT. 13. In case of such release by the wife of her right of dower, or the estate or right of homestead, or of such conveyance of her own estate, the proceeds of the sale may be so invested and disposed of as to secure to her and the minor children of the owner, if it is an estate or right of homestead, the same right, use, and benefit, of and in the principal sum and the income thereof, that she or they would have had therein if it had not been sold. Any agreement made between her and the guardian for securing and disposing of the proceeds or any part thereof for the purpose aforesaid, approved by the probate court for the county in which the guardian was appointed, or by the supreme court of probate, or any order therefor made by either of said courts, if she and the guardian cannot agree, shall be valid and binding on all persons interested in the estate, and may be enforced in either of said courts, or by an action at common law, as the case may require.

Proceeds of such sales, how disposed of. R. S. 77, § 16. 1857, 298.

SECT. 14. When the real estate of a married woman is taken for a railroad, turnpike, way, or other public use, or is damaged by the laying out of a railroad, turnpike, way, or by any other public works, the damages or compensation awarded therefor may be so invested and disposed of as to secure to her the same right, use, and benefit, of and in the sum so awarded and the income thereof, that she would have had of and in the real [estate] and the income thereof if it had not been so taken or damaged; and the supreme judicial court shall, on the application of such woman, hear and determine the case according to the course of proceedings in equity, and shall make such decrees and orders therein as may be necessary and proper to enforce and secure her rights and interests.

Damages awarded when land of married woman is taken for railroad, &c., how disposed of. R. S. 77, § 17.

SECT. 15. The wife of a man who is under guardianship may join with the guardian, and the guardian of a woman may join with her husband, in making partition of her real estate held in joint tenancy or in common, and they may make any release or other conveyance necessary or proper for that purpose, in like manner as the parties might if neither of them were under legal disability.

Wife or husband of ward may join with guardian in making partition of real estate. R. S. 77, § 20.

SECT. 16. When a married woman owns property, real or personal, a guardian may be appointed to her for the same causes, and in the same manner, and with the same powers and duties, as if she were sole, except as hereinafter provided. But no guardian shall be so appointed without such notice to the husband as the court may order.

Married woman, when may be put under guardianship. R. S. 79, §§ 1, 9, 11. See Ch. 109.

SECT. 17. Such guardian shall not have the care, custody, or education, of his ward, except in case of the insanity of her husband, or of his abandoning his wife by absenting himself from the state, and making no sufficient provision for her.

guardian of, not to have custody, &c., of ward, except, &c.

SECT. 18. Such guardian shall not apply the property of his ward to the maintenance of herself and family while she is married, unless

not to apply property to her support with-



out leave of probate court. 1855, 233.

authorized by the probate court on account of the inability of her husband suitably to maintain her or them, or for other cause which the court deems sufficient.

Guardian may be appointed to insane married woman, having right of dower, &c. 1856, 169, §§ 1, 2. 1857, 298, §§ 8, 9.

SECT. 19. When a married woman is by reason of insanity incompetent to release her right of dower or right of homestead, a guardian may be appointed for her in the same manner as if she were sole, with the powers and duties given to guardians of married women owning property, and the husband or any suitable person may be appointed guardian.

How such dower and homestead may be released. 1856, 169, § 3. 1857, 298, § 10.

SECT. 20. When the husband of an insane woman is desirous of conveying any of his real estate, whether absolutely or by way of mortgage, he may by petition, describing the same, ask leave of the probate court that the dower of his wife or any estate of homestead therein may be released, setting forth the facts and reasons why his prayer should be granted. After notice in some newspaper to all persons interested and a hearing thereon, the court, if satisfied that such dower or estate of homestead ought to be released, shall authorize her guardian to make such release, by joining in any deed of conveyance, to be made within five years thereafter, either by the husband or any trustee for him, and whether such deed pass the whole or only separate parcels or lots of said real estate.

When dower is released, part of proceeds may be reserved for use of wife. 1856, 169, § 4.

SECT. 21. If the guardian is so authorized to release the dower of his ward, and the probate court deems it proper that some portion of the proceeds of such real estate, or of any sum loaned on mortgage thereof, should be reserved for the use of such married woman, the court may order that a certain sum, not exceeding thirty-three and one-third per cent. of the net amount of such proceeds or sum actually to be realized from such sale or mortgage, exclusive of any encumbrance then existing on the estate, shall be set aside and paid over to such guardian to be invested and held by him for her benefit if she survives her husband; the income of such sum to be received and enjoyed by the husband during the life of his wife, or until otherwise ordered by the court upon good cause shown; and the principal to be his, and to be paid over to him, if he survives her.

So when estate of homestead is released. 1857, 298, § 11.

SECT. 22. If the guardian is so authorized to release the estate of homestead, and the probate court deems it proper that some portion of the proceeds of such real estate, or of any sum loaned on mortgage thereof, should be reserved for the use of such married woman, the court may order that a certain sum, not exceeding eight hundred dollars, be set aside and paid over to such guardian to be invested in a homestead, and held by him for the benefit of such married woman, if she survives her husband; the rent or use thereof to be received and enjoyed by the husband during the life of his wife, or until otherwise ordered by the court upon good cause shown; and the homestead to be his, and to be conveyed to him by said guardian, if he survives her.

Provision for wife in lieu of dower. 1856, 169, § 5.

SECT. 23. When the husband of an insane woman has conveyed any real estate in trust, without the power of revocation, and in such conveyance provision is made for his wife, which in the opinion of the probate court, to be certified on petition, notice, and hearing, is sufficient in lieu of dower therein, the trustee in such conveyance shall be authorized to pass title to such real estate free from all right of dower.

Same subject. 1856, 169, § 6.

SECT. 24. If, in the opinion of the probate court, certified as aforesaid, such provision is sufficient in lieu of dower of such insane woman in all the real estate owned by her husband at the date of the petition, or in any particular portions thereof, her guardian shall be authorized to release her dower in all such real estate, or such particular portions, by joining in a deed of conveyance of the same.



SECT. 25. All proceedings in the probate court under the five preceding sections shall be had in the county where the husband of the insane woman resides, if an inhabitant of this state, and if not, then in some county where any of his real estate is situated; and a certified copy of all final orders or decrees therein shall be recorded in the registry of deeds in every county or district in which such real estate is situated.

In what county proceedings are to be had, and where orders and decrees are to be recorded. 1856, 169, § 7.

SECT. 26. The wife of a person under guardianship for insanity, may apply to the probate court for the county in which the guardian was appointed, for an allowance for her support out of the estate of her husband, to be paid to her by the guardian during the continuance of the guardianship. The amount of the allowance, if made, shall be determined by commissioners appointed by the court upon her petition.

Allowance to wife out of estate of insane husband, how made. 1856, 99.

MARRIAGE CONTRACTS.

SECT. 27. At any time before a marriage the parties may enter into a contract in writing, agreeing and providing that, after the marriage is solemnized, the whole or any designated part of the real or personal estate, or any right of action of which either party may be seised or possessed at the time of the marriage, shall remain or become the property of the husband or wife, according to the terms of the contract. Such contract may limit to the husband or wife an estate in fee or for life in the whole or any part of the property, and designate any other lawful limitations. All such limitations shall take effect at the time of the marriage, in like manner as if they had been contained in a deed conveying the property limited.

Marriage contracts may be made by parties before marriage. Nature of such contracts. 1845, 208, § 1.

SECT. 28. There shall be annexed to such contract a schedule of the property intended to be affected thereby, containing a sufficiently clear description of the property to enable any creditor of the husband or wife to distinguish it from all other property; and such contract and schedule shall, either before the marriage or within ninety days thereafter, be recorded in the registry of deeds for the county or district in which the husband resides at the time of the record, or if he is not a resident within this state, then in the registry of deeds for the county or district in which the wife resides at the time of the record, if it is made before the marriage, or in which she last resided if made after the marriage. If not so recorded the contract shall be void. It shall also be recorded in every county or district in which there are lands to which it relates.

Schedule and description of property to be recorded with contract in registry of deeds, &c. 1845, 208, § 2.

MARRIED WOMEN COMING FROM OTHER STATES, &c.

SECT. 29. When a married woman comes from another state or country into this state without her husband, he never having lived with her in this state, she shall have all the rights and powers given to married women by the preceding provisions of this chapter, and may also transact business, make contracts, and commence, prosecute, and defend, suits, in her own name, and dispose of her property which may be found here, in like manner as if she were unmarried. She shall also be liable to be sued as if she were unmarried, upon all contracts and for all other acts made or done by her after her arrival in this state. She may make and execute deeds and other instruments in her own name, and do all other lawful acts that may be proper to carry such powers into effect.

Rights of married woman coming into state without husband. R. S. 77, § 18. 15 Mass. 31. 6 Pick. 89.

SECT. 30. When a husband and his wife married in another state or country come into this state, either at the same time or different times, and reside here as husband and wife, she shall retain all property which she had acquired by the laws of any other state or country, or by a marriage contract or settlement made out of the state. Their so residing together here shall have the same effect with regard to their subsequent

of parties married out of state and coming here to reside. R. S. 77, § 19. 1855, 304, § 8.

rights and liabilities, as if they had married at the time of their first residing together in this state.

MARRIED WOMEN ABANDONED BY THEIR HUSBANDS, &C.

Wife, if abandoned by husband, or he is sent to state prison, may be authorized to convey property.  
R. S. 77, §§ 1, 2, 3, 12, 13.

SECT. 31. A wife whose husband has absented himself from the state, abandoning and not sufficiently maintaining her, or whose husband has been sentenced to confinement in the state prison, may upon her petition be authorized by the supreme judicial court to sell, convey, and receipt for, her real and personal estate, and any personal estate which may have come to her husband by reason of the marriage, and which remains in this state undisposed of by him, or to which he is entitled in her right; and to use and dispose of such property or the proceeds thereof during the absence or imprisonment of her husband, as if she were unmarried.

to make contracts, &c.  
R. S. 77, §§ 4, 7, 8.

SECT. 32. The court may further authorize such wife to make contracts in her own name, and to sue and be sued in law or equity, as if she were sole.

Continuance of such authority, &c.  
R. S. 77, §§ 5, 6, 12, 13.

SECT. 33. The authority so granted shall continue until the husband returns into the state and claims his marital rights, or is discharged from prison, and during its continuance the wife may do all acts necessary for its full exercise.

Suits in which she is party not to abate by his return, &c.  
R. S. 77, §§ 9, 10, 12, 13.

SECT. 34. No suit wherein such woman is a party shall be abated by the return of her husband into the state or his discharge from prison, but he may, on his application, be admitted to prosecute or defend the same jointly with her in like manner as if they had intermarried after the commencement of the suit. If he is not admitted as a party, the suit shall proceed to judgment and execution as if he had not returned or been discharged from prison, and any judgment recovered against the wife may be afterwards enforced against him in like manner as if it had been rendered against her before their intermarriage.

Proceedings on petition, &c., by married woman abandoned, &c.  
R. S. 77, § 11.

SECT. 35. Every petition for any of the purposes mentioned in sections thirty-one and thirty-two, may be filed, heard, and determined, in the supreme judicial court in any county. The petition shall be presented and notice thereon given in the manner prescribed for presenting and giving notice of libels for divorce when the adverse party is without the state.

## CHAPTER 109.

### OF GUARDIANS AND WARDS.

SECTION	GUARDIANS.	SECTION	
1.	Guardians to be appointed by probate court.	11. Expenses of defence of insane person, &c.	
OF MINORS.		12. Power and duty of guardian of insane person or spendthrift.	
2, 3.	of minors, by whom to be nominated, &c.	OF PERSONS OUT OF THE STATE.	
4.	power and duty of.	13.	Guardians of persons out of state.
5.	may be appointed by will of father.	14.	powers and duties of.
6.	such to give bond, unless, &c.	15.	bond of.
7.	<i>ad litem</i> , &c., how appointed.	GENERAL PROVISIONS.	
OF INSANE PERSONS AND SPENDTHRIFTS.		16.	Guardians to give bond; condition thereof.
8.	of insane person, how appointed.	17.	Of inventory of estate and accounting thereof.
9.	of spendthrift, how appointed.	18, 19.	Guardians, powers and duties of.
10.	Contracts of spendthrift, pending proceedings, when void.	20.	may make partition of real estate of ward, set off dower, &c.

SECTION

- 21. Property of minor whose father is living, when applied to his support.
- 22. Courts may authorize sales of stocks, &c., and investments.
- 23. By order of S. J. C. guardian may transfer property of ward removing from state.
- 24. Removal, resignation, and death, of guardian.
- 25. Marriage of female guardian extinguishes authority.

SECTION

- 26. Wards, when and how discharged from guardianship.
- 27. Sureties may be discharged and new bond required.
- 28. Bonds may be sued. Proceedings.
- 29. Action against surety limited, &c.
- 30. Proceedings for recovering effects concealed, &c.
- 31. Compensation of guardians.

GUARDIANS.

SECTION 1. The probate court in each county, when it appears necessary or convenient, may appoint guardians to minors and others being inhabitants of or residents in the same county, and to such as reside out of this state and have any estate within the same.

Guardians to be appointed by probate court  
R. S. 79, § 1.

OF MINORS.

SECT. 2. If a minor is under the age of fourteen years, the probate court may nominate and appoint his guardian. If he is above that age, he may nominate his own guardian, who, if approved by the court, shall be appointed accordingly; if not approved by the court, or if the minor resides without this state, or if after being cited he neglects to nominate a suitable person, the court may nominate and appoint his guardian in the same manner as if he were under the age of fourteen years.

of minors, by whom to be nominated, &c.  
R. S. 79, § 2.  
2 Doug. 433.  
See Ch. 108, §§ 16, 25.

SECT. 3. A minor above the age of fourteen years may nominate his guardian before a justice of the peace or the city or town clerk, who shall certify the fact to the probate court.

same subject.  
R. S. 79, § 3.  
1837, 171, § 2.

SECT. 4. The guardian of a minor shall have the custody and tuition of his ward, and the care and management of all his estate; and unless sooner discharged according to law, shall continue in office until the minor arrives at the age of twenty-one years. But the father of the minor, if living, and in case of his death, the mother, while she remains unmarried, they being respectively competent to transact their own business, shall be entitled to the custody of the person of the minor and the care of his education.

power and duty of.  
R. S. 79, § 4.

SECT. 5. A father may by his last will in writing appoint guardians for his children, whether born at the time of making the will or afterwards, to continue during the minority of the child or a less time. Such testamentary guardian shall have the same powers and perform the same duties with regard to the person and estate of the ward, as a guardian appointed by the probate court.

may be appointed by will of father.  
R. S. 79, § 6.  
8 Met. 127.

SECT. 6. The guardian so appointed shall give the bond prescribed in section sixteen, except that when the testator has ordered or requested in his will that a bond be not given, it shall not be required, unless from a change in the situation or circumstances of the guardian or for other sufficient cause the probate court deems it proper to require it.

such to give bond, unless, &c.  
R. S. 79, § 7.

SECT. 7. Nothing contained in this chapter shall impair or affect the power of any court or justice of the peace to appoint a guardian to defend the interests of a minor impleaded in such court, or interested in a suit or matter there pending; nor their power to appoint or allow any person, as next friend for a minor, to commence, prosecute, or defend, any suit in his behalf.

ad litem, &c., how appointed.  
R. S. 79, § 8.

OF INSANE PERSONS AND SPENDTHRIFTS.

SECT. 8. When the relations or friends of an insane person, or the mayor and aldermen or selectmen of the city or town of which such

Guardians of insane person, how appointed.



R. S. 79, § 9.  
14 Mass. 222.

person is an inhabitant or resident, applies to the probate court to have a guardian appointed for him, the court shall cause notice of not less than fourteen days to be given to the supposed insane person, of the time and place appointed for the hearing; and if after a full hearing it appears that the person in question is incapable of taking care of himself, the court shall appoint a guardian of his person and estate.

Guardian of spendthrift, how appointed.  
R. S. 79, §§ 11, 12.  
1846, 249.  
12 Pick. 152.

SECT. 9. When a person by excessive drinking, gaming, idleness, or debauchery of any kind, so spends, wastes, or lessens, his estate, as to expose himself or his family to want or suffering, or any place to charge or expense for the support of himself or his family, the mayor and aldermen or selectmen of the city or town of which such spendthrift is an inhabitant or resident, or upon which he is or may become chargeable, may present a complaint to the probate court, setting forth the facts and circumstances of the case and praying to have a guardian appointed. The court shall cause notice of not less than fourteen days to be given to the supposed spendthrift, of the time and place appointed for the hearing; and if after a full hearing it appears that he comes within the above description, the court shall appoint a guardian of his person and estate.

Contracts of spendthrift, pending proceedings, when void.  
R. S. 79, § 13.  
3 Pick. 229.

SECT. 10. The complainants under the preceding section may cause a copy of the complaint, with the order of notice, to be filed in the registry of deeds for the county or district; and if a guardian is appointed upon such complaint, all contracts, except for necessaries, and all gifts, sales, or transfers, of real or personal estate, made by the spendthrift after such filing of the complaint and order, and before the termination of the guardianship, shall be void.

Expenses of defence of insane person, &c.  
R. S. 79, § 14.

SECT. 11. When a guardian is appointed for an insane person or spendthrift, the court shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint.

Power and duty of guardian of insane person or spendthrift.  
R. S. 79, §§ 10, 16.  
5 Mass. 427.  
21 Pick. 36.

SECT. 12. The guardian of an insane person or spendthrift shall have the care and custody of the person of his ward and the management of all his estate; and shall give the bond prescribed in section sixteen, except that the provisions relating to the education of the ward shall be omitted.

#### OF PERSONS OUT OF THE STATE.

Guardians of persons out of state.  
R. S. 79, § 28.

SECT. 13. When a person liable to be put under guardianship according to the provisions of this chapter, resides without this state and has any estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the probate court for any county in which there is any estate of such absent person, and after such notice to all persons interested as the court shall order and a full hearing and examination, a guardian may be appointed for such absent person.

powers and duties of.  
R. S. 79, § 29.

SECT. 14. Such guardians shall have the same powers and duties with respect to any estate of the ward found within this state, and also with respect to the person of the ward if he comes to reside therein, as are prescribed with respect to other guardians appointed under this chapter.

bond of.  
R. S. 79, § 30.

SECT. 15. They shall give the bond prescribed in section sixteen, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects as come to his hands in this state; and that the provisions respecting the custody of the ward shall not be applicable, unless he comes to reside within this state.

GENERAL PROVISIONS.

SECT. 16. Every guardian shall give bond with surety or sureties to the judge of the probate court, in such sum as he shall order, with condition substantially as follows, (except as is provided in sections six, twelve, and fifteen, of this chapter, and section thirteen of chapter one hundred and one :—

Guardians to give bond ; condition thereof.  
R. S. 79, § 5.  
1850, 196.  
1855, 280.  
38 Maine, 48.  
2 Doug. 433.  
1 Pick. 198.  
11 Met. 529.  
3 Cush. 465.  
4 Cush. 510.  
11 Cush. 18.

First. To make a true inventory of all the real estate and all the goods, chattels, rights and credits, of the ward, that shall come to his possession or knowledge, and to return the same into the probate court at such time as the court shall order :

Second. To dispose of and manage all such estate and effects according to law and for the best interests of the ward, and faithfully to discharge his trust in relation thereto, and to the custody, education, and maintenance, of the ward :

Third. To render an account on oath of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment, and as often as once in three years thereafter, and at such other times as the probate court shall direct : and

Fourth. At the expiration of his trust to settle his accounts in the probate court, or with the ward or his legal representatives, and to pay over and deliver all the estate and effects remaining in his hands or due from him on such settlement to the person or persons lawfully entitled thereto.

SECT. 17. Upon taking an inventory, the estate and effects comprised therein shall be appraised by three suitable persons appointed and sworn as is required with respect to the inventory of the estate of a deceased person ; and every guardian shall account for and dispose of the personal estate of the ward as is directed with respect to executors and administrators in sections one, two, three, six, and seven, of chapter ninety-eight.

Of inventory of estate, and accounting thereof.  
R. S. 79, § 20.  
4 Cush. 510.

SECT. 18. Every guardian shall pay all just debts due from his ward, out of the personal estate if sufficient, and if not, out of the real estate upon obtaining a license for the sale thereof as provided in chapter one hundred and two. He shall settle all accounts of the ward, and demand, sue for, and receive, all debts due to him, or, with the approbation of the probate court, compound for the same and give a discharge to the debtor upon receiving a fair and just dividend of his estate and effects ; and he shall appear for and represent his ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend.

Guardians, powers, and duties of.  
R. S. 79, § 17.  
21 Pick. 36.

SECT. 19. He shall manage the estate of the ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, to the comfortable and suitable maintenance and support of the ward and his family. If the income and profits are insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and apply the proceeds thereof, so far as may be necessary, for the maintenance and support of the ward and his family.

Same subject.  
R. S. 79, § 18.  
See Ch. 108, § 18.

SECT. 20. He may, except when he has an interest adverse to that of the ward in the estate to be divided, make partition of the real estate of his ward when lying in common and undivided, either upon petition for partition or otherwise, as fully and in like manner as the ward could do if he were under no disability ; may assign and set out dower in his ward's estate to any widow entitled thereto, and may appoint an appraiser of real estate on an execution either against or in favor of his ward.

may make partition of real estate of ward, set off dower, &c.  
R. S. 79, § 19.  
1852, 248, §§ 1, 2.

SECT. 21. If a minor who has a father living, has property sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of

Property of minor, whose father is living, when applied to his support.  
R. S. 78, § 2.  
1844, 88.



6 Johns. R. 566.  
2 Mass. 113, 415.  
4 Mass. 97.

his own property, in whole or in part, as shall be deemed reasonable by the probate court; and when necessary, his real estate may be sold for that purpose by the guardian, upon obtaining license therefor as provided in other cases of sales by guardians. The charges for such expenses may be allowed in the settlement of the accounts of the guardian.

Courts may authorize sales of stocks, &c., and investments.  
R. S. 79, § 21.

SECT. 22. The probate courts in the several counties, or the supreme judicial court, on the application of a guardian or any person interested in the estate of a ward, after notice to all other persons interested therein, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any corporation, or any other personal estate or effects held by him as guardian, and invest the proceeds thereof and all other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned. Said courts respectively may make such further order and give such directions as the case may require, for managing, investing, and disposing of, the estate and effects in the hands of the guardian.

1861 Ch. 130 By order of S. J. C. guardian may transfer property of ward removing from state.  
1858, 117.

SECT. 23. When a person under guardianship removes out of this state, his guardian may pay over and transfer the whole or any part of his property to any guardian or trustee, appointed by competent authority in the state to which the residence of the ward is removed, upon such terms and in such manner as the supreme judicial court, sitting in any county, upon bill or petition filed therefor, shall decree.

Removal, resignation, and death, of guardian.  
R. S. 79, § 22.  
11 Met. 104.  
4 Gray, 63.

SECT. 24. When a guardian, appointed either by a testator or by the probate court, becomes insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the court, after notice to him and all others interested, may remove him. Upon the request of a guardian, the probate court in its discretion may allow him to resign his trust. Upon such removal or resignation, and upon the death of a guardian, another may be appointed in his stead.

Marriage of female guardian extinguishes authority.  
1837, 171, § 1.

SECT. 25. When a female guardian marries, her husband shall not be guardian in her right, but the marriage shall extinguish her authority, and the other guardian, if there is any, may proceed in discharging the trust. If there is no other guardian, the probate court may appoint one or make such other order in the premises as the case requires.

Wards, when and how discharged from guardianship.  
R. S. 79, § 23.

SECT. 26. The marriage of a female under guardianship as a minor, shall discharge her guardian from all right to her custody and education, but not to her property; and the guardian of an insane person or spendthrift may be discharged by the probate court, on the application of the ward or otherwise, when it appears that such guardianship is no longer necessary.

Sureties may be discharged and new bond required.  
R. S. 79, § 24.  
See Ch. 101,  
§§ 15-18.

SECT. 27. The supreme judicial court and the probate court may require a new bond to be given by a guardian, and may discharge sureties from future responsibility, in like cases and upon like terms and conditions as are prescribed in chapter one hundred and one with regard to bonds and sureties of executors and administrators.

Bonds may be sued. Proceedings.  
R. S. 79, § 25.  
19 Pick. 403.  
21 Pick. 36.  
See Ch. 101.

SECT. 28. Bonds given by guardians may be put in suit by order of the probate court, for the use and benefit of the ward or any person interested in his estate. The proceedings in such suit shall be conducted in like manner as is provided with respect to suits on the bonds of executors or administrators.

Action against surety limited, &c.  
R. S. 79, § 26.  
9 Cush. 69.

SECT. 29. No action shall be maintained against the sureties in a bond given by a guardian, unless commenced within four years from the time the guardian is discharged; but if at the time of such discharge the person entitled to bring such action is out of the state, it may be commenced at any time within four years after his return.

Proceedings for recovering of-

SECT. 30. Upon complaint to the probate court by a guardian, ward, creditor, or other person interested in the estate of a ward, or by a per-



son having claims thereto in expectancy as heir or otherwise, against any one suspected of having fraudulently received, concealed, embezzled, or conveyed away, any of the money, goods, effects, or other estate, as well real as personal, of the ward, the court may cite and examine such suspected person, although he is the guardian, and proceed with him, as to such charge, in the manner provided respecting persons suspected of fraudulently receiving, concealing, or embezzling, the estate of a deceased person.

fects concealed, &c.  
R. S. 79, § 27.  
1857, 71, § 2.  
4 Cush. 40.  
See Ch. 96 § 6.

SECT. 31. Every guardian shall be allowed his reasonable expenses incurred in the execution of his trust, and shall have such compensation for his services as the court deems just and reasonable.

Compensation of guardians.  
R. S. 79, § 32.

## CHAPTER 110.

### OF THE ADOPTION OF CHILDREN AND CHANGE OF NAMES.

#### ADOPTION OF CHILDREN.

- SECTION
1. Petition for adoption of a child.
  2. Consent thereto must be given by parents, &c.
  3. when either parent is insane, &c.
  4. Proceedings if parent does not consent.
  5. Consent by child.
  6. Proceedings, and decree of adoption.
  7. Relation and rights between child and parents by adoption.

- SECTION
8. Rights of natural parents taken away, &c.
  9. Appeals.
  10. When decree may be reversed.

#### CHANGE OF NAMES.

11. Change of names, how lawfully made.
12. Notice and certificate.
13. Change of child's name in case of adoption.
14. Returns of changes of names, to be made &c.

#### ADOPTION OF CHILDREN.

SECTION 1. Any inhabitant of this state may petition the probate court in the county of his residence for leave to adopt a child not his own, and, if desired, for a change of the child's name; but the prayer of such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein.

Petition for adoption of a child.  
1851, 324, §§ 1, 4.  
1854, 24.  
See § 13.

SECT. 2. The parents of the child, or the survivor of them, shall, except as herein provided, consent in writing to such adoption. If neither parent is living, the guardian of the child, or if there is no guardian, the next of kin in this state, may give such consent; or if there is no next of kin, the court may appoint some suitable person to act in the proceedings as next friend of the child, and to give or withhold such consent.

Consent there- to must be given by parents, &c.  
1851, 324, § 2.  
1852, 262.  
1853, 31.

SECT. 3. If either parent is insane, or imprisoned in the state prison or a house of correction under a sentence for a term not less than three years, or has wilfully deserted and neglected to provide proper care and maintenance for the child, for one year next preceding the time of filing the petition, the court shall proceed as if such parent were dead, and in its discretion may appoint some suitable person to act in the proceedings as next friend of the child, and give or withhold the consent aforesaid.

when either parent is insane, &c.  
1853, 402.  
1859, 61, § 1

SECT. 4. If a parent does not consent to the adoption of his child, the court shall order a copy of the petition and order thereon to be served on him personally, if found in the state, and if not, to be published once a week for three successive weeks, in such newspaper printed in the county as the court directs, the last publication to be at least four

Proceedings if parent does not consent.  
1859, 61, § 2.

weeks before the time appointed for the hearing. Like notice shall also be published when a child has no parent living, and no guardian nor next of kin in this state. The court may order such further notice as it deems necessary or proper.

Consent by child.  
1851, 324, § 3.  
Proceedings, and decree of adoption.  
1851, 324, § 5.

SECT. 5. If the child is of the age of fourteen years or upwards, the adoption shall not be made without his consent.

SECT. 6. If, upon such petition so presented and consented to, the court is satisfied of the identity and relations of the persons, and that the petitioner is of sufficient ability to bring up the child, and furnish suitable nurture and education, having reference to the degree and condition of its parents, and that it is fit and proper that such adoption should take effect, a decree shall be made setting forth the facts, and ordering, that from the date of the decree the child shall to all legal intents and purposes be the child of the petitioner.

Relation and rights between child and parents by adoption.  
1851, 324, § 6.

SECT. 7. A child so adopted shall be deemed, for the purposes of inheritance by such child and all other legal consequences and incidents of the natural relation of parents and children, the child of the parents by adoption, the same as if he had been born to them in lawful wedlock; except that he shall not be capable of taking property expressly limited to the heirs of the body or bodies of the parents by adoption, nor property from the lineal or collateral kindred of such parents by right of representation.

Rights of natural parents taken away, &c.  
1851, 324, § 7.

SECT. 8. The parents of such child shall be deprived by the decree of all legal rights as respects the child; and the child shall be freed from all obligations of maintenance and obedience as respects his parents.

Appeals.  
1851, 324, § 8.

SECT. 9. Any petitioner may appeal to the supreme judicial court from the decree of the probate court on such petition, in like manner as appeals may be taken from other decrees of that court; and any child made the subject of such petition may by a next friend appeal in like manner; but no bond shall be required or costs awarded against such child or next friend.

When decree may be reversed.  
1859, 61, § 2.

SECT. 10. A parent who has not before the hearing upon a petition for the adoption of his child had personal notice thereof, may, at any time within one year after actual notice, apply to the supreme judicial court to reverse the decree. Said court, after due notice, may in its discretion reverse the same, if it appears that any of the material allegations in the petition were not true.

#### CHANGE OF NAMES.

Change of names, how lawfully made.  
1851, 256, § 1.  
See Ch. 107, § 23.

SECT. 11. Applications for change of names of persons may be heard and determined by the probate courts in the several counties. No lawful change of the name of a person, except a woman upon her marriage or divorce, shall be made in this state, unless for sufficient reason consistent with the public interest and satisfactory to said court in the county where the party resides.

Notice and certificate.  
1851, 256, § 2.

SECT. 12. Before decreeing a change of name, except as is provided in the following section, the court shall require public notice of the application therefor to be given, that all persons may appear and show cause, if any they have, why the same should not be granted. The court shall also require public notice to be given of the change decreed, and on return of proof thereof may grant a certificate, under the seal of the court, of the name the party is to bear, and which shall thereafter be his legal name.

Change of child's name in case of adoption.  
1854, 24.

SECT. 13. If in a petition for the adoption of a child, a change of the child's name is requested, the court, upon decreeing the adoption, may also decree such change of name and grant a certificate thereof, without the notices required by the preceding section.

SECT. 14. Each judge shall annually in the month of December make a return to the office of the secretary of the commonwealth, of all changes of names made in his court under this chapter; and the same shall be published in a tabular form with the statutes of the following year.

Returns of changes of names to be made, &c. 1851, 256, § 4. See Ch. 3, § 1.

## CHAPTER 111.

### OF MASTERS, APPRENTICES, AND SERVANTS.

**SECTION**

1. Minors may be bound as apprentices or servants.
2. how bound when under fourteen years.
3. when above fourteen.
4. overseers of poor may bind.
5. until what age and upon what terms.
6. Indenture to be of two parts, &c.
7. one part to be kept for minor.
8. Money, &c., to be for use of apprentice.
9. Parents, selectmen, &c., to inquire into treatment of children.
10. Complaint for misconduct of master or servant may be filed in superior court, &c.
11. Court may discharge apprentice, &c.
12. may award costs.
13. Master liable to action on indenture.

**SECTION**

14. By whom action may be brought.
15. Proceedings therein when brought by overseers.
16. Limitation of action by apprentice.
17. If judgment for plaintiff, court may discharge apprentice.
18. Apprentice absconding may be arrested and returned or imprisoned.
19. Proceedings in such case.
20. Costs therein, of whom recoverable.
21. Apprenticeship discharged by death of master.
22. Mistresses.
23. Common law right.
24. Powers and duties, in whom vested in cities.

SECTION 1. Children under the age of fourteen years may be bound as apprentices or servants until that age; and minors above the age of fourteen years may be bound as apprentices or servants, females to the age of eighteen years or to the time of their marriage within that age, and males to the age of twenty-one years.

Minors may be bound as apprentices or servants. R. S. 80, § 1.

SECT. 2. Children under the age of fourteen years may be bound by their father, or in case of his death or incompetency, by their mother or legal guardian. If illegitimate, they may be bound by their mother during the lifetime of the putative father as well as after his decease. If they have no parent competent to act, and no guardian, they may with the approbation of the selectmen of the town where they reside, bind themselves. The power of a mother to bind her children shall cease upon her subsequent marriage, and shall not be exercised by herself or husband during the continuance of such marriage.

how bound when under fourteen years. R. S. 78, §§ 4, 5, 6. R. S. 80, § 2. 2 Mass. 109, 387, 433.

SECT. 3. Minors above the age of fourteen years may be bound in the same manner, but when bound by their parent or guardian, the minor's consent shall be expressed in the indenture and testified by his signing the same.

when above fourteen. R. S. 80, § 3. 5 Cush. 417.

SECT. 4. A minor child who is, or either of whose parents is, chargeable to a town as having a lawful settlement therein, or supported there at the expense of the state, may be bound as an apprentice or servant by the overseers of the poor.

overseers of poor may bind. R. S. 80, § 6. 7 Greul. 457. 4 N. H. R. 139. 2 Pick. 451.

SECT. 5. Such children, whether under or above the age of fourteen years, may be so bound, females to the age of eighteen years or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching them to read, write, and cipher, and for such other instruction, benefit, and allowance, either within or at the end of the term, as the overseers may deem reasonable.

until what age, and upon what terms. R. S. 80, § 7. 5 Pick. 250.

SECT. 6. No minor shall be so bound unless by an indenture of two

Indenture to be



of two parts,  
&c.  
R. S. 80, §§ 4, 8.

parts sealed and delivered by both parties; and when made with the approbation of the selectmen, they shall certify such approbation in writing upon each part of the indenture.

One part of indenture to be kept for minor.  
R. S. 80, §§ 5, 8.

SECT. 7. One part of the indenture shall be kept by the parent or guardian executing it, for the use of the minor; and when made with the approbation of the selectmen or by the overseers of the poor, shall be deposited with the town clerk, and safely kept in his office for the use of the minor.

Money, &c., to be for use of apprentice.  
R. S. 80, § 9.

SECT. 8. All considerations of money or other things paid or allowed by the master upon a contract of service or apprenticeship made in pursuance of this chapter, shall be paid or secured to the sole use of the minor bound thereby.

Parents, selectmen, &c., to inquire into treatment of children.  
R. S. 80, § 10.

SECT. 9. Parents, guardians, selectmen, and overseers, shall inquire into the treatment of all children bound by them respectively or with their approbation, and of all bound by or with the approbation of the predecessors in office of any of them, and defend them from all cruelty, neglect, and breach of contract, on the part of masters.

Complaint for misconduct of master or servant may be filed in superior court, &c.  
R. S. 80, §§ 11, 22.  
1859, 196.  
2 Pick. 451.

SECT. 10. Complaints by parents, guardians, selectmen, or overseers, for misconduct or neglect of the master, and by the master, for gross misbehavior, or refusal to do his duty, or wilful neglect thereof, on the part of the apprentice or servant, may be filed in the superior court in the county where the master resides, setting forth the facts and circumstances of the case. The court shall order notice to the adverse party, and if the complaint is by the master, to all persons who have covenanted in behalf of the apprentice or servant, and to the selectmen who approved of the indenture, or their successors in office, and shall hear and determine the case with or without a jury, as the allegations of the parties may require.

Court may discharge apprentice, &c.  
R. S. 80, §§ 12, 23.

SECT. 11. The court may render a judgment or decree, that the minor be discharged from his apprenticeship or service, or the master from his contract, and the minor thus discharged may be bound out anew.

may award costs.  
R. S. 80, §§ 12, 13, 23.

SECT. 12. Costs may be awarded to the prevailing party and execution issued therefor; but no costs shall be awarded against selectmen or overseers, unless it appears that the complaint was made without just and reasonable cause. Costs in favor of the master may be recovered of the parent or guardian who executed the indenture, or if there is no parent or guardian liable therefor, such costs may be recovered in an action against the minor when he arrives at full age.

Master liable to action on indenture.  
R. S. 80, § 14.

SECT. 13. Every master shall be liable to an action on the indenture for the breach of any covenant on his part therein contained. All damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and may be applied and appropriated to his use by the person who recovers the same, and the residue shall be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years, or at the time of her marriage within that age.

By whom action may be brought.  
R. S. 80, § 15.

SECT. 14. Such action may be brought by the parent or his executors or administrators, the guardian, or any one who succeeds him in that trust, or the overseers or their successors in office; or it may be brought in the name of the minor by his guardian or next friend, as the case requires; or by himself after the expiration of the term of apprenticeship or service.

Proceedings therein when brought by overseers.  
R. S. 80, § 16.

SECT. 15. If the action is brought by the overseers, it shall not abate by the death of any of them, or by their being succeeded in office; but shall proceed in the names of the original plaintiffs, or the survivor of them, or the executors or administrators of the survivor; and the money recovered therein shall be deposited in the city or town treasury to be applied and disposed of as provided in section thirteen.

SECT. 16. No such action shall be maintained, unless commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

Limitation of action by apprentice.  
R. S. 80, § 17.

SECT. 17. If judgment in such action is rendered for the plaintiff, the court may upon motion of the plaintiff discharge the minor from his apprenticeship or service, if not already done as before provided, and the minor may be bound out anew.

If judgment for plaintiff, court may discharge apprentice.  
R. S. 80, § 18.

SECT. 18. If an apprentice or servant, bound as aforesaid, unlawfully departs from the service of his master, any police court or justice of the peace, upon complaint on oath made by the master or any one in his behalf, may issue a warrant to apprehend the apprentice or servant and bring him before the court or justice. If the complaint is supported, the court or justice may order the offender to be returned to his master, or commit him to the jail or house of correction for a term not exceeding twenty days, unless sooner discharged by his master.

Apprentice absconding may be arrested, and returned or imprisoned.  
R. S. 80, § 19.

SECT. 19. The warrant when directed to an officer or other person by name, shall authorize him to convey the offender to the place of residence of the master in any county in the state.

Proceedings in such case;  
R. S. 80, § 20.

SECT. 20. All costs incurred in such process against a servant or apprentice, shall be paid in the first instance by the complainant. If the complaint is supported, the costs may be recovered by the master in an action on the indenture, if executed by a parent or guardian, and if recovered against a guardian, he may charge the amount paid by him in his guardianship account. If the indenture was executed by overseers of the poor, or the minor with the approbation of the selectmen, the costs may be recovered in an action against the minor after he arrives at full age.

Costs therein, of whom recoverable.  
R. S. 80, § 21.

SECT. 21. No indenture of apprenticeship or service made in pursuance of this chapter shall bind the minor after the death of his master, but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew.

Apprenticeship discharged by death of master.  
R. S. 80, § 24.

SECT. 22. All the foregoing provisions shall apply as well to mistresses as to masters.

Mistresses.  
R. S. 80, § 25.

SECT. 23. Nothing contained in this chapter shall affect the father's right at common law to assign or contract for the services of his children during their minority. 8 Johns. R. 328. 3 B. & A. 586. 1 Ashm. 267. 7 Mass. 147.

Common law right.  
R. S. 80, § 26.  
1 Mason, 78.

SECT. 24. Every thing prescribed in this chapter to be done by the selectmen of a town, shall and may be done by the mayor and aldermen of a city; and every thing prescribed to be done by the overseers of the poor of a town, shall and may be done by the overseers of the poor of a city, or the directors of the house of industry, or such other officers as have charge of the poor therein.

Powers and duties, in whom vested in cities.  
R. S. 80, § 27.

# PART III.

## OF COURTS AND JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES.

### TITLE I.

#### OF COURTS AND JUDICIAL OFFICERS.

- CHAPTER 112. — Of the Supreme Judicial Court.  
CHAPTER 113. — Of the Supreme Judicial Court — Equity Jurisdiction.  
CHAPTER 114. — Of the Superior Court.  
CHAPTER 115. — Of Matters common to the Supreme Judicial and Superior Courts.  
CHAPTER 116. — Of Police Courts.  
CHAPTER 117. — Of Probate Courts.  
CHAPTER 118. — Of Courts of Insolvency.  
CHAPTER 119. — Of Judges and Registers of Probate and Insolvency.  
CHAPTER 120. — Of Justices of the Peace.  
CHAPTER 121. — Of Clerks, Attorneys, and other Officers of Judicial Courts.  
CHAPTER 122. — Special Provisions respecting Courts and the Administration of Justice.

### CHAPTER 112.

#### OF THE SUPREME JUDICIAL COURT

##### SECTION

1. Number of justices.
2. Quorum in court of law.
3. General superintendence of inferior courts. May issue writs of error, &c.
4. Majority of justices may remove certain officers.
5. What trials, &c., to be heard, &c., by full court.
6. Jurisdiction, general.
7. of actions removed from superior court.
8. Single justice may arraign in capital case, and sentence, if, &c.
9. may assign counsel, &c. Exceptions.
10. may reserve questions of law, &c.
11. Cases reported by superior court, appeals, &c., to be entered at next law term in county, unless, &c. Questions reserved to be heard, &c., by full court.
12. Records, &c., to contain brief statement of grounds of decision; to be published, if, &c.
13. Proceedings when exceptions are frivolous.

##### SECTION

14. Judgment, when exceptions are allowed, may be vacated.
15. Proceedings on appeals, or other issues of law.
16. If appeal is not entered, adverse party may enter complaint, &c.
17. Entry of appeal omitted, &c., may be allowed on petition. No security to be received thereby.
18. Powers of four justices at jury term; of single justice at law term.
19. Court for capital trials, where no law term is established.
20. how to be convened.
21. Special term, when held for that purpose.
22. how notified, &c. Proceedings thereat.
23. What business may be transacted at such term.
24. Indictments for capital offences in Dukes County to be tried at court in Barnstable.
25. Special term in such case.



SECTION

- 26. Law term of court for the commonwealth. What questions entered and determined therein.
- 27. Law terms for other counties, where and when held. Law terms to be terms for return of process, &c. But no jury to be summoned unless, &c.
- 28. Jury terms, when and where held.
- 29. Writs, &c., to be sued out of clerk's office in county, &c., and returnable to full court.
- 30. Suits, &c., arising in Dukes County, to be tried, &c., in Barnstable.
- 31. Judgments, how entered in actions continued nisi.
- 32. Liability of security to be computed from time of such entry.

SECTION

- 33. Questions of law, how to be entered.
- 34. At law term in Boston, questions of law to be in order for argument within five days after entry.
- 35. Questions on appeals, &c., in superior court in criminal cases, how entered, &c.
- 36. when to be in order, &c., for argument.
- 37. Questions may be heard *ex parte*, when, &c.; or passed upon without argument, or postponed.
- 38. Construction of "the court."
- 39. Court for the commonwealth to audit accounts, &c.
- 40. Salaries of justices.
- 41. Compensation of officers.

SECTION 1. There shall be one chief justice, and five associate justices of the supreme judicial court.

SECT. 2. Four justices shall constitute a quorum to decide all matters requiring to be heard by a court of law.

1859, 196, § 39.

SECT. 3. The court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein, where no other remedy is expressly provided, and may issue writs of error, certiorari, mandamus, prohibition, quo warranto, and all other writs and processes to courts of inferior jurisdiction, corporations, and individuals, necessary to the furtherance of justice and the regular execution of the laws.

Number of justices.  
1852, 127, § 1.  
Quorum in court of law.  
R. S. 81, § 11.  
General superintendence of inferior courts.  
May issue writs of error, &c.  
R. S. 81, §§ 4, 5.  
1859, 196, § 38.  
10 Met. 217.  
3 Cush. 214.  
5 Cush. 386, 406.  
8 Cush. 529.

SECT. 4. A majority of the justices may remove from office the clerks of the courts or of their own court, when in their judgment the public good requires such removal; and on bill, petition, or other process, a majority of them may remove any clerk of the superior court or of a police court, any commissioner of insolvency, sheriff, register of probate and insolvency, or district-attorney, if sufficient cause is shown therefor and it appears that the public good requires it; and a summary hearing may be had upon bill, petition, or other process, in term time or vacation.

Majority of justices may remove certain officers.  
1856, 173, § 7.  
1858, 93.

*Allen 308*

SECT. 5. Trials of indictments for capital crimes; questions of law on exceptions, on appeals from the superior court, on cases stated by the parties, and on special verdicts; and all issues in law, shall be heard and determined by the full court.

Trials, &c., by full court.  
R. S. 81, § 13.  
R. S. 136, § 22.  
1859, 196.

SECT. 6. The court shall have original and exclusive jurisdiction of petitions for divorce and nullity of marriage, and original and concurrent jurisdiction with the superior court, of petitions for partition and writs of entry for foreclosure of mortgages, and of civil actions in which the damages demanded or property claimed exceed in amount or value four thousand dollars if brought in the county of Suffolk, and one thousand dollars if brought in any other county, if the plaintiff, or some one in his behalf, before service of the writ, makes oath or affirmation before some justice of the peace that he verily believes the matter sought to be recovered actually equals in amount or value said sums respectively; a certificate of which oath or affirmation shall be indorsed on or annexed to the writ.

Jurisdiction, general.  
R. S. 76, § 7.  
1840, 87, § 1.  
1842, 14, § 1.  
1851, 82, § 2.  
1852, 51, §§ 1, 3.  
1859, 196, § 30.  
6 Met. 270.  
7 Met. 43.  
11 Met. 293.  
2 Cush. 494.  
5 Cush. 534.  
Sec Ch. 156, §§ 5, 7.

SECT. 7. The court shall have jurisdiction of all actions and proceedings at law, made returnable to the superior court and removed to the supreme judicial court or transmitted to it under the provisions of chapter one hundred and fourteen.

of actions removed from superior court.  
1859, 196.

SECT. 8. A person indicted for a capital crime may be arraigned before the court held by one justice, and if he pleads guilty, such court may award sentence against him according to law.

1859, 196, 282. 2 Mass. 303.

What justice may do in capital case.  
R. S. 81, § 15.  
R. S. 136, § 21.  
Single justice may assign

SECT. 9. If the prisoner in such case does not plead guilty, the court may assign him counsel and take all other measures preparatory to a

counsel, &c.  
Exceptions.  
R. S. 81, § 16.  
R. S. 136, § 22.  
1859, 196, 282.  
5 Cush. 386.

trial, to be had before the full court. And upon such trial, exceptions may be taken by the defendant and questions of law reserved, to be heard like exceptions taken in trials before a single justice; but if the exceptions are in the opinion of the court frivolous and intended for delay, the court may overrule them, and forthwith render final judgment and pass sentence. And after a decision upon any exceptions, the judgment may be entered and sentence passed, or preliminary proceedings for a new trial may be had, in the court held by a single justice.

may reserve  
questions of  
law, &c.  
R. S. 81, § 26.  
1859, 196,  
1859, 282, § 1.

SECT. 10. Questions of law, whether arising upon a trial or other proceeding, or upon a motion for a new trial on account of an opinion, direction, order, or refusal, of a single justice in matter of law, may be reserved for the consideration of the full court, and so much of the case as is necessary for understanding the question shall be reported for that purpose.

Cases reported  
by superior  
court, appeals,  
&c., to be enter-  
ed at next law  
term in county,  
unless, &c.  
Questions reserved to be  
heard, &c., by  
full court.  
R. S. 81, §§ 29,  
30.  
1859, 196.

SECT. 11. Cases reported by the superior court for determination by the supreme judicial court, questions arising upon appeals from the decisions of the superior court in matters of law, and upon exceptions to the opinions, rulings, orders, and decisions, of the court, whether allowed by that court or by the supreme judicial court upon petition, shall in those counties in which there is a law term, be entered at the term next to be holden for the county, unless otherwise agreed by the parties or ordered by the superior court upon the allowance of exceptions under the provisions of section thirteen of chapter one hundred and fifteen. Upon exceptions allowed or questions reserved in any of the modes provided, the same shall be heard and determined by the full court; and such judgment or other proceedings shall be had therein as law and justice require. And the full court shall, as soon as may be after the decision of the questions submitted to it, make such order, direction, judgment, or decree, as is fit and proper for the further disposition of the case, and enter the same, or cause a rescript, containing a brief statement of the grounds and reason of the decision, to be filed therein.

Records, &c., to  
contain brief  
statement of  
grounds of de-  
cision; to be  
published if,  
&c.  
1859, 196, § 48.

SECT. 12. The records and rescripts made upon the decision of questions arising in any of the modes mentioned in the two preceding sections shall contain a brief statement of the grounds and reasons of the decision; and if no further opinion is written out within sixty days, the reporter shall publish the case with the opinion contained in such record or rescript.

*Allen 208*  
Proceedings  
when excep-  
tions are friv-  
olous.  
R. S. 81, § 31.  
R. S. 82, § 16.

SECT. 13. If, upon the hearing of a case brought before the court upon exceptions alleged, it appears that the exceptions are frivolous, immaterial, or intended for delay, the court may award against the party taking the exceptions double costs from the time when the same were alleged, and also interest from the same time, at the rate of twelve per cent. a year on any sum found due for debt or damages; or may award any part of such additional costs and interest.

Judgment,  
when excep-  
tions are allow-  
ed, may be va-  
cated.  
R. S. 81, § 32.

SECT. 14. If judgment has been rendered in any case in which exceptions are allowed, the judgment may be vacated by the full court without a writ of error, and as if it had been entered by mistake at the same term at which it is so vacated, and thereupon such further proceedings shall be had in the case as law and justice require.

Proceedings on  
appeals, or oth-  
er issues of law.  
R. S. 82, § 15.  
1859, 196, § 48.  
4 Gray, 572.

SECT. 15. In cases where questions are entered in the court upon appeal, or other issue of law, the court may affirm the former judgment with additional damages, at the rate of six per cent. a year, or reverse the same in whole or in part, or order the case to be brought up, entered, and a new trial had, and may enter such judgment, order, or decree, and take such other order therein as the superior court ought to have done, and shall cause such other proceedings to be had in the case as law and justice require.

*Allen 201.*  
If appeal is not  
entered, adverse

SECT. 16. If a party who has taken an appeal, or an exception which has been allowed, neglects to enter the question in the supreme judicial



court, the adverse party may enter a complaint and have the judgment, opinion, ruling, or order, affirmed.

party may enter complaint, &c. R. S. 82, § 10. 3 Cush. 57.

SECT. 17. If by mistake or accident a question arising upon an appeal, or upon exceptions in the superior court, is not duly entered in the supreme judicial court, or if, for a like reason, a complaint founded on an omission to enter such question has not been entered by the adverse party, the court, upon petition filed within one year after the question or complaint should have been entered, and upon such terms as it deems just and reasonable, may allow the party taking the appeal or exception to enter the question, or the adverse party to enter his complaint, as the case may be; and when so entered the court shall proceed therein as if it had been entered at the proper term. But no security by bond, attachment, or otherwise, discharged by the omission of either party to enter the question or complaint, shall be revived and continued in force by the entry of such question or complaint.

Entry of appeal omitted, &c., may be allowed on petition. No security to be revived thereby. R. S. 81, §§ 34, 35, 36. 1859, 196. 4 Met. 371. 5 Cush. 501. *Allen 286*

SECT. 18. Four or more justices present at a jury term shall have and exercise the powers of a full court; a single justice present at a law term shall have and exercise the same authority as at a jury term.

Powers of justices at jury and law terms. R. S. 81, § 38. 1859, 196, § 39. 5 Cush. 495.

SECT. 19. If an indictment for a capital offence is pending and for trial in a county in which there is no law term established, the justices shall hold a session in such county for the trial thereof.

Capital trials, where there is no law term. R. S. 81, § 41. 1859, 196, 282.

SECT. 20. The chief justice upon receiving notice of the pendency of such an indictment shall take measures for convening a quorum of the justices for the trial at the stated term of the court in the county, or at an adjournment of such term; which trial shall be had as soon after the finding of the indictment as the other official duties of the justices admit, and the circumstances of the case require.

Court, how to be convened. R. S. 81, § 42. 1859, 196, 282.

SECT. 21. If a session of the court is not to be held in the county within six months after the finding of the indictment, a special term may be held for the purpose by the full court at such time and place as a majority of the justices may, by an order in writing under their hands, directed to the sheriff of the county, determine.

Special term, when held for that purpose. R. S. 81, § 43. 1859, 196, 282.

SECT. 22. The sheriff shall give notice of the intended special term, by posting a copy of the order on the door of the court house, or by publishing the same in such other manner as therein directed; and the clerk for the county shall issue venire for jurors, and he and all other officers shall do all things necessary or proper in relation to such term, as at a stated term.

how notified, &c. Proceedings thereat. R. S. 81, § 44. 1859, 196, 282.

SECT. 23. The court assembled at such special term shall have and exercise the same powers as at a stated term, except that no party in any civil action pending in the court shall be required to attend at such terms, be defaulted or suffer any other penalty for not attending thereat.

What business may be transacted at such term. R. S. 81, § 45. 1859, 196, 282.

SECT. 24. An indictment for a capital offence found in the county of Dukes County, shall be tried at a court to be held in the county of Barnstable; and the court for that purpose shall be convened and held and all the proceedings in relation thereto conducted as when held in the county where an indictment is found.

Capital indictments in Dukes to be tried in Barnstable. R. S. 81, § 46. 1859, 196, 282.

SECT. 25. If a special term is required to be held in the county of Barnstable for the trial of an indictment found in the county of Dukes County, a written order shall be sent to the sheriff of each of said counties, and each of them required to do in his county whatever is necessary or proper in relation to such term.

Special term in such case. R. S. 81, § 47. 1859, 196, 282.

SECT. 26. A law term of the court for the commonwealth shall be held at Boston on the first Wednesday of January of each year, which may be adjourned from time to time to places and times most conducive to the despatch of business and the interests of the public; and there shall be entered and determined therein questions of law arising in the counties of Barnstable, Bristol, Dukes County, Essex, Middlesex, Nan-

Law term of court for the commonwealth. What questions entered and determined therein. 1859, 196, § 36. 5 Cush. 494.



tucket, Norfolk, Plymouth, and Suffolk; and also all questions of law arising in other counties where special provisions are not made therefor.

Law terms for other counties, when and where held. 1859, 196, § 36.

SECT. 27. For entering and hearing questions of law arising in the following counties, law terms shall be held as follows:—

Berkshire.

For the county of Berkshire, at Lenox, on the first Tuesday of September:

Franklin.

For the county of Franklin, at Greenfield, on the first Monday after the first Tuesday of September:

Hampden.

For the county of Hampden, at Springfield, on the third Monday after the first Tuesday of September:

Hampshire.

For the county of Hampshire, at Northampton, on the second Monday after the first Tuesday of September:

Worcester.

For the county of Worcester, at Worcester, on the fourth Tuesday after the first Tuesday of September.

Law terms to be terms for return of process, &c. But no jury to be summoned unless, &c. 5 Cush. 495.

These terms shall be taken to be terms for the return of process, entry of appeals, trials, and for all purposes for which a court may be held by a single justice in the county in which the court is held; but no jury shall be summoned for such terms unless an order therefor shall be issued by the justices of said court, or one of them, directed to the clerk of said county. Cases which may have arisen or which may be pending in the counties of Berkshire and Franklin, when the provisions of this chapter take effect, shall have day and be cognizable in said counties respectively at the aforesaid terms: persons, processes, and matters, shall be held and answerable accordingly.

1861 Ch. 206

Jury terms, when and where held.

R. S. 81, §§ 12, 59, 1859, 196, § 56.

Barnstable and Dukes.

SECT. 28. Jury terms of the court shall be held by a single justice every year at the times and places following, and the presiding judge thereat shall have and exercise all the powers not expressly reserved to the full court:—

Berkshire.

For the county of Barnstable and Dukes County, at Barnstable, on the first Tuesday of May:

Bristol.

For the county of Berkshire, at Lenox, on the second Tuesday of May:

Essex.

For the county of Bristol, in alternate years at New Bedford and Taunton, beginning at New Bedford on the second Tuesday of November:

Franklin.

For the county of Essex, at Salem, on the third Tuesday of April: For the county of Franklin, at Greenfield, on the second Tuesday of April:

Hampden.

For the county of Hampden, at Springfield, on the fourth Tuesday of April:

Hampshire.

For the county of Hampshire, at Northampton, on the third Tuesday of April:

Middlesex.

For the county of Middlesex, at Lowell, on the third Tuesday of April:

Nantucket.

For the county of Nantucket, at Nantucket, on the first Tuesday of July:

Norfolk.

For the county of Norfolk, at Dedham, on the third Tuesday of February:

Plymouth.

For the county of Plymouth, at Plymouth, on the second Tuesday of May:

Suffolk.

For the county of Suffolk, at Boston, on the first Tuesdays of October and April:

Worcester. 1859, 274.

For the county of Worcester, at Worcester, on the second Tuesday of April.

Writs, &c., to be sued out of clerk's office in county, &c., and returnable to full court. R. S. 81, § 53.

SECT. 29. Writs and processes in suits cognizable by the full court, except original writs ordered by the court, shall be sued out of the clerk's office of the county in which the matter is pending, and be returnable to the full court.

SECT. 30. Any suit, matter, or thing, arising or pending in the county

1861 Ch. 99  
1861 Ch. 99

1861 Ch. 99

1860 Ch. 210  
1861 Ch. 206

1860 Ch. 210

1860 Ch. 57 § 2  
Ch. 210

1860 Ch. 57 § 2

of Dukes County cognizable by the supreme judicial court and to be heard before a single justice, shall be entered, heard, tried, and determined, at the court held in the county of Barnstable, in all respects as if the same court were held in the county of Dukes County; and all matters cognizable by the full court, arising or pending in the county of Dukes County, shall be heard and determined as if arising in the county of Barnstable.

Suits, &c., arising in Dukes County to be tried, &c., in Barnstable. R. S. 81, § 56.

SECT. 31. If an action is continued nisi from any term, either for argument or advisement, and is determined by the court before the next term in the same county, the judgment, by order of the court on the motion or at the request of the party prevailing, may be entered as of the then last term of the court in the county where the action is pending, whether it be a law term or not. If the action is pending in the superior court the rescript may direct the clerk to enter judgment as of the last term in that court.

Judgments, how entered in actions continued nisi. R. S. 81, § 57. 7 Gray, 355.

SECT. 32. The clerk in such case shall note on his docket the time of receiving such order, and when the order is for final judgment in favor of the plaintiff, the security in the suit, whether by bail or otherwise, shall be held for the same time thereafter that it would be held after the entry of judgment in the usual manner.

Liability of security to be computed from time of such entry. R. S. 81, § 58.

SECT. 33. All questions of law arising at the same term in each county, excepting the counties mentioned in section twenty-seven, shall be entered in their order in the court, and in the order of time, as nearly as may be, of the final adjournment of the terms at which the questions arise; and if any special proceeding comes before the court from any county requiring entry, it shall be entered, with the questions from such county which are entered nearest the day of the inception of such proceeding, and all entries shall be made forthwith upon receipt of the papers. And questions of law arising in the superior court in said counties shall be entered with the questions of law pending in the supreme judicial court for such counties respectively; and the clerks of the courts for said counties shall prepare the proper papers for their respective counties.

Questions of law, how to be entered. 1859, 196, § 44. *Allen 101, 88.*

SECT. 34. At the law term held in Boston, all questions of law shall be in order for argument within five days after their entry upon the docket of the full court, and be argued when reached, in their order, by either party ready to do so, unless the court, for good cause shown, postpones the same.

At law term in Boston, questions of law to be in order for argument within five days after entry. 1859, 196, § 45.

SECT. 35. Questions arising upon appeals and exceptions in the superior court in criminal cases, and all processes and other proceedings in such cases, which may lawfully come before the court at the law term aforesaid, shall be entered upon the criminal docket, and be proceeded in and determined, and such judgment, order, or decision, made, as to law shall appertain. And such rescript, writ, or process, shall be issued thereon as the case may require.

Questions on appeals, &c., in superior court in criminal cases, how entered, &c.

SECT. 36. At any time after five days from the entry thereof, all such criminal cases shall be in order and have precedence for argument on such day in every month in which the court shall be in session, as the court may designate; and the arguments shall be continued till such cases are disposed of, and shall not be postponed except for special cause shown.

when to be in order, &c., for argument. 1859, 196, § 46.

SECT. 37. The court may hear any question *ex parte* when it is reached in the order of the docket and only one party is ready for argument; or if neither party is ready, the exceptions may be passed upon by the court without argument, or the case may be postponed when any special reason exists therefor; but no case that has been postponed shall be again in order for argument until all the questions ready for argument have been argued, postponed, or otherwise disposed of.

Questions may be heard *ex parte*, when, &c., or passed upon without argument, or postponed. 1859, 196, § 47.

SECT. 38. If no designation is made, the words "the court" may be

Construction of "the court."

construed to mean the full court or a court held by one justice, as the context or subject matter may require.

SECT. 39. The full court sitting at Boston for the commonwealth shall examine and audit all accounts for services and expenses incident to said court, to be paid by the commonwealth.

SECT. 40. The chief justice of the court shall receive an annual salary of four thousand five hundred dollars, and each of the other justices an annual salary of four thousand dollars, from the treasury of the commonwealth.

SECT. 41. Officers, except deputy-sheriffs, attending upon the court, shall receive compensation therefor as the court may allow, not exceeding three dollars a day.

Court for the commonwealth to audit accounts, &c.

Salaries of justices.

Decl. of Rights.

Art. 29. R. S.

81, § 61. 1856, 10.

See Ch. 15, § 36.

Compensation of officers.

1858, 104.

## CHAPTER 113.

### OF THE SUPREME JUDICIAL COURT—EQUITY JURISDICTION.

#### SECTION

1. Jurisdiction in equity; original and exclusive.
2. special and general. Redemption of mortgages. Trusts. Specific performance. Redelivery, &c. Contribution between devisees. More than two parties having distinct rights, &c. Copartners, &c. Trustees, &c. Waste and nuisance. Accounts. Creditor's bills. Fraud, &c. Accident or mistake. Discovery. Full equity powers.
3. Cases in equity, how commenced, &c.
4. Discovery, how sought. Answers.
5. Defence by demurrer, answer, &c.
6. Cases first heard by single justice.
7. Court always open for hearings, &c. Rule days.
8. Final decree, appeal from. Proceedings.
9. Justice may appoint receivers, &c., until heard by full court.

#### SECTION

10. Interlocutory decree, appeal from, not to transfer entire cause.
11. not appealed from, open to revision.
12. affecting merits, &c., question may be reported to court of law.
13. Appeal, not claimed in time, allowed on petition.
14. to be entered on separate docket.
15. Justice may reserve questions for full court.
16. Decree, &c., to bear date of entry.
17. Execution on final decree not to issue for thirty days, unless, &c.
18. Court may hear cases pending in another county. Decrees, &c., to be transmitted.
19. Notice to adverse party in such case.
20. Motion, &c., may be argued in writing.
21. Upon appeal, testimony to be reported to full court. Rules therefor. Further evidence allowed in special cases.
22. Court may frame issues for jury, when, &c.
23. may issue writs, &c., to enforce decree.
24. Justice to hear equity cases at all times in Boston.
25. Counsel may take papers from files upon leaving receipt.
26. Court may make rules regulating practice, &c.

*1 Allen 401.*

Jurisdiction in equity; original and exclusive. R. S. 81, §§ 4, 5, 9. 3 Cush. 214. 8 Cush. 529.

SECTION 1. In addition to the jurisdiction in equity otherwise conferred, the supreme judicial court shall have original and exclusive jurisdiction of every original process, whether by bill, writ, petition, or otherwise, in which relief in equity is prayed for, except when a different provision is made; and may issue all general and special writs and processes required in proceedings in equity to courts of inferior jurisdiction, corporations and individuals, when necessary to secure justice and equity.

SECT. 2. The court may hear and determine in equity all cases hereafter mentioned, when the parties have not a plain, adequate, and complete remedy at the common law; that is to say,—

Suits for the redemption of mortgages, or to foreclose the same: 22 Pick. 526. 2 Gray, 190. 5 Gray, 177.

Suits and proceedings for enforcing and regulating the execution of trusts, whether the trusts relate to real or personal estate: 13 Met. 210. 9 Cush. 127. 1 Gray, 220. 3 Gray, 280. 5 Gray, 341.

special and general.

R. S. 81, § 8.

12 Met. 316.

Redemption of mortgages.

Trusts.

20 Pick. 368, 372.

22 Pick. 53.

23 Pick. 448.



Suits for the specific performance of written contracts by and against either party to the contract, and his heirs, devisees, executors, administrators, and assigns: Specific performance. R. S. 74, §§ 8-17. 4 Cush. 532. 9 Cush. 10. 6 Gray, 25. 7 Gray, 533.

Suits to compel the redelivery of goods or chattels taken or detained from the owner, and secreted or withheld so that the same cannot be replevied: Redelivery, &c. 20 Pick. 28. 23 Pick. 228. 2 Met. 127. 5 Met. 525. 7 Cush. 530.

Suits for contribution by or between devisees, legatees, or heirs, who are liable for the debts of a deceased testator or intestate, and by or between any other persons respectively liable for the same debt or demand, when there is more than one person liable at the same time for such contribution: Contribution between devisees, &c. More than two parties having distinct rights, &c. 6 Met. 425.

Other cases in which there are more than two parties having distinct rights or interests, which cannot be justly and definitely decided and adjusted in one action at the common law: More than two parties having distinct rights, &c. 6 Met. 425.

Suits between copartners, joint tenants, and tenants in common, and their legal representatives, with authority to appoint receivers of rents and profits, and apportion and distribute the same to the discharge of encumbrances and liens on the estates, or among the co-tenants: Copartners, &c. R. S. 70, § 35. 4 Met. 540. 7 Cush. 365.

Suits between joint trustees, co-executors, and co-administrators, and their legal representatives: Trustees, &c.

Suits concerning waste and nuisance, whether relating to real or personal estate: Waste and nuisance. R. S. 105, § 14. 6 Pick. 376. 13 Pick. 179. 5 Met. 140. 4 Gray, 324.

Suits upon accounts when the nature of the account is such that it cannot be conveniently and properly adjusted and settled in an action at law: Accounts. R. S. 118, § 43. 1851, 206, § 1. 1858, 34. 5 Met. 7. 1 Cush. 82. 7 Cush. 449.

Bills by creditors to reach and apply, in payment of a debt, any property, right, title, or interest, legal or equitable, of a debtor, within this state, which cannot be come at to be attached or taken on execution in a suit at law against such debtor: Creditor's bills.

Cases of fraud, and conveyances or transfers of real estate in the nature of mortgages: Fraud, &c. 1855, 194, § 1. 10 Met. 101. 1 Cush. 222. 7 Gray, 144.

Cases of accident or mistake: Accident, &c. 1856, 38, § 1. 5 Met. 274.

Suits or bills for discovery when a discovery may be lawfully required according to the course of proceedings in equity: Discovery. 1857, 214. 10 Met. 101.

And shall have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate, and complete remedy at law. Full equity powers.

SECT. 3. Cases in equity may be commenced by bill or petition with a writ of subpoena according to the usual course of proceedings in equity, or inserted in an original writ of summons or of summons and attachment, or by a declaration in an action of contract or tort, as the case may be, with or without an order for the attachment of the property or arrest of the defendant; and shall be returnable at the terms of the court as established in the several counties or on the rule days established by the court. The material facts and circumstances relied on shall be stated with brevity, omitting immaterial and irrelevant matters. Cases in equity, how commenced, &c. R. S. 90, § 117. R. S. 107, § 22. 1853, 371, §§ 1, 2. 1855, 194, § 2. 1856, 38, § 2. 4 Met. 563. 5 Gray, 71, 360. See Ch. 123, §§ 18, 20, 31. Ch. 140, § 24.

SECT. 4. If a discovery is sought, it may be by such bill or petition, or by being made part of such declaration, or by interrogatories. Answers thereto shall be made without unnecessary delay, and questions arising thereon be determined by the rules applicable to bills of discovery. Discovery, how sought. Answers. 1855, 194, § 3.

SECT. 5. A defence in equity shall be made by demurrer, plea, or answer. A demurrer shall be accompanied with a certificate that it is not intended for delay; and an answer shall be supported by oath, unless waived by the adverse party. Defence by demurrer, answer, &c. 1855, 194, § 4.

SECT. 6. Cases in equity, and motions and other applications therein, whether interlocutory or final, shall in the first instance be heard and determined by one justice of the supreme judicial court. Cases first heard by single justice. 1859, 237, § 1.

Court always open for hearings, &c.  
Rule days.  
R. S. 81, §§ 20, 21.  
1859, 237, § 7.

SECT. 7. For hearings, and making, entering, and modifying orders and decrees in equity causes, by a single justice, and issuing writs in such causes, the court shall be always open in each county, except on holidays established by law. And the court shall establish rule days for the transaction of the business pertaining to the jurisdiction in equity.

Final decree, appeal from.  
Proceedings.  
R. S. 81, § 25.  
1859, 237, § 2.

SECT. 8. From final decrees made by such justice, any party aggrieved may, within thirty days after the entry thereof, claim an appeal, to be entered on the clerk's docket; and thereupon all proceedings under such decree shall be stayed, and such appeal be thereupon pending before the full court, who shall hear and determine the same, and affirm, reverse, or modify, the decree appealed from, as circumstances may require. On the reversal of any final decree, the court may remand the cause, with such directions as are necessary and proper, to a single justice, further to proceed therein, or may refer it to a master, or take such other order respecting future proceedings therein as equity requires, and as shall be most conducive to the just and speedy determination of the case.

Justice may appoint receivers, &c., until heard by full court.  
1859, 237, § 3.

SECT. 9. If an appeal is taken from a final decree, the justice by whom such decree was made may make such orders for the appointment of receivers, and of injunction or prohibition, or for continuing the same in force, as are needful for the protection of the rights of parties, until the appeal is heard by the full court; subject, however, to be modified or annulled, by the order of that court on motion, after the appeal is taken.

Interlocutory decree; appeal from, not to transfer entire cause.  
1859, 237, § 4.

SECT. 10. From all interlocutory decrees made by a single justice, any party aggrieved may appeal, in like manner, to the full court; but such appeal shall not suspend the execution of the decree of the single justice, nor transfer to the full court the entire cause, or any matter therein, except the question whether the interlocutory decree appealed from, shall be affirmed, reversed, or modified.

not appealed from, open to revision.  
1859, 237, § 5.

SECT. 11. All interlocutory decrees not appealed from shall be open to revision on appeals from final decrees, so far only as it appears to the full court that such final decrees are erroneously affected thereby.

affecting merits, &c., question may be reported to court of law.

SECT. 12. If upon making any interlocutory decree or order the justice is of opinion that it so affects the merits of the controversy that the matter ought to be determined by the court of law before further proceedings are had, he may report the question for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties.

Appeals not claimed in time allowed on petition.  
1859, 237, § 10.

SECT. 13. A party having by accident or mistake omitted to claim an appeal from any final decree, within the time allowed for that purpose, may, at any time within one year after the entry of the decree from which he desires to appeal, apply to the full court, by petition for leave to appeal; which may be granted upon such terms as appear to the court just and equitable.

to be entered on separate docket.  
1859, 195, § 53.

SECT. 14. All appeals in equity and probate matters shall be entered on a separate docket in the supreme judicial court.

Justice may reserve questions for full court.  
1859, 237, § 11.

SECT. 15. The justice by whom a case is heard for final decree may reserve and report the evidence and all questions of law therein, for the consideration of the full court; and thereupon like proceedings shall be had as in appeals from final decrees.

Decree, &c., to bear date of entry.  
1859, 237, § 8.

SECT. 16. Every order and decree shall bear date as of the day when the same is actually entered by the clerk, and the date be noted upon the order or decree and upon the docket by the clerk at the time of entering the same.

Execution on final decree not to issue for thirty days, unless, &c.

SECT. 17. No process for the execution of a final decree, made by a single justice, shall issue until after the lapse of thirty days from the date of the entry thereof, unless all parties against whom such decree is



made waive an appeal by an entry on the clerk's docket, or by a writing filed in the cause. 1859, 237, § 9.

SECT. 18. A single justice or the full court, sitting in one county, may when needful hear and determine cases pending in another county, and any motion therein. And all orders and decrees made on such hearings shall be transmitted to the clerk in the proper county, to be by him entered. Court may hear cases pending in another county. Decrees, &c., to be transmitted. R. S. 81, § 24. 1859, 237, § 7.

SECT. 19. A motion shall not be heard nor a decree or order made under the preceding section, until reasonable notice thereof has been given to the adverse party or his counsel. Notice to adverse party in such case. R. S. 81, § 22.

SECT. 20. Either party in such case may transmit to the court his reasons in writing for or against the application, and the justice shall examine the same and proceed thereon as if the parties were present. Motion, &c., may be argued in writing. R. S. 81, § 23.

SECT. 21. The testimony of witnesses examined orally before a single justice, upon any matter pending before him, in which an appeal is taken, shall be reported to the full court. And the court shall provide by general rules for some convenient and effectual means of having the same reported, by the justice before whom the hearing is had, or by some person designated by him for that purpose. No oral evidence shall be exhibited to the full court, but the cause be heard, on appeal, upon the same evidence as on the original hearing; but the full court may grant leave to parties, in special cases of accident or mistake, to exhibit further evidence, and may provide by general rules, or special order, for the conditions under, and modes by which, such evidence shall be taken. Upon appeal, testimony to be reported to full court. Rules therefor. 1859, 237, § 6. See Ch. 131, § 60.

SECT. 22. The court may frame issues of fact to be tried by a jury, in an equity cause, when requested by a party, and direct the same to be tried in the county where such cause is pending, at the bar of the supreme judicial court, or the superior court. Further evidence allowed in special cases. Court may frame issues for jury, when, &c. 1859, 237, § 13. 6 Pick. 376.

SECT. 23. The court may issue writs of seisin and execution in common form when such process appears to be an appropriate method of enforcing a decree in equity. may issue writs, &c., to enforce decree. R. S. 74, § 12. R. S. 118, § 43.

SECT. 24. The justices of the court shall, from time to time, by arrangement among themselves, designate some one of their number to attend at some convenient place in Boston, at all convenient times, for the purpose of hearing matters in equity, who by his rescript may make decrees and orders in equity suits in any county. Justice to hear equity cases at all times in Boston. 1859, 196, § 50.

SECT. 25. The original papers, in any suit in equity, may be taken from the files in any county by the counsel of record of either party, for use before the court, upon leaving a memorandum and receipt on such files, containing a short description of the papers so taken. Counsel may take papers from files upon leaving receipt. 1859, 196, § 50.

SECT. 26. The court may make rules regulating the practice and conducting the business of the court in matters of equity, so as to simplify the proceedings, discourage delays, lessen the expenses and burdens of litigation, and expedite the decision of causes. Court may make rules regulating practice, &c. 1859, 196, § 49.

CHAPTER 114.

OF THE SUPERIOR COURT.

SECTION

1. Number of justices.
2. Court may be held by one or more justices.
3. Exclusive original and original jurisdiction.
4. Original and concurrent jurisdiction.

SECTION

5. Appellate civil jurisdiction.
6. Criminal jurisdiction, original, and appellate.
7. Removal of actions to S. J. C. by consent; to be entered at next term.



## SECTION

8. Removal of actions to S. J. C. upon affidavit.
9. Debt or damage to exceed twenty dollars.
10. Appeals allowed from judgments on matters of law except, &c. ; practice thereon.
11. Upon appeal, &c., security to be held until final judgment.
12. Decrees of S. J. C. in cases in superior court to be entered of record.
13. Judgment may be final by agreement.
14. Clerk to transmit copies to S. J. C. at expense of appellant, &c. Original papers in case, &c.

## SECTION

15. Entry of appeal, &c., omitted, allowed on petition. No security revived thereby.
16. Courts, when and where held.
17. Civil and criminal business to be transacted at respective terms therefor.
18. Suits on recognizances in criminal matters.
19. No justice to hold more than four criminal terms a year.
20. Certain actions to have precedence.
21. Records transferred, custody of, &c.
22. Salaries of justices.

Number of justices.

1859, 196, § 7.  
Court may be held by one or more justices.  
R. S. 82, § 32.  
1859, 196.

Exclusive original and original jurisdiction.  
R. S. 82, § 2.  
1840, 87, § 2.  
1859, 196.

Original and concurrent jurisdiction.

R. S. 82, § 2.  
R. S. 85, §§ 1, 2.  
R. S. 113, §§ 17, 27, 28.  
1840, 87, § 1.  
1842, 14, § 1.  
1852, 51, §§ 1, 3.  
1852, 314, § 1.  
1859, 196.  
2 Cush. 88, 494.  
See Ch. 156, § 5.

Appellate civil jurisdiction.

R. S. 82, § 3.  
1859, 196, § 5.

Criminal jurisdiction, original and appellate.

R. S. 82, § 25.  
1859, 196.

Removal of actions to S. J. C. by consent.

to be entered at next term.  
1844, 162.  
1859, 196, § 30.  
1 Gray, 108.  
See Ch. 156, § 7.

upon affidavit.

1849, 87, § 3.  
1842, 14, § 1.  
1852, 312, § 82.  
1859, 196, § 30.  
7 Met. 415, 570.  
3 Cush. 356.  
5 Cush. 501.  
11 Cush. 87.  
3 Gray, 377.

SECTION 1. There shall be one chief justice and nine associate justices of the superior court.

SECT. 2. The court may be held by one or more of the justices, and when so held shall have and exercise all the power and jurisdiction committed to said court.

SECT. 3. The court shall have exclusive original jurisdiction of complaints for flowing land, and original jurisdiction of all civil actions except those of which the supreme judicial court, police courts, or justices of the peace have original and exclusive jurisdiction.

SECT. 4. The court shall have original and concurrent jurisdiction with the supreme judicial court, of petitions for partition, of writs of entry for the foreclosure of mortgages, and of all civil actions except in the county of Suffolk, in which the sum demanded in damages exceeds one thousand dollars; and the like jurisdiction in the county of Suffolk, where the sum demanded as aforesaid exceeds four thousand dollars; and original and concurrent jurisdiction with police courts and justices of the peace, where the debt or damages demanded, or the value of the property alleged to be detained, exceeds twenty dollars in cases where police courts and justices of the peace have jurisdiction, except actions of replevin of beasts distrained for the recovery of any penalty or forfeiture, or to obtain satisfaction for damages.

SECT. 5. The court shall have jurisdiction of all civil actions and proceedings legally brought before it by appeal or otherwise from justices of the peace, police courts, or courts of insolvency, and from the decisions of commissioners on insolvent estates of deceased persons.

SECT. 6. The court shall have original jurisdiction of all crimes, offences, and misdemeanors, and appellate jurisdiction of all offences tried and determined before a police court or justice of the peace; and in criminal cases legally brought before it its jurisdiction shall be final, except as otherwise provided.

SECT. 7. Actions and petitions for partition entered in the court in the several counties, except the county of Suffolk, where the *ad damnum* in the writ or property claimed, or value of the estate in controversy, exceeds one thousand dollars, and in the county of Suffolk four thousand dollars, may, before the trial is commenced, be carried, by consent of parties, to the supreme judicial court; the plaintiff shall enter the same at the next term of that court, and the cause proceed as if the action or petition was originally brought therein.

SECT. 8. If the defendant in such action, or the respondent in petition for partition, or any person in behalf of either of them, at the first term at which such defendant or respondent is held by law to appear, makes oath or affirmation before the clerk or a justice of the peace, that he verily believes he has a substantial defence; that the amount in controversy exceeds the amount or value mentioned in the preceding section; that he intends to bring the cause to trial, and requests that the same may be removed to the supreme judicial court, it shall be immediately transferred, with the papers therein, to the clerk of that court, and

by him forthwith entered at the charge of the party removing the same, and the cause proceed as if originally brought in that court.

SECT. 9. No action shall be commenced in the court wherein the debt or damages demanded do not exceed twenty dollars.

7 Mass. 476. 16 Mass. 448. 4 Pick. 169. 10 Pick. 473.

SECT. 10. A party aggrieved by a judgment founded upon matter of law apparent on the record, in any proceeding, civil or criminal, except judgment upon answers or pleas in abatement or motion to dismiss for defect of form of process, may appeal therefrom to the supreme judicial court. An issue of law joined in the superior court shall not be waived by consent of parties after such appeal has been entered in the supreme judicial court, but that court may, for good cause, allow the parties to withdraw or amend their pleadings, and if the same result in an issue of fact, the case shall be remanded to the superior court to be there tried; but no execution shall issue upon the judgment appealed from, unless the appeal is waived, until the case is so remanded.

SECT. 11. When an appeal is taken or an exception is allowed, and the question arising thereon is duly entered in the supreme judicial court, any security which has been taken in the case, whether by bond, attachment, or otherwise, and whether the case is civil or criminal, shall stand as if no judgment had been rendered in the superior court, or exception taken, until final judgment is entered, unless execution is awarded because the exceptions are deemed frivolous and intended for delay.

SECT. 12. Orders or decrees of the supreme judicial court issued on questions arising in a case pending in the superior court shall be entered of record in that court, and such disposition be made of the ease as law and justice require, conformably to the rescript or order of the supreme judicial court.

SECT. 13. Parties in an action submitted to the determination of the court may agree that the judgment therein shall be final.

SECT. 14. The clerks shall, at the expense of the party appealing or taking exceptions, or of the plaintiff if a case is reserved or reported, or of the commonwealth in all criminal cases, prepare and transmit to the supreme judicial court sitting for the proper county, one copy of every paper on file in the case, except papers used in evidence only, and also one copy of all papers made part of the case or referred to in the bill of exceptions or report, or so much thereof as necessary fully to present the question of law, for the use of the chief justice, and like copies for the clerk of the supreme judicial court, to be kept on file in said court; and one copy of the bill of exceptions, or report, or papers upon which the question of law arises on appeal, for each associate justice, and a like copy for each party and the reporter. And in case any original papers used in the trial of the cause, are needed in the supreme judicial court, they shall be transmitted to the clerk of said court, to be by him kept on file until the rescript in such action is sent. And the expense of such copies and transmission shall be taxed in the bill of costs of the prevailing party, if he has paid the same.

SECT. 15. If by reason of mistake or accident an appeal to the superior court is not duly entered therein, or if for a like reason a complaint founded on an omission to enter an appeal has not been entered by the appellee, the court upon petition may allow said appeal or complaint to be entered in the same manner, and upon the same terms, as questions or complaints are allowed in like cases to be entered in the supreme judicial court under section seventeen of chapter one hundred and twelve; and when so entered, the case shall proceed as if the complaint or appeal had been duly entered. Attachments made and security given in the original action shall not be revived or continued in force by the entry of an appeal or complaint of the original plaintiffs, allowed under this section, but shall remain discharged.

Debt or damage to exceed twenty dollars.  
R. S. 82, § 4.

Appeals, &c.; practice thereon. *1 Allen 180*  
R. S. 82, § 10.  
1859, 193, § 26.  
19 Pick. 530.  
22 Pick. 278.  
4 Met. 123.  
5 Met. 88, 288.  
6 Met. 270, 280.  
7 Met. 211, 317, 488.  
8 Met. 263.  
10 Met. 174.  
3 Cush. 11, 57, 355.  
7 Cush. 115.  
8 Cush. 374, 409.  
2 Gray, 551.  
Upon appeal, &c., security to be held until final judgment.  
R. S. 81, § 37.  
R. S. 82, § 18.  
1859, 196, § 31.

Decrees of S. J. C. in cases in superior court to be entered of record.

Judgment may be final by agreement.  
R. S. 82, § 11.  
Clerk to transmit copies to S. J. C. at expense of appellant, &c.  
1859, 196, §§ 33, 34.

original papers in case, &c.

Entry of appeal, &c., omitted, allowed on petition.  
R. S. 82, §§ 21, 22, 23, 24.  
1859, 196.

No security revived thereby.



Courts, when and where held. 1859, 196, § 10. Barnstable.

SECT. 16. The court shall be held in every year at the times and places following, that is to say:—

For the county of Barstable, at Barnstable on the Tuesday next after the first Monday of April, and on the first Tuesday of September:

Berkshire. For the county of Berkshire, at Lenox, for civil business on the fourth Mondays of February, June, and October; for criminal business on the first Mondays of January and July:

Bristol. For the county of Bristol, at Taunton on the second Mondays of March and September, and at New Bedford on the second Mondays of June and December:

Dukes County. For the county of Dukes County, at Edgartown, on the last Mondays of May and September:

Essex. For the county of Essex, for civil business, at Salem on the first Mondays of June and December, at Lawrence on the first Monday of March, and at Newburyport on the first Monday of September; for criminal business, at Salem on the third Monday of January, at Newburyport on the second Monday of May, and at Lawrence on the fourth Monday of October:

Franklin. For the county of Franklin, at Greenfield, on the third Monday of March, and the second Mondays of August and November:

Hampden. For the county of Hampden, at Springfield, for civil business on the second Mondays of March and June, and the first Monday of October; for criminal business, on the third Monday of May and first Monday of December:

Hampshire. For the county of Hampshire, at Northampton, for civil business, on the third Monday of February, the first Monday of June, and the third Monday of October; for criminal business on the second Monday of June and third Monday of December:

Middlesex. For the county of Middlesex, for civil business, at Lowell, on the second Monday of March and the first Monday of September, at Concord on the first Monday of June, and at Cambridge on the second Monday of December; for criminal business, at Cambridge, on the second Monday of February, at Concord on the fourth Monday of June, and at Lowell on the third Monday of October:

Nantucket. For the county of Nantucket, at Nantucket, on the first Mondays of June and October:

Norfolk. For the county of Norfolk, at Dedham, on the fourth Monday of April and the third Mondays of September and December:

Plymouth. For the county of Plymouth, at Plymouth, on the second Mondays of February and June and third Monday of October:

Suffolk. For the county of Suffolk, at Boston, for civil business, on the first Tuesdays of January, April, July, and October; for criminal business on the first Monday of every month:

Worcester. For the county of Worcester, for civil business, at Worcester, on the first Monday of March, the Monday next after the fourth Monday of August, and the second Monday of December; and at Fitchburg on the second Mondays of June and November; for criminal business, at Worcester, on the third Monday of January, the second Monday of May, and the third Monday of October; and at Fitchburg on the second Monday of August.

SECT. 17. In the counties where both civil and criminal terms are established, civil business exclusively shall be transacted at civil terms, and criminal at criminal terms; and continuances of civil and criminal cases shall be to civil and criminal terms respectively without any special order therefor, except as provided in the following section.

SECT. 18. In such counties civil suits on recognizances entered into in criminal prosecutions cognizable by this court, shall be returnable to and have day in criminal terms.

Civil and criminal business to be transacted at respective terms therefor. 1859, 196, § 11.

Suits on recognizances in criminal matters. R. S. 82, § 43.

1841, 111, § 3. 1859, 196, § 12.

1860 Ch. 62



SECT. 19. No justice shall hold in any one year more than four terms for the transaction of criminal business only.

SECT. 20. At any term of the court wherein criminal business may be transacted, causes arising under the provisions of chapters one hundred and forty-four, eighty-six, and eighty-seven, shall have precedence in the order said chapters are herein named, next after the causes of persons actually confined in prison and awaiting trial.

SECT. 21. The records of courts transferred to the superior court shall remain in the custody of its clerks. In the county of Suffolk the clerk of said court, for civil business, shall have the custody of said records in civil cases, and the clerk for criminal business shall have the custody of said records in criminal cases. Copies of said records may be certified by said clerks respectively. Judicial writs and processes founded upon such records shall issue under the seal of the superior court, in like manner and with the same effect as similar writs and processes founded upon its own records.

SECT. 22. The chief justice of the court shall receive an annual salary of three thousand seven hundred dollars, and each of the other justices an annual salary of three thousand five hundred dollars, from the treasury of the commonwealth.

No justice to hold more than four criminal terms a year. 1859, 196, § 22. Certain actions to have precedence. 1859, 196, § 54.

Records transferred, custody of, &c. 1859, 196, § 4.

Salaries of justices. 1859, 196, § 17. See Ch. 15, § 36.

## CHAPTER 115.

### OF MATTERS COMMON TO THE SUPREME JUDICIAL AND SUPERIOR COURTS.

**SECTION**

1. Justices, tenure of office. Senior justice to act as chief, in case, &c.
2. to be conservators of the public peace.
3. Courts may make judgments, frame writs, &c.
4. to make rules for practice, &c.
5. not to charge juries as to matters of fact.
6. may set aside verdict, &c., before judgment, &c.
7. Decision on pleas in abatement, &c., to be final. Exceptions to rulings, &c., when to be presented, &c.
8. to be allowed, &c., within five days, unless, &c.
9. Trials not to be delayed by allowance of exceptions.
10. If exceptions are frivolous, judgment may be entered, &c.
11. If disallowed, may be proved, on petition.

**SECTION**

12. Copies of exceptions, &c., to be sent up within twenty days.
13. Questions of law in Berkshire, &c., may, by consent of parties, be heard in Boston.
14. Judgment may be entered as of former term.
15. First day of term, how designated.
16. Two or more sessions may be held at same term.
17. Courts to allow, &c., accounts, &c.
18. Justices to make convenient arrangements for holding courts.
19. Court may adjourn to another shire town.
20. Adjournment of court, in absence of justice.
21. Same subject.
22. Courts to establish seal and appoint officers.

SECTION 1. The justices of the supreme judicial court and superior court shall continue to hold their offices according to the tenor of their commissions, and vacancies be filled in the manner provided by the constitution. In case of a vacancy in the office of chief justice of either court, or of his sickness or absence, his duties shall be performed by the senior justice of such court present and qualified to act.

Justices, tenure of office. Absence, &c., of chief. Constitution, Ch. 2, § 1, art. 9. Ch. 3, art. 1. R. S. 81, §§ 1, 49. 1859, 196, § 7.

SECT. 2. The justices of the supreme judicial court and superior court shall severally by virtue of their offices be conservators of the peace throughout the commonwealth.

to be conservators of the public peace. R. S. 81, § 7.

SECT. 3. The courts respectively may make and award such judgments, decrees, orders, and injunctions, and shall issue all writs and processes necessary or proper to carry into effect the powers granted to

Courts may make judgments, frame writs, &c.

R. S. 81, §§ 6, 9.  
 R. S. 82, § 30.  
 1853, 371, § 3.  
 1859, 196, §§ 15,  
 16.  
 Courts to make  
 rules for prac-  
 tice, &c.  
 R. S. 81, § 10.  
 R. S. 82, § 37.  
 1836, 273, § 2.  
 1851, 261, § 2.  
 1852, 312, §§ 34,  
 76.  
 1853, 371, § 4.  
 1857, 267, §§ 2, 3.  
 1859, 196, §§ 35,  
 49.

them, and when no form for any such writ or process is prescribed, the court shall frame one in conformity with the principles of law and the usual course of proceedings in the courts of this commonwealth.

SECT. 4. The courts shall respectively from time to time make and promulgate uniform codes of rules for regulating the practice and conducting the business of such courts in cases not expressly provided for by law; for the purpose of—

First. Simplifying and shortening the pleadings and other proceedings:

Second. Prescribing the terms upon which amendments will be allowed by the court, or upon which unnecessary counts and statements will be stricken out of the record; discouraging negligence and deceit; preventing delay; securing parties from being misled; placing the party not in fault as nearly as possible in the condition in which he would have been if no mistake had been made; distinguishing between form and substance; and affording known, fixed, and certain requisitions, in place of the discretion of the court:

Third. For conducting trials:

Fourth. Presenting more distinctly the questions to be tried by the jury:

Fifth. Giving each party notice of matters intended to be given in evidence by the other party so as to prevent surprise and enable suitors to prepare for trial:

Sixth. Respecting the forms of verdicts so as to place upon record the finding of the jury in matters of fact:

Seventh. Expediting the decision of causes:

Eighth. Remedying abuses and imperfections in practice and diminishing costs: *provided*, that such rules are not repugnant to the laws of the state, and that the rules of the superior court shall not conflict with those of the supreme judicial court, but upon the same subject shall be in conformity therewith.

not to charge  
 juries as to mat-  
 ters of fact.

SECT. 5. The courts shall not charge juries with respect to matters of fact, but may state the testimony and the law.

may set aside  
 verdict, &c.  
 R. S. 82, § 19.  
 1853, 185.  
 1859, 196, § 32.

SECT. 6. The courts may, at any time before judgment in a civil action, set aside the verdict and order a new trial, for any cause for which a new trial may by law be granted; or after verdict may report the case for determination by the supreme judicial court.

Decision on  
 pleas in abate-  
 ment, &c., to be  
 final.

SECT. 7. Decisions of a justice of either court, upon pleas in abatement or on motions to dismiss for defect of form in process, shall be final on the question raised. On motions for a new trial, and in all cases, civil or criminal, whether according to the course of the common law or otherwise, a party aggrieved by an opinion, ruling, direction, or judgment, of the court in matters of law, may allege exceptions thereto; such exceptions, being reduced to writing in a summary mode and filed with the clerk, and notice thereof given to the adverse party, may be presented to the court before the adjournment without day of the term in which the exceptions are taken, and within three days after the verdict in the case, or after the opinion, ruling, direction, or judgment, excepted to is given. For good cause shown, a further time, not exceeding five days, unless by consent of the adverse party, may be allowed by the court. The exceptions being examined and found conformable to the truth shall be allowed by the presiding judge. In all cases the adverse party shall have an opportunity to be heard concerning the allowance of such exceptions.

Exceptions to  
 rulings, &c.,  
 when to be pre-  
 sented, &c.

R. S. 81, §§ 27,  
 28. R. S. 82, § 12.  
 1859, 196, § 27.  
 5 Met. 287, 330.  
 4 Gray, 166, 573.

SECT. 8. The exceptions shall be restored to the files of the court within five days after the same are presented to the judge, with a certificate under his hand either allowing or disallowing the same, unless the judge finds that further time is necessary for the examination or hearing upon the same, not exceeding ten days, unless for reasons

1 Allen 531

to be allowed,  
 &c., within five  
 days, unless,  
 &c.  
 1859, 196, § 27.

1 Allen 18, 389

1 Allen 275

1 Allen 485

rendering more delay necessary, which shall be certified by the judge on restoring the papers.

SECT. 9. The trial of questions of fact shall not be prevented or delayed by the filing or allowance of exceptions, but the court shall proceed to the determination of such questions as if exceptions had not been taken, and such further proceedings be had as the court orders; but no judgment shall be entered unless the exceptions are adjudged immaterial, frivolous, or intended for delay.

Trials not to be delayed by allowance of exceptions.  
R. S. 81, §§ 29, 33.  
R. S. 82, § 13.  
1859, 196, § 28.

SECT. 10. If the exceptions appear to the justice before whom the trial is had, to be frivolous, immaterial, or intended for delay, judgment may be entered, and execution awarded or stayed on such terms as the court deems reasonable, and in criminal cases sentence passed, notwithstanding the allowance of the exceptions. If execution is not awarded, any security which has been taken in the case, whether by bond, attachment, or otherwise, shall stand as if no judgment had been entered, until an order is made for final judgment.

If exceptions are frivolous, judgment may be entered, &c.  
R. S. 81, § 29.  
10 Pick. 252.

SECT. 11. If the justice disallows or fails to sign and return the exceptions, or alters any statement therein, and either party is aggrieved, the truth of the exceptions presented may be established before the supreme judicial court upon petition setting forth the grievance, and thereupon, the truth thereof being established, the exceptions shall be heard, and the same proceedings had as if they had been duly signed and brought up to said court with the petition. The supreme judicial court shall make and promulgate rules for settling the truth of exceptions alleged and not allowed.

If disallowed, may be proved, on petition.  
R. S. 81, §§ 28, 29, 30.  
1851, 261.  
1859, 196, § 29.  
10 Pick. 252.  
4 Gray, 166, 573.

SECT. 12. Copies and papers relating to a question of law arising in either court upon appeal, by bill of exception, reserved case, or otherwise, shall within twenty days from the adjournment of the court for that term without day, be transmitted to and entered in the law docket of the supreme judicial court for the proper county; but the entry thereof shall not transfer the case, but only the question to be determined.

Copies of exceptions, &c., to be sent up within 20 days.  
1859, 196, §§ 26, 27, 34. *Allen 401.*

SECT. 13. Questions of law arising in the supreme judicial court or superior court, when sitting for the counties of Berkshire, Hampshire, Franklin, Hampden, or Worcester, may, by consent of all the parties filed in the case, be entered and heard at the law term of the supreme judicial court at Boston. And if the judge before whom any action or proceeding is tried in the courts in said counties in which a question of law is saved or arises for the determination of the full court, deems the exception or appeal frivolous, or intended for delay merely, or that the interests of the parties or the public require a more speedy determination thereof than can be attained in the terms established for the county in which the trial is had, he shall so certify and order the questions of law to be entered and heard at the term aforesaid in Boston; and all the other proceedings shall be the same as if the questions had arisen in any other county.

Questions of law in Berkshire, &c., may, by consent of parties, be heard in Boston.  
1859, 196, § 36.

SECT. 14. The courts may at their discretion, whenever justice requires it, enter any judgment as of any day of a former term.

Judgment may be entered as of former term.

SECT. 15. In writs, processes, records, and judicial proceedings, civil and criminal, the day on which any term is to commence may be designated as the first, second, or other Monday, or other day in the week, in the month in which the same happens.

First day of term, how designated.  
1859, 196, § 18.

SECT. 16. Two or more sessions of the court may be held in the same county at any term for the transaction of business, when the public convenience requires; and such division of the business may be made as may conduce to its more speedy and convenient disposal.

Two or more sessions may be held at same term.  
1851, 330, § 2.  
1859, 196, § 13.

SECT. 17. The courts shall respectively receive, examine and allow accounts for services and expenses incident thereto in the several counties, and order payment thereof out of the respective county treasuries.

Courts to allow, &c., accounts.  
1836, 4, § 10.  
1859, 196, § 20.

SECT. 18. The justices of said courts respectively, or a majority of

Justices to



make convenient arrangements for holding courts.  
R. S. 82, § 33.

Court may adjourn to another shire town.  
1848, 236.  
1859, 275.

Adjournment of court in absence of justice.  
R. S. 81, § 39.  
R. S. 82, § 39.  
1859, 196, § 19.

Same subject.  
R. S. 81, § 40.  
R. S. 82, § 30.

Courts to establish seal, and appoint officers.  
1859, 196, § 16.

them, shall, from time to time, make such arrangements for the attendance of some one of them at the several times and places appointed for holding the courts, as will be most convenient, and insure a punctual and prompt discharge of their duties.

SECT. 19. If the public business demands, either court may adjourn an established term in one shire town to another in the same county. Persons, recognizances, and processes required to appear at or to be returned to the established term, shall appear at, be returnable to, and have day in, the adjourned term.

SECT. 20. When no justice is present at the time and place appointed for holding a court, whether at the beginning of a term or any adjournment thereof, the sheriff of the county or either of his deputies may adjourn the court from day to day, or from time to time, as circumstances require, or as ordered by any of the justices, and shall give notice of such adjournment by making public proclamation in the court house, and by a notification posted on the door of the court house, or published in some newspaper.

SECT. 21. In such case any justice may, by a written order, require the sheriff or his deputy to adjourn the court without day, or to the time expressed in the order; and the officer shall adjourn the court accordingly by public proclamation in the court house.

SECT. 22. Each court shall have power to establish a seal, and to appoint all officers necessary for the transaction of its business.

## CHAPTER 116.

### OF POLICE COURTS.

#### SECTION

1. Courts established, &c.
2. where not to be established.

#### JUSTICES AND CLERKS.

3. Appointment of the justices.
4. Clerks, how chosen, &c.
5. when justice may appoint.
6. may appoint assistants.
7. *pro tempore*, when appointed.
8. to be sworn, give bond, keep records, &c.
9. Justice, clerk, &c., not to act as counsel, &c.

#### JURISDICTION.

10. Jurisdiction, general.
11. with powers necessary to discharge their duties.

#### *Criminal.*

12. criminal, same as justices of the peace.
13. additional, concurrent with superior court.
14. Same subject.
15. final, may be declined, &c.
16. Warrants, when court not in session.
17. where returnable, &c.

#### *Civil.*

18. Jurisdiction, civil, when exclusive.
19. when two or more are plaintiffs, &c.

#### SESSIONS, PROCEEDINGS, &C.

20. Terms of court, separate civil and criminal.
21. Expenses, how paid.

#### SECTION

22. Courts, by whom held.
23. Rules. When justice to act as clerk.
24. Courts may issue summons to run into any county.
25. Complaints to be entered on docket. Warrants, where returnable.
26. Processes, how to bear test, &c.
27. Attendance of parties, &c., when case is adjourned.
28. Warrants, &c., by whom made. Fees, &c.
29. Fees, &c., to be paid to county treasurer, except, &c.
30. accruing to city, &c., to be paid thereto.
31. Fees and costs, in criminal cases, how made up, &c.

#### APPEALS.

32. Appeal allowed.

#### SALARIES.

33. Salaries of justices and clerks; of clerk elected under section four.
34. Justice, &c., to receive no additional compensation.

#### POLICE COURT OF BOSTON.

35. Three justices in Boston; tenure of office.
36. First justice. Any justice to issue warrants, &c., when, &c.
37. Salaries of assistant clerks.
38. Court, when to be held, for criminal business.

SECTION  
 39. Court, when to be held for civil business.  
 40. Different sessions may be held at same time.

SECTION  
 41. Jurisdiction, exclusive; concurrent. Records, &c., of justice's court transferred.  
 42. Justices to make rules, &c.  
 43. Clerk to render account of fees, &c.

SECTION 1. The cities and towns of Adams, Boston, Cambridge, Chelsea, Chicopee, Fall River, Gloucester, Haverhill, Lawrence, Lee, Lowell, Lynn, Milford, New Bedford, Newburyport, Pittsfield, Roxbury, Salem, Springfield, Taunton, Williamstown, and Worcester, shall each continue a judicial district under the jurisdiction of the police court thereof.

Courts established, &c. 1861 Ch. 207.  
 R. S. 87.  
 1833, 64, 192. 1861 Ch. 158.  
 1834, 33.  
 1848, 32, 260.  
 1849, 86.  
 1850, 310.  
 1852, 94, 304.

SECT. 2. No police court shall hereafter be established in any town having less than ten thousand inhabitants.

where not to be established.

JUSTICES AND CLERKS.

SECT. 3. There shall be one justice and two special justices of each of said courts, except in the city of Boston. The justices now appointed shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur, others shall be appointed in the manner provided by the constitution.

Appointment of the justices.  
 Const. Ch. 3, art. 1.  
 R. S. 87, § 30.  
 1847, 270.

SECT. 4. The clerks now in office shall hold their offices until successors are chosen and qualified under the provisions of this chapter; and in every city or town containing, according to the next preceding state or national census, fourteen thousand inhabitants, in which a police court is established, and where the office of clerk is not established by law, a clerk of the court shall be chosen at the municipal election of the year in which clerks of other police courts shall next thereafter be elected. At the annual municipal election in the year eighteen hundred and sixty-one, and every fifth year thereafter, clerks of the several police courts, where the office of clerk shall then exist by law, shall be chosen by the districts, and shall hold office until their successors are chosen and qualified. If a clerk is removed, or otherwise vacates his office, another shall be chosen at the annual municipal election, for the remainder of the term.

Clerks, how chosen, &c.  
 Amend. const. art. 19.  
 See Ch. 112, § 4.  
 1861 Ch. 158, 207.

SECT. 5. The justice of a police court, when no clerk is required by law, may appoint a clerk, to be paid by him, and for whose official acts and doings he shall be responsible, and who shall hold his office during the pleasure of such justice.

when justice may appoint.  
 1838, 147, § 2.  
 1854, 335, § 12.  
 8 Met. 171.

SECT. 6. The clerk may, subject to the approval of the justice, or court, from time to time, appoint, to aid him in the discharge of his duties, one or more assistant-clerks, who shall be removable at his pleasure, and for whose doings he shall be responsible.

may appoint assistants.  
 R. S. 87, § 23, 24.  
 1838, 147, § 2.

SECT. 7. In case of the absence, death, or removal of a clerk, the court shall appoint a clerk *pro tempore*, who shall receive the compensation of the clerk and act until he resumes his duties, or the vacancy is filled by election.

*pro tempore*, when appointed.  
 R. S. 87, § 18.

SECT. 8. The clerk, assistant-clerks, and clerk *pro tempore*, of each court shall be sworn; and the clerk shall give bonds in a sum not less than three times the amount of his annual salary, with sureties to the acceptance of the treasurer of the city, town, or county, with a condition for the faithful performance of the duties of his office. He or his assistants shall attend all sessions of the court and keep a record of all the proceedings. The records in civil and criminal cases shall be kept separately in different books.

to be sworn, give bond, keep records, &c.  
 R. S. 87, §§ 19, 20.  
 1838, 147, § 2.  
 1855, 270, § 4.  
 1857, 264, § 3.

SECT. 9. No justice, clerk, or assistant-clerk, shall be retained or employed as counsel or attorney in any suit, complaint, or proceeding pending in his court, nor in any which has been examined or tried therein; and no special justice shall be so retained or employed in any case in which he shall officiate as justice.

Justice, clerk, &c., not to act as counsel, &c.  
 R. S. 87, §§ 25, 44.  
 1855, 321, § 12.  
 1857, 264, § 4.

## JURISDICTION.

Jurisdiction,  
general.  
1852, 46.  
1857, 51.

with powers  
necessary to  
discharge their  
duties.  
R. S. 87, § 13.

SECT. 10. Police courts may in their respective counties exercise the powers, and shall perform the duties and be subject to the liabilities, of justices of the peace.

SECT. 11. They shall have and exercise the powers necessary and proper for the discharge of their duties; and the proceedings in the hearing, trial, and determination, of cases, including trials by jury, and all matters relating thereto, shall be substantially the same, and the fees and costs shall be the same, as in like cases before justices of the peace.

*Criminal.*

criminal,  
same as justices  
of the peace.  
R. S. 87, §§ 3, 4,  
5, 32.  
1848, 331, § 4.  
1854, 277, § 2.  
8 Cush. 210.  
11 Cush. 405.  
See Ch. 120.

SECT. 12. They shall in their respective counties have the same jurisdiction as any justice of the peace in all matters relating to crimes and offences; and in relation to crimes and offences committed in their respective districts such jurisdiction shall exclude the jurisdiction of other police courts and of justices of the peace, except as provided in section seventeen, and section thirty-two of chapter one hundred and twenty.

additional,  
concurrent with  
superior court.  
1853, 195, § 1.  
1858, 45, § 1.  
1859, 196.  
See Ch. 52, § 27.

SECT. 13. They shall in their respective counties, concurrently with the superior court, have jurisdiction of cases of assault and battery, (except where committed with intent to commit some other offence, or with a weapon dangerous to life, or where the life of the person assaulted is in danger, or such person is maimed,) and in such cases may punish by imprisonment in the jail or house of correction not exceeding six months or by fine not exceeding thirty dollars. They shall also concurrently as aforesaid have jurisdiction of offences punishable by fine or forfeiture not exceeding one hundred dollars, or imprisonment in the jail or house of correction not exceeding one year, or both said punishments.

Same subject.  
R. S. 126, § 23.  
1855, 135.  
1857, 89.  
1857, 157, § 1.  
See Ch. 161,  
§§ 16-18, 21, 25-  
27, 43-45, 54, 57.

SECT. 14. They shall also have concurrent jurisdiction, as aforesaid, of larcenies; and offences of obtaining property by any false pretence, or privy or false token, or by the game of three-card monte, or any other game, device, sleight of hand, pretended fortune telling, trick, or other means, by the use of cards or other implements or instruments; and offences of buying, receiving, or aiding in the concealment of stolen goods or other property; where the property alleged to be stolen, or so obtained, bought, received, or the concealment of which is so aided, is not alleged to exceed the value of fifty dollars; and in such cases may punish by imprisonment in the jail or house of correction not exceeding two years, or by fine not exceeding one hundred dollars.

final, may be  
declined, &c.  
1853, 196, § 2.  
1857, 157, § 2.

SECT. 15. They may in their discretion decline to exercise final jurisdiction of any case in which the superior court has concurrent jurisdiction.

Warrants when  
court not in ses-  
sion.

SECT. 16. The justice may receive complaints and issue warrants when the court is not in session.

where return-  
able, &c.  
R. S. 87, §§ 5, 6,  
33, 1850, 310, § 2.  
1852, 94, § 23.  
1855, 270, § 7.  
1855, 321, § 10.  
1858, 103, § 3.  
1858, 138.  
8 Cush. 210.  
7 Gray, 322.

SECT. 17. All warrants issued by said courts, or a justice thereof, or by a justice of the peace in any district, in a criminal suit or prosecution, or under the provisions of chapter seventy-two, shall be returnable before the police court of the district. Warrants issued by justices of the peace of any county for offences committed out of the district, may be made returnable before the nearest police court in the county. No fees shall be allowed to a justice of the peace for any such warrant, but all fees therefor shall be payable to the court to which the warrant is returnable.

*Civil.*

Jurisdiction,  
civil, when ex-  
clusive.

SECT. 18. The courts in their respective counties shall each have the same jurisdiction as justices of the peace of all civil actions and pro-



ceedings, and such jurisdiction shall, when the plaintiff and defendant both reside in the district, exclude the jurisdiction of other police courts and justices of the peace.

SECT. 19. When there are two or more plaintiffs or defendants, or one or more trustees, the jurisdiction of the court shall not be exclusive, unless all the parties reside in the district.

R. S. 87, §§ 11, 34.  
1848, 32, § 24.  
1849, 137.  
1 Met. 148.  
Jurisdiction when two or more are plaintiffs, &c.  
R. S. 87, § 35.

SESSIONS, PROCEEDINGS, & C.

SECT. 20. Each court shall be held as often as necessary for civil and criminal business within the district for which it is established, in the court house, or in any other suitable place to be provided by the district, and may be adjourned from time to time to the same or any other place in the same district, as occasion requires. Separate terms of the court for civil and criminal business, and the times of holding the same, shall be fixed by the justice or justices by general rule.

Terms of court; separate civil and criminal.  
R. S. 87, § 42.  
1861 Ch. 115:

SECT. 21. The reasonable expenses of such courts for rent and care of court rooms, fuel, record books, blanks and stationery, and otherwise incidental to maintaining such courts, shall be certified by the justices thereof, and audited, allowed, and paid out of the county treasury to the parties entitled thereto, like costs in criminal cases, and two-thirds of such expenses shall be repaid to the county out of the treasury of the commonwealth.

Expenses, how paid.  
1861 Ch. 172

SECT. 22. Each court, except in Boston, shall be held by the justice; but in case of his sickness, interest, absence, or other disability, and in case of a vacancy in the office of justice, the special justice holding the oldest commission shall have the powers and perform the duties of the justice; and at any time upon request of the justice either special justice may hold a session of the court, and two or more sessions may be held at the same time, the fact being stated upon the record. For every day occupied by a special justice, he shall receive the same rate of compensation as the justice, by whom he shall be paid, but such compensation shall not exceed the fees taxable by law for the services performed.

Courts, by whom held.  
R. S. 87, §§ 31, 46.  
1848, 331, § 3.  
1849, 86, §§ 4, 10.  
1854, 34, § 8.  
1856, 4.  
1857, 26, § 2.  
1857, 294, § 2.  
6 Cush. 353.

SECT. 23. The justices may establish rules for the orderly and uniform conducting of the business of their respective courts, and when no clerk is appointed shall keep a fair record of their proceedings, and perform all other duties of clerk.

Rules. When justice to act as clerk.  
R. S. 87, § 37.  
1850, 310, § 7.

SECT. 24. The courts may issue summons and other process to procure the attendance of witnesses in the trial and examination of criminal cases, to run into any county to be served by the sheriff of any county or his deputies, or any constable of the city or town in which any witness may be.

Courts may issue summons, to run into any county.  
1838, 147, § 1.

SECT. 25. Complaints made to a police court shall be entered on a docket to be kept for the purpose, and all warrants issued upon any complaint shall be returned to the court specified in the warrant, with the return of the officer who had the same for service indorsed thereon.

Complaints to be entered on docket.  
Warrants, where returnable.  
1859, 236, § 1.

SECT. 26. Processes issuing from a police court having a clerk, shall be under the seal of the court, signed by the clerk or an assistant-clerk, and shall bear test of the justice or first justice who is not a party thereto; and in case of the death, absence, or disability of the justice, then of one of the special justices. In other respects the processes of said courts shall be substantially like the processes issued by justices of the peace.

Processes, how to bear test, &c.  
R. S. 87, § 12.  
1838, 147, § 2.  
1853, 170, § 3.  
1855, 270, § 5.  
1855, 428, § 7.  
1857, 264, § 8.  
13 Gray, 74.

SECT. 27. When a trial or examination pending before a police court is adjourned to a future day, as provided in chapter one hundred and seventy, the parties and witnesses shall not be required to attend from day to day, but they shall attend at the time to which the cause is adjourned, and the recognizances, if any, shall be taken accordingly.

Attendance of parties, &c., when case is adjourned.  
R. S. 87, § 9.

Warrants, &c., by whom made.  
 Fees, &c.  
 R. S. 87, § 21.  
 1838, 147, § 2.  
 1854, 346, § 1.  
 1856, 172, § 3.  
 See Ch. 14,  
 §§ 12, 13.

SECT. 28. The clerk of each court where the office of clerk is established by law, and the justice of every other court, shall make all warrants, writs, processes, and returns, of the court, tax bills of cost, and receive all fees, fines, forfeitures, and costs, accruing from the business of the court in civil and criminal cases, including fees for blanks and copies. All fees for copies shall be indorsed thereon.

Fees, &c., to be paid to county treasurer, except, &c.

SECT. 29. The clerk or justice receiving such fees, fines, forfeitures, and costs, shall account for and pay over the full amount thereof quarterly, in the months of January, April, July, and October, in each year, to the treasurer of the county, except as is provided in the following section.

accruing to city, &c., to be paid thereto.  
 R. S. 87, § 38.  
 1853, 57, § 7.  
 1856, 26, § 4.  
 1856, 158, § 2.

SECT. 30. All fines and forfeitures so received by the clerk or justice, which accrue to any city or town, shall be paid to such city or town as often as twice in each year; and all fees of officers and witnesses, whether received directly from the persons convicted or through the county treasurer, shall be paid to the persons entitled thereto, and if not so paid, shall be accounted for and paid over to the county treasurer, in like manner as is required of justices of the peace.

Fees and costs, in criminal cases, how made up, &c.  
 R. S. 87, § 39.

SECT. 31. Fees and costs in criminal cases, not received by the justice or clerk, shall be made up, taxed, certified, allowed, and paid, as is provided in prosecutions before justices of the peace.

APPEALS.

Appeals.  
 R. S. 86.  
 R. S. 87, §§ 5, 36.  
 1859, 196.

SECT. 32. A party aggrieved by the judgment of a police court may appeal to the superior court. Such appeals shall be had, entered, conducted, and disposed of, in all respects like appeals from justices of the peace.

SALARIES.

Salaries of justices and clerks.  
 See Ch. 15, § 36.

SECT. 33. The justices and clerks in the following districts shall receive from the treasury of the commonwealth annual salaries, as follows:

Adams.  
 Boston.

Adams, the justice, eight hundred dollars.  
 Boston, the justices, twenty-five hundred dollars each; the clerk, eighteen hundred dollars.

Cambridge.

Cambridge, the justice, fifteen hundred dollars; the clerk, five hundred dollars.

Chelsea.

Chelsea, the justice, one thousand dollars.

Chicopee.

Chicopee, the justice, nine hundred dollars.

Fall River.

Fall River, the justice, one thousand dollars; the clerk, five hundred dollars.

Gloucester.

Gloucester, the justice, six hundred dollars.

Haverhill.

Haverhill, the justice, six hundred dollars.

Lawrence.

Lawrence, the justice, fifteen hundred dollars; the clerk, eight hundred dollars.

Lee.

Lee, the justice, four hundred dollars.

Lowell.

Lowell, the justice, twenty-two hundred dollars; the clerk, one thousand dollars.

Lynn.

Lynn, the justice, one thousand dollars; the clerk, three hundred dollars.

Milford.

Milford, the justice, twelve hundred dollars.

New Bedford.

New Bedford, the justice, fifteen hundred dollars; the clerk, eight hundred dollars.

Newburyport.

Newburyport, the justice, nine hundred dollars; the clerk, five hundred dollars.

Pittsfield.

Pittsfield, the justice, eight hundred dollars.

Roxbury.

Roxbury, the justice, fifteen hundred dollars; the clerk, five hundred dollars.

1860 Ch. 100

1861 Ch. 121

Salem, the justice, fifteen hundred dollars; the clerk, nine hundred dollars. Salem.

Springfield, the justice, fifteen hundred dollars. Springfield.

Taunton, the justice, twelve hundred dollars; the clerk, six hundred dollars. Taunton.

Williamstown, the justice, three hundred dollars. Williamstown.

Worcester, the justice, fifteen hundred dollars; the clerk, eight hundred dollars. Worcester.

In any district having a clerk elected as provided in section [four,] of clerk elected [three] for whom no salary is above provided, the clerk shall receive an annual salary of five hundred dollars. under section four.

SECT. 34. No justice or clerk shall receive any compensation, besides Justice, &c., to receive no additional compensation. 1852, 159. 1858, 103, § 3. his regular salary or allowance, for making or issuing, in any capacity, complaints, warrants, subpoenas, or other criminal process, which he is by law authorized to issue; or for any service performed by him in the discharge of his official duties in said court.

POLICE COURT OF BOSTON.

SECT. 35. The justices of the police court of the city of Boston shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur others shall be appointed in the manner provided by the constitution, so that there shall be three justices. Three justices. Const. Ch. 3, art. 1. R. S. 7, § 1.

SECT. 36. The senior justice shall be the first justice of the court; and when the court is not in session any justice thereof may issue warrants and receive complaints. First justice. Any justice to issue warrants, &c., when, &c. R. S. 87, § 17.

SECT. 37. The assistant-clerks shall receive annual salaries from the treasury of the commonwealth, as follows: the first assistant-clerk, eighteen hundred dollars; the second, seventeen hundred dollars; the third, one thousand dollars, and the fourth, nine hundred dollars. Salaries of assistant-clerks.

SECT. 38. The court shall be held for criminal business by one or more of the justices daily in the forenoon at nine o'clock, and in the afternoon, except on Saturday, at three o'clock or some hour thereafter. It may be held on Saturday afternoons if it appears expedient to any of the justices. Court, when to be held for criminal business. R. S. 87, § 2. 1853, 179, § 5.

SECT. 39. The court shall be held for civil business by one or more of the justices, weekly. Each term shall commence on Saturday, and actions therein may be continued to any future day fixed for the sitting of the court. for civil business. R. S. 87, §§ 10, 14. 1853, 179, § 4. 3 Pick. 508. 6 Pick. 110.

SECT. 40. Different justices may hold different sessions at the same time for the trial of civil or criminal cases, in any rooms in the court house or in other places assigned by the aldermen of the city of Boston. Different sessions at same time. 1853, 179, § 1.

SECT. 41. The court shall have the same jurisdiction as justices of the peace in all civil actions and proceedings; which shall, when all the plaintiffs and defendants reside within the district, exclude the jurisdiction of other police courts and justices of the peace. The court shall also have jurisdiction concurrently with the superior court in the county of Suffolk of all personal actions and proceedings in civil cases in which the amount demanded or the value of the property claimed exceeds one hundred dollars and does not exceed three hundred dollars: provided, the defendants reside or have their usual place of business in the county of Suffolk. All cases and proceedings pending in or returnable to the justices' court for the county of Suffolk, and the records and jurisdiction of said court, are transferred to said police court. Jurisdiction, exclusive, concurrent. R. S. 87, § 11. 1849, 137. 1859, 190. See §§ 18, 19.

SECT. 42. The justices shall meet from time to time to establish necessary rules for the orderly and uniform conducting of the business of the court, and also to arrange, distribute, equalize, and insure a prompt and punctual discharge of their duties. Records, &c., of justices' court transferred.

SECT. 43. The clerk of the court shall render to the board of accounts Clerk to render Justices to make rules, &c. R. S. 87, § 16.



account of fees, &c.  
R. S. 87, § 22.  
1859, 196.

of the county of Suffolk a quarterly account of all criminal costs and fees taxed by him, and the board upon approval thereof shall certify the same to the treasurer of the county of Suffolk, who shall pay the same to the persons entitled thereto.

CHAPTER 117.

1860 Ch. 169.

OF PROBATE COURTS.

COURTS AND JURISDICTION.

SECTION

1. Judge and register of the court.
2. General jurisdiction.
3. Jurisdiction, first taken, effect of.
4. when not to be contested.
5. Court may enforce specific performance of contracts of deceased persons to convey lands.
6. Who to convey; effect of the conveyance.

APPEALS.

7. S. J. C. to be supreme court of probate, &c.
8. Appeal.
9. when to be claimed and entered.
10. reasons of to be filed, &c.
11. omitted by mistake, &c., allowed on petition.
- 12, 13, 14. proceedings on petition for.
15. proceedings in probate court suspended by, &c. — may be waived.
16. proceedings in supreme court upon.
17. when appellant fails to enter.
18. Jury trial in supreme court.

MISCELLANEOUS PROVISIONS.

19. Rules of practice, how and by whom established.

SECTION

20. Judge may frame and issue necessary warrants, &c.
21. Decrees, &c., to be in writing, and what papers to be recorded.
22. Regularity of proceedings presumed in certain cases.
23. Acts in vacation.
24. Court may revoke commissions, &c.
25. Power of court as to costs.
26. Executions therefor.
27. Accountants may be sworn out of court, in case, &c.
28. Oaths of other persons, how administered.
29. Parties may select newspaper for notice.
30. What copies register shall make free of charge; and for what he may receive pay.
31. Books and stationery.
32. Clerks, &c., not to be commissioners, except, &c.

SESSIONS OF THE COURTS.

33. Judge may keep order and punish for contempt.
34. Adjournment of court.
35. No court without register.
36. Times and places of holding courts.

COURTS AND JURISDICTION.

Judge and register of the court.  
R. S. 83, §§ 1, 20.  
1858, 93.

General jurisdiction.  
R. S. 64, § 3.  
R. S. 83, §§ 5, 6.  
1851, 256.  
1851, 324.  
5 Pick. 20, 370, 519.  
10 Cush. 17.  
2 Gray, 231.

Jurisdiction first taken, effect of.  
R. S. 62, § 20.  
R. S. 64, § 3.  
R. S. 79, § 31.  
R. S. 83, § 14.

when not to be contested.  
R. S. 83, § 12.  
9 Mass. 543.  
5 Pick. 20, 370.  
2 Gray, 231.

SECTION 1. The judge and register of probate and insolvency for each county shall continue to be judge and register of the probate court of such county, and shall have all the jurisdiction, power, and authority, given to judges and registers of probate respectively.

SECT. 2. The probate court for each county shall have jurisdiction of the probate of wills, granting administration of the estates of persons who at the time of their decease were inhabitants of or resident in the county, and of persons who die without the state leaving estate to be administered within such county; of the appointment of guardians to minors and others, and of all matters relating to the estates of such deceased persons and wards; and of petitions for the adoption of children and the change of names.

SECT. 3. When a case is within the jurisdiction of the probate court in two or more counties, the court which first takes cognizance thereof by the commencement of proceedings, shall retain the same; and administration or guardianship first granted shall extend to all the estate of the deceased or ward in this state, and exclude the jurisdiction of the probate court of every other county.

SECT. 4. The jurisdiction assumed in any case by the court, so far as it depends on the place of residence of a person, shall not be contested in any suit or proceeding, except in an appeal in the original case, or when the want of jurisdiction appears on the same record.

SECT. 5. When a person who has entered into a written agreement for the conveyance of real estate dies or is put under guardianship before making such conveyance, the probate court shall have jurisdiction concurrent with the supreme judicial court to enforce a specific performance, and upon a petition therefor presented by any person interested in the conveyance, shall order the petitioner to give notice to all persons interested, that they may appear and show cause either for or against the prayer of the petition.

Court may enforce specific performance of contracts of deceased persons to convey lands. 1853, 374, § 1. 1859, 36, § 1. 7 Gray, 533.

SECT. 6. If upon the hearing it appears that the deceased, if living, or the ward, if not under guardianship, would be required to make the conveyance, the court shall order the executor or administrator of the deceased or the guardian of the ward to make the same; and when so made it shall have like force and effect as if made by the person who entered into the agreement to convey.

Who to convey; effect of conveyance. 1853, 374, § 2. 1859, 36.

APPEALS.

SECT. 7. The supreme judicial court shall be the supreme court of probate, and have appellate jurisdiction of all matters determinable by the probate courts and the judges thereof, except in cases in which other provisions are specially made.

S. J. C. to be supreme court of probate, &c. R. S. 83, § 33.

SECT. 8. Any person aggrieved by an order, sentence, decree, or denial, of the court or judge, except in cases otherwise provided for, may appeal therefrom to the supreme judicial court. 8 Cush. 529. 6 Gray, 137.

Appeal. R. S. 83, § 34. 6 Met. 194. 11 Met. 390. 4 Cush. 408.

SECT. 9. The appeal shall be claimed and notice thereof given at the probate office within thirty days after the date of the act appealed from, and be entered in the supreme judicial court at the rule day appointed by said court for the same county, next after the expiration of fifty days from the date of the act so appealed from.

when to be claimed and entered. R. S. 83, §§ 34, 36. 1859, 196, § 6. 1859, 237, § 12.

SECT. 10. The appellant shall file in the probate office his reasons of appeal, and cause an attested copy thereof to be served on the adverse party fourteen days at least before the time when the appeal is to be entered.

reasons of to be filed, &c. R. S. 83, § 37.

SECT. 11. If a person aggrieved omits to claim or prosecute his appeal, without default on his part, the supreme court of probate, if it appears that justice requires a revision of the case, may on the petition of the party aggrieved, and upon such terms as it deems reasonable, allow an appeal to be entered and prosecuted with the same effect as if it had been done seasonably. Such petition may be entered in the clerk's office at any time, and the order of notice thereon may be made returnable at a rule day.

omitted by mistake, &c., allowed on petition. R. S. 83, § 39. 1 Gray, 522.

SECT. 12. Such appeal shall not be allowed without due notice to the party adversely interested, nor unless the petition therefor be filed within one year after passing the decree or order complained of, except as provided in the following section.

proceedings on petition for. R. S. 83, § 40.

SECT. 13. If the petitioner was without the United States at the time of passing the decree or order, he may file his petition at any time within three months after his return, and within two years after the act complained of.

same subject. R. S. 83, § 41.

SECT. 14. Appeals and petitions for appeal shall be entered on a docket with cases in equity, and shall have the same rights as to hearing and determination as such cases.

entry of, &c.

SECT. 15. After an appeal is claimed, and notice given at the probate office, all proceedings in pursuance of the order, sentence, decree, or denial appealed from, shall cease until the determination of the supreme court of probate is had; but if the appellant in writing waives his appeal before the entry thereof, proceedings may be had in the probate court as if no appeal had been taken.

proceedings in probate court suspended by, &c. — may be waived. R. S. 83, § 43. 4 Cush. 46. 1850 Ch. 189.

SECT. 16. The supreme court of probate may reverse or affirm, in

proceedings

in supreme court upon.  
R. S. 83, § 44.

whole or in part, the sentence or act appealed from, and may pass such decree thereon as the probate court or judge ought to have passed, and remit the case for further proceedings, or take any other order therein, as law and justice shall require.

Proceedings when appellant fails to enter his appeal.  
R. S. 83, § 45.

SECT. 17. If the appellant fails to enter and prosecute his appeal, the supreme court of probate may, upon the complaint of any person interested, affirm the former sentence or take such other order as law and justice shall require.

Jury trial in supreme court.  
R. S. 83, § 46.

SECT. 18. If, upon the hearing of an appeal in the supreme court of probate, any question of fact occurs proper for trial by jury, the court may cause it to be so tried upon an issue formed for the purpose under the direction of the court.

#### MISCELLANEOUS PROVISIONS.

Rules of practice, how and by whom established.  
R. S. 83, § 8.

SECT. 19. The several judges shall from time to time make rules for regulating the practice and conducting the business in their courts in all cases not expressly provided for by law; and shall return a statement of their rules and course of proceedings to the supreme judicial court, as soon as conveniently may be after making the same. The supreme judicial court may alter and amend the same, and make other and further rules from time to time for regulating the proceeding in the probate courts as it deems necessary, in order to secure regularity and uniformity in the proceedings.

Judge may frame and issue necessary warrants, &c.  
R. S. 83, § 9.

SECT. 20. The judge shall make and issue all warrants and processes necessary or proper to carry into effect the powers granted to him; and when no form for a warrant or process is prescribed by statute or the rules of the court, he shall frame one in conformity with the principles of law, and the usual course of proceedings in this state.

Decrees, &c., to be in writing, and what papers to be recorded.  
R. S. 83, § 7.  
6 Met. 369.

SECT. 21. All his decrees and orders shall be made in writing, and the register shall record, in books to be kept for the purpose, all decrees and orders, wills proved in the court, with the probate thereof, letters testamentary and of administration, warrants, returns, reports, accounts, and bonds; and all other acts and proceedings required to be recorded by the rules of the court or a special order of the judge.

Regularity of proceedings presumed in certain cases.  
R. S. 83, § 13.

SECT. 22. When the validity of a decree is drawn in question in another suit or proceeding, every thing necessary to have been done or proved in order to render the decree valid, which might have been proved by parol evidence at the time of making the decree, and was not required to be recorded, shall after twenty years from such time be presumed to have been done or proved, unless the contrary appears on the same record.

Acts in vacation.  
R. S. 83, § 4.

SECT. 23. Orders of notice and other official acts which are passed as matters of course and do not require a previous notice to an adverse party, may be made and done in vacation as well as in court.

Court may revoke commissions, &c.  
R. S. 83, § 31.

SECT. 24. Any warrant or commission for the appraisement of an estate, for examining the claims on insolvent estates, for the partition of real estate, or for the assignment of dower or other interests in real estate, may be revoked by the judge for sufficient cause; and he may thereupon issue a new commission, or proceed otherwise as the circumstances of the case shall require.

Power of court, as to costs.  
R. S. 83, § 47.  
7 Gray, 472.

SECT. 25. In cases contested either before the probate court or supreme court of probate, costs in the discretion of the court may be awarded to either party, to be paid by the other, or to either or both parties to be paid out of the estate which is the subject of the controversy, as justice and equity shall require.

Executions therefor.  
R. S. 83, § 48.

SECT. 26. When costs are awarded to be paid by one party to the other, said courts may issue execution therefor in like manner as is practised in the courts of common law.

Accountants

SECT. 27. When an executor, administrator, guardian, or trustee,



who is required to make oath to an account, is unable by reason of sickness or otherwise to attend personally in the probate court, the judge may administer the oath to the accountant out of court, or may by his commission authorize a justice of the peace to administer it. And a certificate of the oath with the account and vouchers produced therewith, and the commission, if any, shall be returned into the registry of probate and there filed and recorded.

may be sworn out of court, in case, &c.  
R. S. 83, § 29.

SECT. 28. All other oaths required of executors, administrators, guardians, and trustees, and all oaths required of commissioners of insolvency, appraisers, dividers of estates, and other persons, in relation to any proceeding in the court, may be administered by the judge or register in or out of court, or by a justice of the peace, or by the city or town clerk where there is no justice of the peace, and a certificate thereof, when administered out of court, shall be returned into the registry of probate and there filed and recorded.

Oaths of other persons, how administered.  
R. S. 15, § 48.  
R. S. 83, § 30.  
1852, 241.

SECT. 29. Persons having business in the court may select such newspapers as they may prefer for the publication of legal notices ordered upon their applications, but if the judge deems the newspaper thus selected insufficient to give due publicity, he may order the publication in one other newspaper.

Parties may select newspaper for notice.  
1851, 138.

SECT. 30. The register shall make, without charge, one copy of all wills proved, inventories returned, and accounts settled; of all partitions of real estate and assignments of dower; and of all orders and decrees of the court; and shall deliver the same when demanded to the executor, administrator, guardian, widow, heir, or other party principally interested. For additional copies of such documents, and copies of other papers, he shall be paid by the person demanding the same at the rate of twelve cents a page.

What copies register shall make, free of charge; and for what he may receive pay.  
R. S. 83, § 53.

SECT. 31. Each county shall provide all books necessary for keeping the records and all printed blanks and stationery used in probate proceedings.

Books and stationery.  
R. S. 83, § 54.  
7 Gray, 472.

SECT. 32. No clerk or other person employed in the office of a probate court shall be commissioner of insolvency or appraiser or divider of an estate in any case within the jurisdiction of the court, unless his appointment is requested by all parties in interest.

Clerks, &c., not to be commissioners, except, &c.  
R. S. 83, § 28.  
1839, 164, § 2.

SESSIONS OF THE COURTS.

SECT. 33. The judge may keep order in court and punish any contempt of his authority in like manner as such contempt might be punished in the superior court.

Judge may keep order, &c.  
R. S. 83, § 10.

SECT. 34. He may adjourn the court as occasion requires; and when he is absent at the time appointed for holding a court, the register shall adjourn it as he thinks necessary, or as ordered by the judge; the register may also adjourn the court when there is a vacancy in the office of judge.

Adjournment of court.  
R. S. 83, § 3.  
1836, 41.

SECT. 35. No court shall be held by adjournment or otherwise unless the register, assistant-register, or a temporary register is present.

No court without register.  
R. S. 83, § 20.

SECT. 36. Probate courts shall be held in each year at the times and within the cities and towns hereinafter mentioned, in such places therein as the several judges shall from time to time appoint; sufficient notice of which appointments shall be given by the respective judges as often as changes take place, by advertisement in some newspaper, or by posting the same in some public places, viz.:—

Times and places of holding courts.  
Const. Ch. 3, art. 4.  
R. S. 83, §§ 2, 55, 56, 57.  
1858, 93.  
3 Pick. 508.

For the county of Suffolk, at Boston, on every Monday in each month, except July:

Suffolk.  
1838, 54.

For the county of Essex, at Salem, on the first Tuesday of each month; at Lawrence, on the second Tuesday of each month, except April, May, July, August, and October; at Gloucester, on the second

Essex.  
R. S. 83, § 55.  
1848, 234.  
1853, 407.  
1856, 1.

Tuesday of April and October; at Newburyport, on the third Tuesday of each month, except March, May, August, September, and November; at Haverhill, on the third Tuesdays of May and November; at Ipswich, on the third Tuesdays of March and September:

Middlesex.  
1857, 78.

For the county of Middlesex, at Cambridge, on the second Tuesdays of each month, (except July,) and on the fourth Tuesdays of January, February, March, April, August, November, and December; at Lowell, on the first Tuesdays of February, April, June, September, and December; at Concord, on the first Tuesdays of January, March, May, and October; at Groton, on the fourth Tuesdays of May and September; and at Framingham, on the fourth Tuesdays of June and October:

Worcester.  
1837, 141.  
1848, 255.  
1854, 318.  
1856, 162.

For the county of Worcester, at West Brookfield, on the second Tuesdays of May and October; at Clinton, on the third Tuesdays of May and October; at Templeton, on the Thursdays next after the third Tuesdays of May and October; at Barre, on the Fridays next after the third Tuesdays of May and October; at Milford, on the fourth Tuesday of May and the Wednesday next after the fourth Tuesday of October; at Uxbridge, on the fourth Tuesday of October; at Fitchburg, on the Wednesdays next after the third Tuesdays of May and October; and at Worcester, on the first Tuesdays of every month:

Hampshire.  
R. S. 83, § 55.  
1843, 40.

For the county of Hampshire, at Northampton, on the first Tuesday of every month; at Amherst, on the second Tuesdays of January and August; at Belchertown, on the second Tuesdays of May and October; and at Chesterfield, on the third Tuesdays of May and October:

Hampden.  
1850, 287.

For the county of Hampden, at Springfield, on the first Tuesdays of January, February, March, April, June, July, and November; and on the fourth Tuesdays of April, August, and September; at Westfield, on the third Tuesdays of March, June, September, and December; at Monson, on the second Tuesday of June; and at Palmer, on the second Tuesday of September:

Franklin.  
R. S. 83, § 55.  
1850, 244.

For the county of Franklin, at Greenfield, on the first Tuesday of every month except November; at Northfield, on the second Tuesday of May and September; at Orange, on the second Tuesday of March and December; at Lock's Village, in Shutesbury, on the second Tuesday of July; at Conway, on the third Tuesday of May; at Charlemont, on the fourth Tuesday of May; at Shelburne Falls, on the second Tuesday of February and fourth Tuesday of October:

Berkshire.  
1857, 16.

For the county of Berkshire, at Lenox, on the first Tuesdays of January, February, March, April, May, June, September, October, and December, on the third Tuesday of July, and on the second Tuesday of November; at Great Barrington, on the Wednesdays next after the first Tuesdays of February and May, next after the third Tuesday of July, and next after the second Tuesday of November; at Lanesborough, on the second Tuesdays of January and October, and on the fourth Tuesdays of April and July; at Adams, on the Wednesdays next after the second Tuesdays of January and October, and next after the fourth Tuesdays of April and July:

Norfolk.  
R. S. 83, § 55.  
1844, 127.

For the county of Norfolk, at Dedham, on the first Tuesday of every month; at Quincy, on the fourth Tuesdays of February, May, August, and November; at Roxbury, on every Saturday, except the third, fourth, and fifth Saturdays of July, and the first and second Saturdays of August; at Wrentham, on the third Tuesdays of May, August, and November; at Medway, on the third Tuesdays of February, June, and October:

Bristol.  
1857, 159.

For the county of Bristol, at Taunton, on the first Tuesdays of January, March, and June, and on the Friday next after the first Tuesday of November; at New Bedford, on the first Tuesday of February, on the Friday next after the first Tuesday of May, on the last Tuesday of August, and on the first Tuesday of December; at Pawtucket, on the first Tuesday of April; at Fall River, on the Fridays next after the

first Tuesdays of April and July, and on the first Tuesday of October; at Attleborough, on the first Tuesday of May; at Norton, on the first Tuesday of July; at Seekonk, on the first Tuesday of September; and at Rehoboth, on the Friday next after the first Tuesday of September:

For the county of Plymouth, at Plymouth, on the third Mondays of January, February, and May, on the second Mondays of April and August, and on the first Monday of December; at Scituate, on the first Tuesday of June, and last Tuesday of November; at Hingham, on the first Tuesday of March and last Tuesday of August; at East Bridgewater, on the first Tuesdays of April, July, and October; at Bridgewater, on the last Tuesday of February; at North Bridgewater, on the last Tuesday of July; at Middleborough, on the first Tuesdays of May and August, and last Tuesday of October; at Wareham on the Wednesdays next after the first Tuesdays of May and November; at Abington, on the second Monday of January; and at Hanover, on the last Monday of September:

Plymouth.  
R. S. 83, § 55.  
1845, 73.  
1850, 204.  
1852, 249.  
1855, 320.  
1856, 122.

For the county of Barnstable, at Barnstable, on the second Tuesdays of January, February, March, August, September, and December, and on the third Tuesdays of May and June; at Sandwich, on the second Tuesday after the first Monday of November; at Falmouth, on the second Wednesday after the first Monday of November; at Harwich, on the third Monday of April and the last Monday of October; at Brewster, on the Tuesday next after the third Monday of April; at Dennis, on the Thursday next after the second Tuesday of October; at Orleans, on the Wednesday next after the third Monday of April and on the Tuesday next after the last Monday of October; at Wellfleet, on the Wednesday next after the last Monday of October; at Truro, on the Thursday next after the third Monday of April; and at Provincetown, on the Friday next after the third Monday of April and on the Thursday next after the last Monday of October.

Barnstable.  
R. S. 83, § 55.  
1837, 98, § 1.  
1853, 74.  
1857, 113.

For the county of Dukes County, at Tisbury, on the third Monday of April and on the first Mondays of March and September; at Edgartown, on the third Mondays of January and July, and on the first Mondays of June and December; and at West Tisbury, on the third Monday of October:

Dukes County.  
R. S. 83, § 55.  
1856, 265.  
1859, 56.

For the county of Nantucket, at Nantucket, on the first Tuesday of every month.

Nantucket.  
1859, 161.

## CHAPTER 118.

### OF COURTS OF INSOLVENCY.

#### GENERAL PROVISIONS.

##### SECTION

1. Courts of insolvency. Judges. Registers.
2. to have original jurisdiction, &c.
3. to be held in shire towns, &c. Adjournment of.
4. Judge may approve bonds, &c.
5. may punish for contempt, administer oaths, &c.
6. Proceedings to be matters of record. Evidence.
7. Register, duties of. Docket.
8. may administer oaths and adjourn court.
9. fees of, for copies.
10. Docket, &c., open to inspection.
11. Warrants, &c., when returnable, &c., how executed, &c.
12. Parties may select newspapers.
13. Counties to furnish court rooms, and room for records, &c.

##### SECTION

14. Commonwealth to pay expenses.
15. Judges may make rules, &c.
16. Jurisdiction, &c., of S. J. C.

#### APPLICATIONS BY THE DEBTOR. FIRST MEETING.

17. Who may petition, &c.
18. Judge to issue warrant to messenger. Contents of warrant.
19. Messenger to receive debtor's property.
20. Debtor to deliver property and schedule.
21. Perishable, &c., property may be sold before appointment of assignee.
22. First meeting. Return of warrant. Schedules.
23. If no notice, meeting adjourned.
24. If debtor dies, proceedings to continue.

#### DEBTS AND PROOF OF CLAIMS.

25. What debts and demands may be proved.



## SECTION

26. Mutual debts may be set off.
27. Provision in case of mortgage, pledge, or lien.
28. Claims to be proved on oath. Form of oath.
29. Oath may be made by attorney.
30. before a justice of the peace.
31. Certain claims may be postponed.
32. Claims in certain cases not to be allowed.
33. Judge to allow debts proved. Creditor may act by attorney.
34. Appeal from judge's decision on claims. Entry of appeal.
35. Proceedings on appeal.
36. Judgment on appeal. Costs.
37. Evidence of claims may be withdrawn by leaving copy attested, &c.

## ASSIGNMENT AND ASSIGNEE.

38. Assignee, choice of, &c.
39. judge to approve, and may order new election, &c.
40. to give bond, &c.
41. failing to give bond, to be removed.
42. judge to assign property to.
43. to record assignment and give notice.
44. Effect of assignment.
45. Attachments, how preserved.
46. Assignee to demand and sell estate, and keep accounts.
47. to commence and prosecute suits, which shall not abate on his death.
48. Certain drafts, &c., assigned, not to be offset, &c.
49. Money and property of debtor to be kept separate by assignee.
50. court may direct temporary investment of, when, &c.
51. Assignee to give notice of meetings.
52. compensation of.
53. may submit controversies to arbitration.
54. may sell perishable property pending dispute of title. Property recovered by action, &c.
55. to certify and render accounts.
56. removal of, by creditors.
57. by judge upon complaint.
58. when out of state and refusing to obey, &c., or any cause.
59. may resign.
60. vacancies in office of, may be filled by appointment or election.
61. effect of resignation, &c., of.
62. vesting of estate upon death, &c., of.
63. former to execute deeds, &c. Judge to pass orders for fulfilment of duties, &c., of.
64. preferred creditors not to vote for, &c. Ineligibility of, not to affect titles.
65. penalty on, for neglect, &c.

## EXAMINATION, &amp;C., OF DEBTOR.

66. Debtor to submit to examination.
67. examination of, when in prison.
68. when sick or unable to attend.
69. when out of state without wilful default.
70. to do acts necessary to confirm the assignment and enable assignee to recover, &c.
71. proceedings against, for refusing to execute instruments or obey decrees of judge, &c.

## SECOND AND THIRD MEETINGS. OATH AND DISCHARGE.

72. Judge to appoint second meeting. Debtor may amend schedule of creditors. Oath.

## SECTION

73. Upon failure to call or hold meeting, court may order.
74. If meeting liable to be defeated, register may call on order of judge.
75. Third meeting. Certificate of discharge.
76. Effect of discharge.
77. Debtor imprisoned, &c., to be discharged on certificate.
78. discharged from arrest, &c., and property exempt from attachment, &c.
79. Debts arising from defalcation and claims for necessities not discharged.
80. Sureties, &c.
81. Discharge by assent of creditors.
82. upon second and third insolvency.
83. Creditors may assent notwithstanding appeal.
84. Debtor failing by accident, &c., to take oath, may be discharged.
85. Appeal from decision of judge on question of discharge.
86. Proceedings on appeal.

## MATTERS AVOIDING DISCHARGE.

87. Discharge forfeited by proceedings in fraud of creditors. Who may contest.
88. Fraudulent preferences avoid a discharge.

## PREFERENCES.

89. Fraudulent payments, &c., void. Creditor not to prove claim.
90. Preceding sections not to apply to necessities.
91. Sales, &c., to prevent property from coming to assignee, &c., void.

## ALLOWANCE AND SURPLUS.

92. Allowance to debtor.
93. in case of death.
94. Surplus to be returned to debtor.

## ACCOUNTS AND DIVIDENDS.

95. Assignee to exhibit accounts on oath if required. Judge to order dividend.
96. Preferred claims.
97. Reservation for absent creditors.
98. Second dividend. Assignees' accounts.
99. Outstanding debts, &c., may be sold.
100. Suits on claims sold by assignees. Costs.
101. Further dividends if necessary.
102. Former dividends not to be disturbed.

## APPLICATIONS BY CREDITORS.

103. Applications by creditors.
104. Warrant to issue. Proceedings thereon.
105. If attachment is not dissolved through accident or mistake, proceedings may be stayed.

## CONCEALMENT OF PROPERTY, &amp;C.

106. Debtor to be deemed guilty of misdemeanor in certain cases.
107. Proceedings against persons fraudulently concealing, &c., property, &c.

## PARTNERSHIPS.

108. Proceedings in case of partners.
109. Choice of assignee and adjustment of joint and separate property and debts.
110. Provision in case of limited partnerships.
111. Separate allowance to each partner.
112. Certificate of discharge to each partner.

## INSOLVENT CORPORATIONS.

113. Corporations may petition by authorized officer.

SECTION

- 114. Proceedings similar to those against a person.
- 115. Claims before last dividend provable.
- 116. Schedules. Duties, &c., of officers. Oath.
- 117. Franchise of corporations authorized to take toll, may be sold. Purchaser may have corporation organized anew.
- 118. Property may be sold in shares, and purchasers organized.
- 119. Land damages preferred claims.
- 120. Void preferences.
- 121. No allowance or discharge to corporation, &c.
- 122. Proceedings against a corporation.
- 123. Redemption of mortgages.
- 124. Mortgages not affected.

FEES AND COSTS.

- 125. Fees for warrant, &c.

SECTION

- 126. Register to receive and account for fees.
- 127. Costs when attachments are dissolved.
- 128. award of.
- 129. execution may issue for.

VACATING PROCEEDINGS.

- 130. Proceedings may be vacated.

RETURNS.

- 131. Judges to make returns. Returns to be recorded and open for inspection.

CASES BEFORE COMMISSIONERS, &C.

- 132. Jurisdiction of commissioners, &c., in cases pending.
- 133. Removal of cases upon death, &c., of commissioner, &c.
- 134. papers, &c., to be deposited in probate office.

GENERAL PROVISIONS.

SECTION 1. The courts of insolvency in the several counties shall continue courts of record, and the judges and registers of probate and insolvency in their respective counties shall be judges and registers thereof.

SECT. 2. The courts shall have original jurisdiction in their respective counties of all cases of insolvency arising under the provisions of this chapter.

SECT. 3. Each court shall be held at the shire towns of the county at such times as the judge appoints, and may be held at such other places as will best promote the convenience of the public. The judge may adjourn any court or meeting from time to time as occasion requires, and all things lawfully done at an adjourned meeting shall have like force and effect as if done at the original meeting.

SECT. 4. The judge may in vacation as well as in court approve compositions and assignees' bonds, approve or order sales, receive petitions, issue orders of notice and warrants, and do such other official acts as are done as matters of course and do not require notice to an adverse party.

SECT. 5. The judge may keep order in his court, and punish any contempt of his authority; administer oaths, issue commissions, take testimony, and compel the attendance of witnesses and the giving of testimony, in the same manner and to the same extent as the superior court; and may appoint such officers to attend upon the court as are necessary for the transaction of its business and keeping order therein.

SECT. 6. The proceedings in courts of insolvency shall be deemed matters of record, and the assignment and certificate of discharge shall be recorded in full. The other proceedings need not be recorded at large, but shall be carefully filed, kept, and numbered, in the office of the register. Copies of all parts of the records, and of records of prior proceedings in insolvency deposited in his office, duly certified by the register, shall in all cases be admissible as evidence, *prima facie*, of the facts therein stated.

SECT. 7. The register shall keep a docket with an alphabetical index of all cases in court, in which he shall enter short memorandums, with the numbers, of all proceedings and papers filed. He [shall] make all computations of dividends and orders of distribution, and shall furnish to the assignee a certified copy of such orders, and of the schedules of creditors and assets filed in each case.

SECT. 8. He may administer all oaths required in the course of proceedings before the court, except the oath described by section seventy-

Courts.  
Judges. Registers.  
1856, 284, § 1.  
1858, 32, § 1.  
1858, 93.

to have original jurisdiction, &c.  
1858, 93, § 10.

to be held in shire towns, &c.  
1838, 163, § 15.  
1856, 284, § 3.  
1858, 93, § 11.  
7 Met. 431.  
4 Cush. 584.  
8 Gray, 193.

Judge may approve bonds, &c.  
1856, 284, § 4.

may punish for contempt, administer oaths, &c.  
1838, 163, § 15.  
1856, 284, §§ 7, 9.  
1859, 196.

Proceedings to be matters of record. Evidence.  
1838, 163, § 14.  
1858, 32, §§ 1, 2.  
6 Met. 518.  
5 Cush. 615.  
6 Cush. 185, 362.  
10 Cush. 545.  
3 Gray, 255.

Register, duties of.  
Docket.  
1854, 329, § 3.  
1856, 284, § 13.  
1858, 32, §§ 1, 2.  
6 Cush. 185, 363.  
10 Cush. 545.

may administer oaths and adjourn court.

1838, 163, § 14.  
1856, 284, § 13.  
1855, 141, § 5.  
fees of, for  
copies.  
1856, 284, § 22.

Docket, &c.,  
open to inspec-  
tion.  
1856, 284, § 13.

Warrants, &c.,  
when return-  
able, &c.  
1848, 304, § 6.  
1856, 284, § 6.

Parties may se-  
lect newspa-  
pers.  
1851, 138.

Counties to fur-  
nish court  
rooms, and  
room for rec-  
ords, &c.  
1856, 284, § 3.

Commonwealth  
to pay ex-  
penses.  
1856, 284, § 23.

Judges may  
make rules,  
&c.  
1853, 284, § 10.

Jurisdiction,  
&c., of S. J. C.  
1838, 163, § 18.  
1851, 327, § 16.  
2 Met. 569, 573.  
4 Met. 392, 504.  
6 Met. 537.  
8 Met. 19.  
9 Met. 23, 469.  
1 Cush. 170, 449.  
2 Cush. 294.  
4 Cush. 127, 270,  
448.  
7 Cush. 181, 183.  
10 Cush. 173.  
11 Cush. 582.  
1 Gray, 584.  
3 Gray 239, 242,  
248, 533.  
4 Gray, 431.

Who may peti-  
tion, &c.  
1838, 163, § 1.  
1841, 124, § 1.  
1855, 363, § 1.  
1858, 93, § 10.  
4 Met. 401, 403.  
7 Met. 427.  
8 Met. 129.  
1 Cush. 531.

Judge to issue  
warrant to mes-  
senger.  
Contents of  
warrant.  
1838, 163, §§ 1, 2.  
1841, 124, § 1.  
1844, 178, § 10.

two; and in the absence of the judge or a vacancy in that office he may adjourn a court or meeting.

SECT. 9. For copies of orders for distribution and of schedules, in addition to those required by law, and for copies of other papers, he shall be paid by the person demanding the same, at the rate of fourteen cents a page, and no more.

SECT. 10. The docket, and all books, records, documents, and papers, in his office, relating to insolvency, shall at all reasonable times be open to the inspection of the public.

SECT. 11. All assignments, warrants, orders of notice, and processes, issuing from the court, shall be under the seal thereof, and shall be executed and obeyed throughout the commonwealth; and any officer or person to whom they are legally directed may serve the same in any county. All warrants shall be returnable not less than ten nor more than sixty days from the issuing of the same.

SECT. 12. Persons having business in court may designate the newspapers in which notices under their applications shall be published; but if the newspapers thus selected are deemed by the judge insufficient to give publicity to the notice, he may order publication in one other newspaper.

SECT. 13. Each county shall provide suitable court rooms in the shire towns; and a suitable fire-proof room, in which shall be kept all the records, books, documents, and papers, appertaining to the business of the court, and the records in all cases in insolvency.

SECT. 14. All expenses attending the sessions of the courts, and the transaction of business therein, for blank books for records, and for blank forms and stationery necessary for the business of the courts, shall be paid out of the treasury of the commonwealth.

SECT. 15. The judges or a majority of them shall from time to time make rules in writing for regulating the practice and conducting the business of the courts in all cases not provided for by law. They shall, as soon as conveniently may be after making and adopting such rules, submit a copy thereof to the supreme judicial court for approval, and amendment or alteration.

SECT. 16. The supreme judicial court shall have a general superintendence and jurisdiction of all cases arising under this chapter; and, except when special provision is otherwise made, may, upon the bill, petition, or other proper process, of any party aggrieved, hear and determine the case as a court of equity. It may from time to time make such general rules and forms as it deems necessary to establish and maintain a regular and uniform course of proceedings in all the counties. The powers thus granted may be exercised either by said court or by any justice thereof in term time or vacation, except that general rules and forms shall be made only at a law term.

#### APPLICATIONS BY THE DEBTOR. FIRST MEETING.

SECT. 17. Any inhabitant of this state owing debts contracted while such inhabitant, may apply by petition to the judge for the county within which he resides, setting forth his inability to pay all his debts, and his willingness to assign all his estate and effects for the benefit of his creditors, and praying that such proceedings may be had in the premises as are provided in this chapter.

SECT. 18. If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than two hundred dollars, he shall forthwith issue a warrant under his hand to the sheriff of the county or either of his deputies, directing him forthwith as messenger to take possession of all the estate real and personal of the debtor, except such as may be by law exempt from attachment, and of



all his deeds, books of account, and papers, and keep the same safely until the appointment of an assignee; to publish notice in such newspapers as the warrant specifies, send written notice by mail or otherwise to all creditors upon the schedule furnished him by the debtor, and to give such personal or other notice to any persons concerned as the warrant prescribes; which notice shall state:—

1846, 168, § 4.  
1848, 304, §§ 6, 8.  
1850, 319.  
1851, 138, § 1.  
1854, 329, § 4.  
2 Met. 265.  
4 Met. 403.  
12 Met. 464.  
7 Cush. 144.  
3 Gray, 245.

First. That a warrant has issued against the estate of the debtor:

Second. That the payment of any debts, and the delivery of any property belonging to such debtor, to him or for his use, and the transfer of any property by him, are forbidden by law:

Third. That a meeting of the creditors of the debtor to prove their debts and choose one or more assignees of his estate, will be held at a court of insolvency to be holden at a time and place designated in the warrant, not less than ten nor more than sixty days after the issuing of the same.

SECT. 19. The messenger shall as soon as may be demand and receive from the debtor and other persons all the estate in his or their possession respectively, which is herein ordered to be assigned, with all the deeds, books of account, and papers, of the debtor, relating thereto.

Messenger to receive debtor's property.  
1838, 163, § 6.  
12 Met. 464.  
2 Cush. 48.  
3 Gray, 245.

SECT. 20. Upon demand made by the messenger under the preceding section, the debtor shall forthwith deliver to him such part of the estate and other things demanded as is within his possession or power, and shall disclose the situation of such parts thereof as are in the possession of any other person, so as to enable the messenger to demand and receive the same. The debtor shall also within three days after the date of the warrant make and deliver to the messenger a schedule, containing a full and true account of all his creditors, with the place of residence of each creditor, if known to the debtor, and the sum due to each of them. The schedule shall also set forth the nature of each debt, whether founded on written security, account, or otherwise, and also the true cause and consideration thereof, and a statement of any existing mortgage, pledge, or other collateral security, given for the payment of the same.

Debtor to deliver property and schedule. *Allen 115.*  
1838, 163, § 6.  
1848, 304, § 8.  
1854, 329, § 3.  
2 Met. 263, 373.  
8 Met. 75.  
9 Met. 292.  
8 Cush. 375.  
3 Gray, 250.

SECT. 21. When it appears to the satisfaction of the judge that the estate of the debtor or any part thereof is of a perishable nature, or likely to deteriorate in value before an assignee can be appointed, he may order the same to be sold in such manner as he deems expedient, under the direction of the messenger, who shall hold the funds received, in place of the estate disposed of.

Perishable, &c., property may be sold before appointment of assignee.  
1848, 304, § 15.

SECT. 22. At the meeting held in pursuance of the notice the messenger shall make return of the warrant and of his doings thereon, and deliver to the register the schedule of creditors received from the debtor; and at the same meeting, or within such further time as the court may, for cause shown, allow therefor, the debtor shall deliver to the register a schedule of all his real and personal estate, giving a description of the same and stating where it is situated.

First meeting. Return of warrant. Schedules.  
1838, 163, § 2.  
1841, 124, § 2.  
1854, 329, § 3.  
8 Cush. 375.

SECT. 23. If it appears to the judge that the notice to the creditors required by section eighteen has not been given, he shall forthwith adjourn the meeting and order such notice.

If no notice, meeting adjourned.  
1848, 304, § 8.

SECT. 24. If the debtor dies after the issuing of the warrant, the proceedings shall be continued and concluded in like manner and with like validity and effect as if he had lived.

If debtor dies, proceedings to continue.  
1838, 163, § 5.

DEBTS AND PROOF OF CLAIMS.

SECT. 25. Debts due and payable from the debtor at the time of the first publication of the notice of issuing the warrant may be proved and allowed against his estate at any meeting; and all debts at that time

What debts and demands may be proved.  
1838, 163, §§ 2, 3,  
7, 12, 13.

3 Met. 62.  
 4 Met. 302.  
 6 Met. 203, 305,  
 537.  
 7 Met. 348, 424,  
 435.  
 8 Met. 19, 129.  
 10 Met. 194.  
 2 Cush. 173, 294.  
 3 Cush. 342, 469.  
 4 Cush. 48, 99.  
 5 Cush. 85, 194,  
 613.  
 6 Cush. 537.  
 7 Cush. 183, 594.  
 10 Cush. 476.  
 1 Gray, 305.  
 2 Gray, 111.  
 4 Gray, 284.  
 5 Gray, 574.  
 13 Gray, 15.

absolutely due, although not payable, may be proved and allowed as if payable, with a discount or rebate of interest when no interest is payable by the contract. Moneys due on any bottomry or respondentia bond or policy of insurance may be proved and allowed, if the contingency or loss happens before the making of the first dividend, in like manner as if the same had happened before the first publication of the notice. If the debtor is liable for any debt in consequence of having made or indorsed a bill of exchange or promissory note before said first publication, or in consequence of the payment by any party to a bill or note of any part of the money secured thereby, or of the payment of any sum by a surety of the debtor in any contract, if the payment is made before the making of the first dividend, such debt may be proved and allowed as if it had been due and payable by the debtor before the first publication. All demands against the debtor for or on account of goods or chattels wrongfully obtained, taken, or withheld, by him, may be proved and allowed as debts, to the amount of the value thereof. No debt other than those above mentioned shall be proved or allowed against the estate.

Set off of debts.

1838, 163, § 3.  
 6 Met. 537.  
 10 Met. 194.  
 5 Cush. 194.  
 4 Gray, 284.  
 7 Gray, 425.

Provision in case of mortgage, pledge, or lien.

1838, 163, § 3.  
 6 Met. 305.  
 8 Met. 19.  
 2 Cush. 294.  
 3 Cush. 469.  
 4 Cush. 99.  
 7 Cush. 183.  
 4 Gray, 553.  
 6 Gray, 523.

Claims to be proved on oath.

Form of oath.  
 1838, 163, §§ 4,  
 15.  
 1848, 304, § 14.  
 1851, 189, § 1.  
 1851, 349, § 1.  
 1852, 189, §§ 1, 2.  
 1856, 284, § 35.  
 1858, 93, § 9.

SECT. 26. If it appears that there has been mutual credit given by the debtor and any other person, or mutual debts between them, the account between them shall be stated, and one debt set off against the other, and the balance shall be allowed or paid on either side.

SECT. 27. When a creditor has a mortgage or pledge of real or personal estate of the debtor, or a lien thereon, for securing the payment of a debt claimed by him, the property so held as security shall, if he requires it, be sold, and the proceeds applied towards the payment of his debt, and he shall be admitted as a creditor for the residue. The sale shall be made in such manner as the judge orders, and the creditor and assignee respectively shall execute all deeds and papers necessary or proper for effecting the conveyance. If the creditor does not require such sale and join in effecting the conveyance, he may release and deliver up to the assignee the premises held as security and be admitted as a creditor for the whole of his debt. If the property is not so sold, or released and delivered up, the creditor shall not be allowed to prove any part of his debt.

SECT. 28. No debt shall be proved or allowed unless the creditor, or if he resides in a foreign country and the debt is founded on a contract made by the debtor with the consignee or agent of the creditor residing in the United States, such consignee or agent, makes oath in substance as follows:—

I, \_\_\_\_\_, do swear that \_\_\_\_\_, of \_\_\_\_\_, by (or against) whom proceedings in insolvency have been instituted, at and before the date of such proceedings, was, and still is, justly and truly indebted to me in the sum of \_\_\_\_\_, for which sum or any part thereof I have not, nor has any other person to my use, to my knowledge or belief, received any security or satisfaction whatever, beyond what has been disposed of agreeably to law. And I do further swear, that said claim was not procured by me for the purpose of influencing the proceedings in this case. And I do further swear that I have not, directly or indirectly, made or entered into any bargain, arrangement, or agreement, express or implied, to sell, transfer, or dispose of, my claim, or any part of my claim, against said debtor, nor have, directly or indirectly, received or taken, or made or entered into any bargain, arrangement, or agreement, express or implied, to take or receive, directly or indirectly, any money, property, or consideration, whatsoever, to myself, or to any person or persons to my use or benefit, under or with any understanding or agreement, express or implied, whereby my vote for assignee, or my assent to the debtor's discharge, is or shall be in any way affected, influenced, or controlled, or whereby the proceedings in this case are or shall be affected, influenced, or controlled.

No claim shall be allowed unless all the statements set forth in the oath are true.

SECT. 29. If the creditor is disabled by absence from the state, sickness, or other cause, from proving his claim, the above oath may be

Oath may be made by attorney.



made by his agent or attorney testifying to the best of his knowledge and belief; in which case the judge may require such further proof of the truth of the statements therein as he deems expedient. 1852, 189, §§ 1, 2.

SECT. 30. The oath may be made before a justice of the peace; but the judge may at any time require the personal appearance in court of the party making such affidavit, to be further interrogated on oath. The debtor and any party proving a debt may be examined on oath in presence of the judge on all matters relating thereto. Oath may be before a justice of the peace. 1838, 163, § 4. 1858, 93, § 9.

SECT. 31. When a claim is presented for proof before the election of the assignee, and the judge entertains doubts of its validity or of the right of the creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim till after the assignee is chosen. Certain claims may be postponed. 1856, 284, § 33.

SECT. 32. A person who has since the sixth day of July eighteen hundred and fifty-six accepted any preference, having reasonable cause to believe that the same was made or given by the debtor contrary to any provision of this chapter, shall not prove the debt or claim on account of which the preference was made or given, nor receive any dividend thereon. Claims in certain cases not to be allowed. 1838, 163, § 10. 1856, 284, § 32.

SECT. 33. The judge shall allow all debts duly proved, and shall cause a list thereof to be made and certified by the register; and any creditor may act at all meetings by his duly constituted attorney the same as though personally present. Debts proved. Creditor may act by attorney. 1838, 163, §§ 2, 15.

SECT. 34. A supposed creditor whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim, may appeal from the decision to the superior court; but no appeal shall be allowed unless it is claimed and notice thereof given to the register, to be entered with the record of the proceedings, and also to the assignee or creditor, as the case may be, within ten days after the decision appealed from. The appeal shall be entered at the term of the superior court which shall be first held within or for the county next after the expiration of fourteen days from the time of claiming the same. But if the appellant in writing waives his appeal before the entry thereof, proceedings may be had in the court of insolvency as if no appeal had been taken. Appeal from judge's decision on claims. Entry of appeal. 1838, 163, § 4. 1859, 195. 7 Met. 85. 9 Met. 291. 12 Met. 464. 2 Cush. 371. 4 Cush. 370. 5 Cush. 615. 6 Cush. 28. 1 Gray, 584. 3 Gray, 116.

SECT. 35. Upon entering the appeal the creditor shall file in court a statement in writing of his claim, setting forth the same substantially as in a declaration for the same cause of action at law, and the assignee shall plead or answer thereto in like manner; and like proceedings shall be thereupon had in the pleadings, trial, and determination of the cause, as in an action at law commenced and prosecuted in the usual manner; except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor. Proceedings on appeal. 1838, 163, § 4.

SECT. 36. The final judgment of the court shall be conclusive; and the lists of debts shall, if necessary, be altered to conform thereto. The party prevailing in the suit shall be entitled to costs against the adverse party, to be taxed and recovered as in suits at law; if recovered against the assignee they shall be allowed out of the estate. Judgment on appeal. Costs 1838, 163, § 4. 7 Met. 85.

SECT. 37. A bill of exchange, promissory note, or other instrument, used as evidence upon the proof of a claim and left in court or deposited in the office, may be delivered by the register to the person who used it, upon his filing a copy thereof attested by the register; the register also indorsing upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon. Evidence of claims may be withdrawn by leaving copy attested. &c. 1852, 189, § 3.

ASSIGNMENT AND ASSIGNEE.

SECT. 38. The creditors shall at the first meeting in the presence of the judge choose one or more assignees of the estate of the debtor; the Assignee, choice of, &c. 1838, 163, § 2.



choice to be made by the greater part in value of the creditors who have proved their debts: *provided*, that when the number of creditors present amounts to five and less than ten, the votes of two at least, and when the number of creditors amounts to ten or more, the votes of three at least, shall be necessary for a choice. If no choice is made by the creditors at said meeting, the judge shall appoint one or more assignees. If an assignee so chosen or appointed fails, within four days, to express in writing his acceptance of the trust, the judge may fill the vacancy.

Assignee, judge to approve choice of, &c. 1858, 141, § 1.

to give bond, &c. 1844, 178, § 11. 1848, 304, § 12. 4 Gray, 253-288. 6 Gray, 364. See Ch. 101.

failing to give bond, to be removed. 1853, 116.

judge to assign property to. 1838, 163, § 5.

to record assignment and give notice. 1838, 163, § 11.

Effect of assignment. 1838, 163, § 5.

What to vest. 2 Met. 258. 3 Met. 139, 305, 522. 4 Met. 137, 346, 537. 5 Met. 49, 582. 6 Met. 493, 537. 7 Met. 164, 348, 424. 8 Met. 19. 13 Met. 17. 2 Cush. 450. 4 Cush. 33, 532. 5 Cush. 422. 6 Cush. 30, 87. 7 Cush. 203, 595. 10 Cush. 92. 3 Gray, 245, 392, 398.

Rights of action. 2 Met. 569. 3 Met. 522.

Attachments, how preserved. 1841, 124, § 5. 1855, 66. 1857, 247. 4 Met. 470. 13 Met. 200. 2 Cush. 124. 3 Cush. 318. 4 Gray, 120, 429. 6 Gray, 112, 523.

SECT. 39. All elections of assignee shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient he may appoint additional assignees or order a new election.

SECT. 40. The judge at any time may, and upon the request filed in writing of any creditor who has proved his claim shall, require the assignee to give good and sufficient bond to the judge and his successors in office, with a condition for the faithful performance and discharge of his duties. The bond shall be approved by the judge by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the manner provided for the prosecution of administration bonds.

SECT. 41. If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days after notice to him of such order, the judge shall remove him and appoint another in his place.

SECT. 42. The judge shall, by an instrument under his hand, assign and convey to the assignee all the estate real and personal of the debtor, except such as is by law exempt from attachment, with all his deeds, books, and papers relating thereto.

SECT. 43. The assignee shall forthwith cause the assignment to be recorded in the registry of deeds in each district or county in which there may be real estate of the debtor on which it may operate; and shall give such public notice of his appointment as the judge shall order.

SECT. 44. The assignment shall vest in the assignee all the property of the debtor real and personal which he could have lawfully sold, assigned, or conveyed, or which might have been taken on execution upon a judgment against him, at the time of the first publication of the notice of issuing the warrant, although the same is then attached on mesne process as the property of the debtor; and shall be effectual to pass all said estate, and, subject to the provisions of the following section, to dissolve any such attachment. The assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate real or personal, and all his rights of redeeming such goods or estate. The assignee may redeem all mortgages, conditional contracts, pledges, and liens, of or upon any goods or estate of the debtor, or sell the same subject to such mortgage or other incumbrance.

6 Met. 537.	Dissolution of attachment.	6 Met. 299, 493.	2 Cush. 124.	Time of vesting.
2 Cush. 494.	ment.	7 Met. 318.	3 Cush. 306, 318.	2 Met. 258.
5 Cush. 442.	21 Pick. 169.	8 Met. 29.	4 Cush. 357, 393,	4 Met. 346.
6 Cush. 114, 362.	22 Pick. 450.	9 Met. 23.	441.	6 Met. 537.
6 Gray, 243.	3 Met. 251, 416.	13 Met. 200,	10 Cush. 317.	7 Met. 318.
7 Gray, 242, 539.	4 Met. 298, 470, 481, 504.	535.	3 Gray, 245.	1 Cush. 300.

SECT. 45. If a debtor whose property is attached, conveys before judgment and execution in the suit any part of such property, and subsequently thereto and before execution issues, proceedings are commenced by or against him as an insolvent debtor, or if a dissolution of an attachment under the preceding section might prevent the property attached from passing to the assignee, the judge before whom proceedings in insolvency are pending, or the court to which the process of attachment is returnable, may upon application made on or before the day of the third meeting of creditors by any person interested, and

cause shown thereon, order the lien created by the attachment to continue. The action may be continued or execution stayed until the assignee is chosen and takes charge of the action. The assignee may proceed with the action and levy the execution at the cost and expense of the estate; and the amount recovered exclusive of costs due to the original plaintiff shall vest in the assignee.

SECT. 46. The assignee shall demand and receive from the messenger and all other persons, all the estate in his or their possession assigned or intended to be assigned under the provisions of this chapter; and he shall sell all such estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested and for cause shown, the court may make such order concerning the time, place, or manner of sale, as will in its opinion promote the interests of the creditors; and the assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall at reasonable times have free resort.

Assignee to demand and sell estate, and keep accounts.  
1838, 163, § 11.  
10 Cush. 173.

SECT. 47. He shall have the like remedy to recover all said estate, debts, and effects, in his own name, as the debtor might have had if no assignment had been made. If at the time of the assignment an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect as if it had been originally commenced by him. No suit pending in the name of the assignee shall be abated by his death or removal; but upon the motion of the surviving, remaining, or new assignee, as the case may be, he shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally commenced by him. In suits prosecuted by the assignee, the assignment made by the judge shall be conclusive evidence of his authority to sue.

1851 Ch. 102.  
to commence and prosecute suits, which shall not abate on his death.  
1838, 163, § 5.  
2 Met. 569.  
3 Met. 522.  
4 Met. 504.  
2 Cush. 494.  
5 Cush. 442.  
6 Cush. 362.  
7 Cush. 595.  
3 Gray, 241, 382.  
4 Gray, 184.

SECT. 48. Drafts, bills of exchange, promissory notes, claims, demands, and causes of action, which subsequently to the sixth day of July in the year eighteen hundred and fifty-six, and within six months before the filing of the petition by or against a debtor, are assigned, transferred, conveyed, or delivered, to any person indebted or liable to the debtor, shall not be offset or pleadable in defence in any suit by the assignee to recover such debt or liability; but the assignee may recover the same notwithstanding such draft, bill of exchange, promissory note, claim, demand, or cause of action: *provided*, that the person to whom the same are so assigned, transferred, conveyed, or delivered, had at the time of such assignment, transfer, conveyance, or delivery, reasonable cause to believe the debtor insolvent.

Certain drafts, &c., assigned, not to be offset, &c.  
1856, 284, § 28.

SECT. 49. The assignee shall as soon as may be after receiving any money belonging to the estate, deposit the same in some bank, in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall as far as practicable keep all goods and effects belonging to the estate separate and apart from all other goods in his possession, or designated by appropriate marks; so that they may be easily and clearly distinguished, and may not be exposed or liable to be taken as his property or for the payment of his debts.

Money and property of debtor to be kept separate by assignee.  
1838, 163, § 11.  
See Ch. 57, § 63.

SECT. 50. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the temporary investment of the money belonging to such estate in securities to be approved by the judge; or may authorize the same to be deposited in any bank in this state upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon.

court may direct temporary investment of, when, &c.  
1850, 119, § 1.

SECT. 51. He shall give written notice to all known creditors by

Assignee to



give notice of meetings.  
1846, 163, § 4.  
1850, 319.

Assignee, compensation of.  
1838, 163, § 11.

may submit controversies to arbitration.  
1838, 163, § 11.  
11 Cush. 582.

may sell perishable property pending dispute of title.  
Property recovered by action, &c.  
1858, 73, §§ 1, 2.

to certify and render accounts, when, &c.  
1844, 178, § 7.  
10 Cush. 173.

removal of, by creditors.  
1838, 163, § 11.  
1859, 69.

by judge upon complaint.  
1848, 304, § 12.

when out of state, and refusing to obey, &c., or any cause.  
1851, 349, § 2.  
1853, 141, § 1.

may resign.  
1858, 141, § 3.

vacancies in office of, may be filled by appointment or election.

mail or otherwise of all dividends; and such notice of meetings after the first as the judge shall order.

SECT. 52. He shall be allowed, and may retain out of the money in his hands, all the necessary disbursements made by him in the discharge of his duty, and a reasonable compensation for his services, in the discretion of the judge.

SECT. 53. He may, under the direction of the judge, submit any controversy arising in the settlement of demands against the estate, or of debts due to it, to the determination of arbitrators, to be chosen by him and the other party to the controversy; and may under such direction compound and settle any such controversy by agreement with the other party as he thinks proper and most for the interest of the creditors.

SECT. 54. When it appears to the satisfaction of the judge that the title to any portion of an estate which has come into possession of the assignee is in dispute, and that the property is of a perishable nature, or liable to deteriorate in value, he may on the petition of the assignee, and after such notice to the claimant, his agent, or attorney, as the judge deems reasonable, order it to be sold under the direction of the assignee, who shall hold the funds received, in place of the estate disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties. But this provision shall not prevent the recovery of the property from the possession of the assignee by action of replevin commenced at any time before the judge orders the sale.

SECT. 55. When an assignee has received from the estate assets sufficient to pay fifty per cent. of the debts and claims proved against it, he shall certify the fact and render his accounts therefor to the judge; and when he has received twenty-five per cent. more from the assets, he shall in like manner certify and render his accounts therefor. He shall also certify and render his accounts at any time when required by the judge.

SECT. 56. At a meeting called by order of the judge in his discretion for the purpose, and which shall be called upon the application of a majority of the creditors either in number or value, the creditors may with the consent of the judge remove any assignee by such a vote as is provided in section thirty-eight for the choice of assignees.

SECT. 57. The judge after due notice and hearing may remove an assignee if it appears to him upon the complaint of any person interested in the estate that the assignee has fraudulently received, concealed, embezzled, or conveyed away, any of the money, goods, effects, or other estate, of the debtor, or has been interested in any suit at law in relation to said estate for the purpose of securing to himself a preference or priority over the other creditors, or has in his possession or control any portion of the estate with intent to appropriate the same unlawfully to his own use, or has been guilty of any fraudulent act in relation to the same.

SECT. 58. He may also remove an assignee who having removed from the state unreasonably refuses or neglects to obey any lawful order for calling meetings of the creditors, to settle his accounts, or otherwise unreasonably refuses or neglects to discharge his duties; and for any other cause which in his judgment renders such removal necessary or expedient.

SECT. 59. An assignee may with the consent of the judge resign his trust and be discharged therefrom.

SECT. 60. Vacancies caused by death or otherwise in the office of assignee may be filled by appointment of the judge, or at his discretion by an election of the creditors in the manner prescribed in section thirty-eight at a regular meeting, or at a meeting called for the purpose, with



such notice thereof in writing to all known creditors, and by such person, as the judge shall direct. 1838, 163, §§ 2, 11. 1858, 141, §§ 2, 3.

SECT. 61. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors; nor affect the liability of the principal or surety on the bond given by the assignee. Assignee, effect of resignation, &c., of. 1858, 141, § 3.

SECT. 62. When by death or otherwise the number of assignees is reduced, the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees, and the persons selected to fill vacancies, with the same powers and duties relative thereto as if they were originally chosen. vesting of estate upon death, &c., of. 1838, 163, § 11. 1848, 304, § 12. 1851, 349, § 2.

SECT. 63. Any former assignee, his executors, or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts, requisite to enable him to recover and receive all the estate; and the judge may pass all orders which he deems expedient to secure the proper fulfilment of the duties of any former assignee, and the rights and interests of all persons interested in the estate. former to execute deeds, &c. Judge to pass orders for fulfilment of duties, &c., of. 1838, 163, § 11. 1851, 349, § 2. 1858, 141, § 4.

SECT. 64. No person who has received any preference contrary to the provisions of the laws relating to insolvency, shall vote for or be eligible as assignee, but no title to property, real or personal, sold, transferred, or conveyed, by an assignee, shall be affected or impaired by reason of his ineligibility. preferred creditors not to vote for, &c. Ineligibility not to affect titles. 1856, 284, § 34.

SECT. 65. An assignee refusing or unreasonably neglecting to execute an instrument when lawfully required by the judge, or disobeying a lawful order or decree of the judge in the premises, may be committed to and detained in the jail of the county where he is found, or in which he dwelt when he was appointed, until he obeys such order or decree, or is released by the supreme judicial court or some justice thereof on a writ of *habeas corpus*. penalty on, for neglect, &c. 1838, 163, § 23.

EXAMINATION, &c., OF DEBTOR.

SECT. 66. The debtor shall at all times before the granting of his certificate, upon reasonable notice, attend and submit to an examination on oath before the judge and the assignee upon all matters relating to the disposal of his estate; to his trade and dealings with others, and his accounts concerning the same; to all debts due or claimed from him; and to all other matters concerning his estate, and the due settlement thereof according to law; which examination shall be in writing when so required by the judge, shall be signed by the debtor and filed with the other proceedings. Debtor to submit to examination. 1838, 163, § 6. 2 Met. 573. 9 Met. 292. 3 Gray, 115, 250.

SECT. 67. If the debtor is in jail in any suit or proceeding for or on account of any debt or demand that is provable against his estate, at any time before the granting of his certificate and when his attendance is required before the court or the assignee, or at any meeting of his creditors, the judge may, in his discretion, by warrant under his hand require the jailer to produce the debtor for the purposes aforesaid, at a time and place to be specified in the warrant. examination of, when in prison. 1838, 163, § 9.

SECT. 68. If the debtor by reason of imprisonment, sickness, or any other cause deemed sufficient by the judge, is unable to attend before the judge, or the assignee, or at any meeting of his creditors, the judge, or some person deputed by him for that purpose, and the assignee, or some person appointed by him, shall attend the debtor, in jail or elsewhere, if he is within this state, in order to take his examination; and the examination thus taken shall be of the same force and effect as if the debtor had attended in person before the judge or assignee, or at the meetings aforesaid, and had there undergone the same examination. when sick or unable to attend. 1838, 163, § 9.

SECT. 69. If the debtor is without this state and unable to return when out of

state without wilful default. 1838, 163, § 9.

and give his personal attendance at any of the times and for the purposes specified in this chapter, and if it appears that such absence was not caused by his wilful default, and as soon as may be after the removal of such impediment he offers to attend and submit to an examination on oath before the judge and the assignee as herein provided, and to do and perform all things required by this chapter for the purpose of obtaining his certificate, he shall be entitled thereto in like manner as if he had done the same things at the times respectively herein prescribed.

Debtor to do acts necessary to confirm the assignment, and enable assignee to recover, &c. 1838, 163, § 5. 3 Met. 251.

SECT. 70. The debtor shall, at the expense of the estate, make and execute such deeds and writings, and indorse such bills, notes, and other negotiable papers, draw such checks and orders for moneys deposited in banks or elsewhere, and do all such other lawful acts and things, as the assignee at any time reasonably requires, and which may be necessary or useful for confirming the assignment, and enabling the assignee to demand, recover, and receive, all the estate and effects so assigned, especially any part thereof which is without this state.

proceedings against, for refusing to execute instruments or obey decrees of judge, &c. 1838, 163, § 23. 2 Met. 573.

SECT. 71. If the debtor refuses or unreasonably neglects to execute an instrument when lawfully required pursuant to an order of the judge, or disobeys any lawful order or decree, the judge shall issue his warrant to any civil officer, commanding him to arrest and commit the debtor to the jail in the county where he may be found, or where he dwelt at the time of his insolvency; and he shall remain in close custody until he obeys such order or decree, unless he is released by the supreme judicial court or some justice thereof on a writ of *habeas corpus*.

SECOND AND THIRD MEETINGS—OATH AND DISCHARGE.

Judge to appoint second meeting. Debtor may amend schedule of creditors. 1838, 163, § 7. 1859, 329, § 3. 3 Met. 213. 7 Met. 420, 431. 11 Cush. 164, 311, 447. Form of oath. See § 84.

SECT. 72. The judge shall appoint a second meeting of the creditors, to be held at a court not more than three months after the date of the warrant, regard being had to the distance at which the creditors reside. The debtor shall then be allowed to amend and correct his schedule of creditors, and shall take and subscribe an oath before the judge, which shall be certified by him and filed in the case, in substance as follows:—

“I —— do swear that the account of my creditors contained in the schedule made and signed by me and now on file in court is in all respects just and true, according to my best knowledge and belief. And I do further swear, that I have delivered to \_\_\_\_\_, the messenger, all my estate, (excepting such parts thereof as are by law exempted from attachment, and such as have been necessarily expended for the support of myself and my family,) and all my books of account and papers relating to my said estate, that were within my possession or power when the same were demanded of me by the messenger; that I have delivered to my assignee all such of my said estate, books, and papers, as have since come to my possession; and that if any other estate, effects, or other things, which shall or ought to be assigned and delivered to the assignee, shall hereafter come to my knowledge or possession, I will forthwith disclose or deliver the same to him. And I do further swear, that there is not any part of my estate or effects made over or disposed of in any manner for the future benefit of myself or my family, or in order to defraud my creditors.”

Upon failure to call or hold meeting, court may order. 1854, 329, § 1.

SECT. 73. When a failure to call or hold a second or third meeting within the time prescribed occurs, the court may, upon the petition of an interested party, order such meeting with like effect as to the validity of the proceedings as if the meeting had been duly held.

If meeting liable to be defeated, register may call on order of judge. 1854, 329, § 2.

SECT. 74. Upon the death, resignation, or neglect, of the assignee, or his absence from the county, whereby a meeting to be notified by him is liable to be defeated, such meeting may be notified by the register on the order of the judge, on petition of any interested party, with notice at the discretion of the judge to the assignee if living, and with the like effect as if the meeting had been called and notified by the assignee.

Third meeting. Certificate of discharge.

SECT. 75. The judge shall appoint a third meeting of the creditors to be held within six months from the time of the appointment of the



assignee; at which meeting or some meeting thereafter, if it appears to the satisfaction of the judge that the debtor has made a full disclosure and delivery of all his estate as herein required, and that he has in all things conformed himself to the directions and requirements of the laws relating to insolvent debtors, the judge shall grant him a certificate, which shall state all fiduciary debts specially exempt from discharge, and be in substance as follows:—

1838, 163, §§ 7, 12.  
1844, 178, § 3.  
1848, 304, § 9.  
1 Cush. 87.  
4 Cush. 529.  
7 Cush. 341.  
11 Cush. 355.

COMMONWEALTH OF MASSACHUSETTS.

ss. Court of Insolvency.

To all people to whom these presents shall come, I, A. B., judge of the court of insolvency for said county of \_\_\_\_\_, send greeting.

Form of certificate of discharge.

Whereas, it has been made to appear to me, that C. D., of B., in the said county of \_\_\_\_\_, merchant, whose estate has been assigned for the benefit of his creditors, according to law, has made a full disclosure and delivery of all his estate, and that he has in all things conformed himself to the requirements of law in that behalf made and provided: I do accordingly certify that said C. D. is absolutely and wholly discharged from all his debts which have been or shall be proved against his estate assigned as aforesaid, and from all debts which are provable against his estate, and which are founded on any contract made by him within this state or to be performed within the same, and made since the last day of July in the year eighteen hundred and thirty-eight, and from all debts which are provable as aforesaid, and which are founded on any contract made by him since that date, and due to any persons who were resident within this commonwealth on the \_\_\_\_\_ day of \_\_\_\_\_ last, being the day of the first publication of the notice of the warrant issued for the seizure of the estate of said C. D.; and from all demands against him for or on account of any goods or chattels wrongfully obtained, taken, or withheld, by him, according to the provisions of chapter one hundred and eighteen of the General Statutes. And I do further certify that said C. D. is by force of said chapter forever discharged and exempted from arrest or imprisonment in any suit, or upon any proceeding, for or on account of any debt or demand whatever which might have been proved against his estate assigned as aforesaid.

Given under my hand and the seal of said court this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

SECT. 76. The debtor shall thereupon, except as provided in section seventy-nine, be absolutely and wholly discharged from debts proved against his estate; and from all debts provable under this chapter, and founded on any contract made by him subsequently to the last day of July in the year eighteen hundred and thirty-eight and while an inhabitant of this state, if made within this state, to be performed within the same, or due to any person resident therein at the time of the first publication of the notice of the issuing of the warrant; and from all demands for or on account of any goods or chattels wrongfully obtained, taken, or withheld, by him, as mentioned in section twenty-five, while such inhabitant.

Effect of discharge.  
1838, 163, § 7.  
1844, 178, § 3.  
1855, 363, § 1.  
21 Pick. 172.  
3 Met. 213.  
4 Met. 302.  
6 Met. 299.  
7 Met. 152, 257,  
318, 321, 420,  
424, 431.  
8 Met. 72, 75,  
102, 129.  
10 Met. 332, 392,  
594, 597.  
12 Met. 470.  
13 Met. 62.  
1 Cush. 430.  
2 Cush. 173, 333,  
3 Cush. 381.  
4 Cush. 607.

5 Cush. 83, 86, 484.	8 Cush. 375. 10 Cush. 43, 523.	3 Gray, 252, 551. 5 Gray, 51, 316.	12 Met. 470. 1 Cush. 430.	10 Cush. 523. 2 Gray, 43.
6 Cush. 225.	1 Gray, 305, 623.	Contracts out of state.	5 Cush. 83.	3 Gray, 551.
7 Cush. 15, 242, 455, 592.	2 Gray, 43, 111, 148.	10 Met. 594, 597.	7 Cush. 15, 242, 455.	5 Gray, 487, 539, 552.

SECT. 77. If the debtor at the time of obtaining his certificate is in jail on any suit or proceeding for or on account of any claim provable against his estate, he shall be discharged from such imprisonment upon producing to the jailer his certificate granted pursuant to the provisions of this chapter.

Debtor imprisoned, &c., to be discharged on certificate.  
1838, 163, § 9.

SECT. 78. The debtor shall also be forever thereafter discharged and exempt from arrest or imprisonment in any suit or upon any proceeding for or on account of any debt or demand which might have been proved against his estate. And the property and estate of the debtor by him acquired subsequently to the time of the first publication of the notice of the issuing of the warrant, shall not be subject to attachment, by trustee process or otherwise, in any suit to recover a debt which may have been so provable and due to any person or persons not resident in this state at the time of such first publication, or founded on any contract existing at the time of said first publication and made or to be performed out of the limits of this state.

discharged from arrest, &c., and property exempt from attachment, &c.  
1838, 163, § 7.  
1850, 97.  
7 Met. 257.  
8 Met. 102.



Debts from defalcation and for necessities not discharged.  
1838, 163, § 7.  
1844, 178, § 3.  
1848, 304, § 10.  
10 Cush. 43.  
See Ch. 90, § 29.

SECT. 79. A debt created subsequently to the fifteenth day of April in the year eighteen hundred and forty-four by the debtor's defalcation as a public officer, executor, administrator, guardian, receiver, trustee, or assignee of an insolvent estate, shall not be discharged under this chapter, but the dividend declared thereon shall be payment of so much of said debt. A claim for necessities furnished to the debtor or his family shall not be so discharged unless the claim is proved against his estate.

Sureties, &c.,  
1838, 163, § 7.  
5 Cush. 614.  
1 Gray, 623.

SECT. 80. A discharge shall not release or discharge any person liable for the same debt as a partner, joint contractor, indorser, surety, or otherwise, for or with the debtor.

Discharge by assent of creditors.  
1848, 304, § 9.  
8 Cush. 109.  
10 Cush. 43.  
1 Gray, 623.  
2 Gray, 519.  
3 Gray, 254.

SECT. 81. A discharge shall not be granted to a debtor whose assets do not pay fifty per cent. of the claims proved against his estate, unless the assent in writing of a majority in number and value of his creditors who have proved their claims is filed in the case within six months after the date of the assignment.

upon second and third insolvency.  
1844, 178, §§ 5, 6.  
1856, 257.  
5 Cush. 83.  
8 Cush. 104.  
13 Gray, 203.

SECT. 82. A discharge shall not be granted to a debtor a second time insolvent whose assets do not pay fifty per cent. of the claims proved against his estate, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed in the case within six months after the date of the assignment. No discharge shall be granted to a debtor a third time insolvent. But a debtor who has paid all the debts owing by him at the time of his previous insolvency, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not been previously insolvent.

Creditors may assent whose claims are appealed, &c.  
1852, 293.  
3 Gray, 255.

SECT. 83. A creditor may assent to the debtor's discharge under the two preceding sections, notwithstanding an appeal from the allowance of his claim is pending, and such assent shall be valid if the claim is finally allowed.

Debtor failing by accident, &c., to take oath, may be discharged.  
1858, 121.

SECT. 84. When a discharge is refused a debtor for the sole reason that the assent of the requisite majority of his creditors has not been seasonably obtained or filed, or for the reason that he has not taken the oath required by section seventy-two, the judge, upon the application of the debtor made within twelve months after the date of the assignment and with the written assent of three-fourths in number and value of the creditors who have proved their claims, may grant his discharge if he satisfies the judge on a hearing had after public notice of said application that the failure to obtain or file the assent was occasioned by accident or mistake, and by no fault of his own; or that the omission to take the oath was owing to his inability by reason of sickness to attend and take the same; and if he is present and takes the oath and abides and performs all lawful orders of the court.

Appeal from decision of judge on question of discharge.  
1838, 163, § 8.  
1848, 304, § 11.  
1859, 196.

SECT. 85. Either the debtor or the assignee may within ten days after the decision of the judge upon the question of granting the certificate of discharge, and not after, upon giving notice to the register to be entered with the record of proceedings, appeal from such decision to the term of the superior court which shall be first held within and for the county next after the expiration of fourteen days from the time of claiming the appeal. But if the appellant in writing waives his appeal before the entry thereof in the superior court, proceedings may be had in the court of insolvency, as if no appeal had been taken.

Proceedings on appeal.  
1838, 163, § 8.  
1859, 196.

SECT. 86. The appeal may be heard and determined by the superior court or any justice thereof; and the assignee or any creditor may appear and object to the allowance of the certificate. If after a full hearing of the parties it appears to the satisfaction of the court that the debtor has made a full disclosure and delivery of all his estate as herein required, and that he has in all things conformed himself to the directions of this chapter, the court shall cause a certificate thereof in substance

like that prescribed in section seventy-five, to be made under the seal of the court, signed by the clerk, and delivered to the debtor.

MATTERS AVOIDING DISCHARGE.

SECT. 87. A discharge shall not be granted, or valid, if the debtor has wilfully sworn falsely as to any material fact in the course of the proceedings, or if he has fraudulently concealed any part of his estate, or effects, or any books or writings relating thereto; or if, being insolvent and having reasonable and sufficient cause to believe himself so, he has, within one year next before the filing of a petition by or against him, paid or secured, either directly or indirectly, in whole or in part, any borrowed money, or preëxisting debt, or any liability of his or for him; or if, within six months before the filing the petition by or against him, he has procured his lands, goods, money, or chattels to be attached, sequestered, or seized on execution; or if, subsequently to the sixth day of July eighteen hundred and fifty-six, he has destroyed, altered, mutilated, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document with intent to defraud his creditors; or has removed himself, or removed or caused to be removed any part of his property, from the state, with intent to defraud his creditors; or has made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or spent any part thereof in gaming; or if, having knowledge that any person has proved a false debt against his estate, he has not disclosed the same to his assignee within one month after such knowledge; or if, being a merchant or tradesman, he has not subsequently to said date kept proper books of account. And the discharge shall be null and void, if the debtor, or any person in his behalf, shall have procured the assent of any creditor thereto by any pecuniary consideration.

Discharge forfeited by proceedings in fraud of creditors.  
 1838, 163, § 10.  
 1841, 124, § 3.  
 1841, 178, § 8.  
 1848, 304, § 9.  
 1856, 284, § 31.  
 1858, 54.  
 3 Met. 213.  
 7 Met. 164, 261, 420.  
 8 Met. 377, 490.  
 2 Cush. 480.  
 7 Cush. 136, 146.  
 8 Cush. 103, 377, 381.  
 10 Cush. 545.  
 3 Gray, 594.  
 Who may contest.  
 7 Met. 422.  
 13 Met. 62.  
 8 Cush. 377.  
 6 Gray, 327.  
 See § 90.

SECT. 88. If any person, in contemplation of becoming insolvent and of obtaining a discharge in insolvency, makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under any liability for him, or for the purpose of preventing the property from coming to the hands of his assignee in insolvency, or of being distributed under the laws relating to insolvency in satisfaction of his debts, except as provided in section ninety, he shall not be entitled to a discharge, and any discharge received by him shall be void and of no effect.

Fraudulent preferences avoid a discharge.  
 1838, 163, § 10.  
 1841, 124, § 3.  
 1856, 284, § 25.  
 8 Met. 62, 67, 377.  
 7 Cush. 146.  
 See § 90.

PREFERENCES.

SECT. 89. If any person, being insolvent or in contemplation of insolvency, within six months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, having reasonable cause to believe such person is insolvent or in contemplation of insolvency, and that such payment, pledge, assignment, or conveyance is made in fraud of the laws relating to insolvency, the same shall be void; and the assignees may recover the property, or the value of it, from the person so receiving it or so to be benefited.

Fraudulent payments void, &c.  
 1838, 163, § 10.  
 1841, 124, § 3.  
 1856, 284, §§ 25, 26. — 1 Met. 366.  
 4 Met. 137.  
 5 Met. 49.  
 7 Met. 164, 520.  
 8 Met. 377, 496.  
 9 Met. 292, 469.  
 13 Met. 167, 434.  
 1 Cush. 170.  
 2 Cush. 160, 480.  
 3 Cush. 169.  
 7 Cush. 136, 181.  
 10 Cush. 545.  
 3 Gray, 541, 595.  
 4 Gray, 101.  
 6 Gray, 100, 324.  
 See § 90.

1861 Ch. 192



Preceding sections not to apply to necessities.

1856, 284, § 25.  
See Ch. 90, § 29.

Sales, &c., to prevent property from coming to assignee, &c., void.  
1856, 284, § 27.  
8 Met. 62, 67, 377.  
7 Cush. 146.  
13 Gray, 18.

SECT. 90. The provisions of the three preceding sections shall not apply to any payment of money, or transfer of property in payment, not exceeding twenty-five dollars in amount, upon a debt contracted for necessities furnished to the debtor or his family.

SECT. 91. If any person, being insolvent or in contemplation of insolvency, within six months before the filing of the petition by or against him, makes any sale, assignment, transfer, or other conveyance of any description, of any part of his property, to any person who then has reasonable cause to believe such person insolvent or in contemplation of insolvency, and that such sale, assignment, transfer, or other conveyance is made with a view to prevent the property from coming to his assignee in insolvency, or to prevent the same from being distributed under the laws relating to insolvency, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade, any of said provisions, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property or the value thereof as assets of the insolvency. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, that fact shall be *prima facie* evidence of such cause of belief.

#### ALLOWANCE AND SURPLUS.

Allowance to debtor.  
1838, 163, §§ 6, 8.  
8 Cush. 169.  
See § 111.

SECT. 92. The debtor shall receive from the assignee one dollar a day for his attendance on the judge or the assignee when required under section sixty-six. He shall also be allowed out of his estate, for the necessary support of himself and his family, such sum, not exceeding the rate of three dollars per week for each member of his family, and for such time, not exceeding two months, as the judge may order. And every debtor who is discharged shall be allowed five per cent. on the net produce of all his estate received by the assignee, if such net produce, after such allowance, is sufficient to pay the creditors entitled to a dividend the amount of fifty per cent. on their debts; but the allowance shall not exceed in the whole the sum of five hundred dollars.

in case of death.  
1838, 163, § 5.

SECT. 93. If an allowance to the debtor on the net produce of his estate becomes due and is not paid to him in his lifetime, it shall be paid to his executors or administrators, and disposed of and distributed in like manner as any other property of which he may be possessed at the time of his decease.

Surplus to be returned to debtor.  
1838, 163, § 13.  
6 Met. 293.

SECT. 94. If after the payment of all debts proved any surplus remains in the hands of the assignee, it shall be paid or re-conveyed to, or re-vest in, the debtor or his legal representatives.

#### ACCOUNTS AND DIVIDENDS.

1861 Ch. 102. Assignee to exhibit accounts on oath if required.  
Judge to order dividend.  
1838, 163, § 12.  
10 Cush. 173, 498.

SECT. 95. At the third meeting the assignee shall exhibit to the judge and creditors present, fair and just accounts of all his receipts and payments touching the estate, and shall, if required by the judge, be examined on oath as to the truth of such accounts. The judge shall thereupon order a dividend of the estate and effects, or of such part thereof as he deems fit, among such of the creditors as have proved their claims, in proportion to their respective debts.

Preferred claims.  
1838, 163, §§ 12, 24.  
1841, 124, § 6.  
1850, 218.  
1858, 119, §§ 1, 2.  
11 Met. 234.  
2 Cush. 173, 371.

SECT. 96. In the order for a dividend under the preceding section the following claims shall be entitled to priority or preference, and to be first paid in full in their order:

First. All debts due to the United States, and all debts due to and taxes assessed by this state:

Second. Wages due to any operative to an amount not exceeding



fifty dollars for labor performed within one year next preceding the first publication of the notice of insolvency, or for labor for the recovery of payment for which a suit commenced within one year after the performance thereof is pending, or has terminated within one year from said first publication :

3 Cush. 342.

Third. All debts due to physicians for medical attendance on the debtor or his family, rendered within six months prior to the institution of proceedings in insolvency, to an amount not exceeding fifty dollars :

Fourth. All debts due to any persons who by the laws of the United States, or of this state, are or may be entitled to a priority or preference in like manner as if this chapter had not been enacted :

Fifth. Legal fees, costs, and expenses, of suit, and for the custody of the property proved as preferred under section one hundred and twenty-seven.

SECT. 97. If at the time of ordering the dividend it appears probable that there are just claims against the estate which by reason of the distant residence of the creditor or for other sufficient reason have not been proved, the judge shall in ordering the dividend leave in the hands of the assignee a sum sufficient to pay every such absent creditor a proportion equal to what shall be then paid to the other creditors, which sum shall remain thus unappropriated in the hands of the assignee until the final dividend is declared, or until the judge orders its distribution.

Reservation for absent creditors. 1838, 163, § 12. 20 Pick. 312.

SECT. 98. The assignee shall, at such time as the judge directs within eighteen months after the appointment of the assignee, make a second dividend of the estate, if the same was not wholly distributed upon the first dividend, and shall give notice of a meeting of all the creditors of the debtor for that purpose. At such meeting the accounts of the assignee shall be produced and examined as provided in section ninety-five, and settled by the judge; and any balance appearing to be in the hands of the assignee, shall, by order of the judge, be divided among all the creditors who have proved their debts, in proportion thereto.

Second dividend. Assignees' accounts. 1838, 163, § 13. 7 Met. 348. 20 Pick. 312. 1851 Ct. 102.

SECT. 99. If at any time before the final dividend there remain in the hands of the assignee any outstanding debts or other property due or belonging to the estate which cannot in the opinion of the judge be collected and received by the assignee without unreasonable or inconvenient delay, the assignee may, under the direction of the judge, sell and assign such debts or other property in such manner as the court shall order.

Outstanding debts, &c., may be sold. 1838, 163, § 13.

SECT. 100. Suits upon claims sold by assignees shall be brought in the name of the purchasers. The fact of sale and of purchase by the plaintiff shall be set forth in the writ, and the defendant may avail himself of any matter of defence of which he could have availed himself in a suit upon the claim by the assignee. Costs in such suits shall be recovered by or against the plaintiff, and the assignee shall not be liable therefor.

Suits on claims sold by assignees. Costs. 1850, 194. 12 Cush. 282.

SECT. 101. Such second dividend shall be final unless a suit relating to the estate is then depending, or part of the estate is outstanding, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee; in which cases another dividend shall be made by order of the judge. Further dividends shall be made in like manner as often as occasion requires.

Further dividends if necessary. 1838, 163, § 13. 7 Met. 348.

SECT. 102. No creditor whose debt is proved at the time of the second or any subsequent dividend shall disturb any prior dividend, but he shall be paid so far only as the funds remaining unappropriated in the hands of the assignee are sufficient therefor.

Former dividends not to be disturbed. 1838, 163, § 13. 20 Pick. 312.

## APPLICATIONS BY CREDITORS.

## Applications

by creditors.  
 1838, 163, § 19.  
 1844, 178, §§ 9,  
 12, 13.  
 1851, 189, § 2.  
 1856, 284, §§ 25,  
 29.  
 2 Met. 573.  
 4 Met. 392, 504.  
 6 Met. 518, 521.  
 9 Met. 292, 459.  
 11 Met. 233.  
 1 Cush. 449.  
 4 Cush. 121.  
 5 Cush. 469.  
 8 Cush. 101.  
 4 Gray, 550.  
 5 Gray, 144.  
 6 Gray, 329.

SECT. 103. If any person arrested on mesne process in a civil action for the sum of one hundred dollars or upwards, founded upon a demand in its nature provable against the estate of an insolvent debtor, has not given bail therein on or before the return day of such process; or has been actually imprisoned for more than thirty days, in any civil action founded on such contract, for the sum of one hundred dollars or upwards; or if any person whose goods or estate are attached on mesne process in any civil action founded on such contract, for the sum of one hundred dollars or upwards, has not within seven days from the return day of such process dissolved the attachment in the manner provided in chapter one hundred and twenty-three; or if any person has removed himself or any part of his property from the state, with intent to defraud his creditors; or has concealed himself to avoid arrest, or any part of his property to prevent its being attached, or taken on a legal process; or procured himself or his property to be arrested, attached, or taken, on any legal process; or made any fraudulent payment, conveyance, or transfer, of any part of his property; any of his creditors whose claims provable against his estate amount to the sum of one hundred dollars, may, within ninety days thereafter, apply by petition to the judge for the county in which the debtor resides, or, in case the debtor has ceased to reside in this state within one year next before the commencement of proceedings against him, in the county in which he last had his residence, setting forth the facts and the nature of such claims, verified by oath, and praying that his estate may be seized and distributed according to the provisions of this chapter.

Warrant to issue. Proceedings thereon.  
 1838, 163, § 19.  
 6 Met. 518.  
 9 Met. 459.  
 4 Cush. 121.

SECT. 104. The judge, after notice of the petition given to the debtor by a copy thereof served upon him personally or left at his last and usual place of abode, and a hearing before him of the petitioner and debtor, or a default by the debtor to appear in pursuance of said notice, if the facts set forth in the petition appear to be true, shall forthwith issue his warrant to take possession of the estate of the debtor. The warrant shall be directed, and the property of the debtor shall be thereon taken and distributed, in the same manner and with similar proceedings to those herein provided for the taking possession and distribution of the property of a debtor upon his own petition.

If attachment is not dissolved through accident or mistake, proceedings may be stayed.  
 1851, 189, § 3.

SECT. 105. When a person by accident or mistake has failed to dissolve an attachment within the time required by section one hundred and three, he may forthwith apply by petition to the judge before whom proceedings against him are pending, for a stay of the proceedings, and after such notice to the petitioning creditor as the judge orders, or without notice if the urgency of the case does not allow notice to be given, the proceedings may be stayed by an order of the judge until a hearing; and if upon the hearing he proves to the satisfaction of the judge that he is in fact solvent, or that for any other cause the proceedings ought to be stayed, the judge shall order the proceedings to be stayed and finally suppressed.

## CONCEALMENT OF PROPERTY, &amp;c.

Debtor to be deemed guilty of misdemeanor in certain cases.  
 1856, 284, § 30.

SECT. 106. If a debtor after notice of the filing of a petition by or against him secretes or conceals any property belonging to his estate, or any books, deeds, documents, or writings, relating thereto, or removes or causes to be removed the same or any part thereof out of the state, or otherwise disposes of any part thereof, with a view to prevent it from coming to the possession of the messenger or assignee, or to hinder, impede, or delay either of them in recovering or receiving the same; or makes any payment, gift, sale, assignment, or conveyance of any property belonging to his estate; or spends any part thereof in



gaming or otherwise, except such parts as may reasonably be expended for the support of himself and his family, not exceeding the amount allowable by law; he shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding two years.

SECT. 107. A judge before whom proceedings are pending in relation to the estate of a debtor may, upon the complaint under oath of any person interested therein, against any one suspected of having fraudulently received, concealed, embezzled, or conveyed away, any money, goods, effects, or other estate, of the debtor, cite the suspected person to appear before him and be examined on oath upon the matter of the complaint. If the person cited refuses to appear and submit to such examination or to answer such interrogatories as are lawfully propounded to him, the judge may commit him to the jail of the county, there to remain in close custody until he submits to the order of the court. All such interrogatories and answers shall be in writing, signed by the party examined, and filed in court.

Proceedings against persons fraudulently concealing, &c., property, &c. 1846, 168, § 1. 4 Cush. 448.

PARTNERSHIPS.

SECT. 108. When two or more persons who are partners become insolvent, a warrant may be issued as provided in this chapter, by the judge in whose county either of the partners resides, upon the petition of one or more of the partners, (reasonable notice being first given by the judge to the other partners, if within the state, to show cause why its prayer should not be granted,) or upon the petition of any creditor of the partners; upon which warrant all the joint stock and property of the company and the separate estate of each of the partners shall be taken, except such parts as may be by law exempt from attachment; and all the creditors of the company, and the separate creditors of each partner, may prove their respective debts.

in case of partners. 1838, 163, § 21. 1856, 284, § 37. 1858, 93, § 10. 22 Pick. 450. 4 Met. 397, 537. 5 Met. 562, 582. 12 Met. 1. 2 Cush. 175. 4 Cush. 99, 127. 5 Cush. 224, 613. 8 Cush. 109, 375. 9 Cush. 553. 10 Cush. 458. 592. 11 Cush. 236. 3 Gray, 239, 542. 4 Gray, 120, 122. 6 Gray, 329.

SECT. 109. The assignee shall be chosen by the creditors of the company; and shall keep separate accounts of the joint stock, or property of the company, and of the separate estate of each member thereof; and after deducting out of the whole amount received by him the total expenses and disbursements paid, the net proceeds of the joint stock shall be appropriated to pay the creditors of the company, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors. If there is any balance of the separate estate of a partner after the payment of his separate debts, it shall be added to the joint stock for the payment of the joint creditors. If there is a balance of the joint stock after the payment of the joint debts, it shall be divided and appropriated to and among the separate estates of the several partners according to their respective rights and interests therein, and as it would have been if the partnership had been dissolved without insolvency; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts.

Choice of assignee and adjustment of joint and separate property and debts. 1838, 163, § 21. 9 Cush. 553. 10 Cush. 458, 592. 4 Gray, 120, 122. 5 Gray, 574. 13 Gray, 115.

SECT. 110. The provisions of the two preceding sections shall apply to limited partnerships formed under chapter fifty-five, or under chapter thirty-four of the Revised Statutes, when such partnerships become insolvent; but the separate estates and separate debts of the special partners shall not be subject to the proceedings against the partnership.

Provision in case of limited partnerships. 1838, 163, § 22.

SECT. 111. In all proceedings against partners each shall be entitled to allowance as herein before provided for the maintenance of himself and his family; and the allowance on the net produce of the estates as provided in section ninety-two, shall be computed on the joint estate, and also on each of the separate estates, as if there had been a separate warrant against each; but neither of the partners shall receive in the whole more than five hundred dollars.

Separate allowance to each partner. 1838, 163, § 21. 5 Cush. 169.

SECT. 112. The certificate of discharge shall be granted or refused

Certificate of



discharge to each partner. 1838, 163, § 21.

to each partner as it would or ought to be if the proceedings had been against him alone. In all other respects the proceedings against partners shall be conducted in the same manner as against a single person.

#### INSOLVENT CORPORATIONS.

Corporations may petition by authorized officer. 1851, 327, §§ 1, 2. 13 Met. 503. 3 Gray, 531.

SECT. 113. Any corporation created by authority of this state, except railroad and banking corporations, may apply by petition signed by an officer duly authorized by a vote of a majority of the corporators present and voting at a legal meeting called for the purpose, to the judge for the county where the corporation has its principal place of business, setting forth its inability to pay its debts and its willingness to assign all its estate and effects for the benefit of its creditors, and praying that such proceedings may be had in the premises as are hereinafter provided. The judge shall thereupon forthwith issue a warrant, as in the case of an application by a debtor under section seventeen, but requiring the notice given by the messenger to state further that the making of any contract by the corporation is forbidden by law.

Proceedings similar to those against a person. 1851, 327.

SECT. 114. Thereupon like proceedings shall be had, with like powers, duties, and privileges, of the judge, register, messenger, assignee, and creditors, as are herein before provided upon the petition of a debtor, except as hereinafter mentioned.

Claims before last dividend provable. 1851, 327, § 3.

SECT. 115. Claims on account of bills of exchange, indorsements, money due on bottomry or respondentia bonds, paid upon indorsements, or as surety, may be proved against an insolvent corporation before the making of the last dividend, in like manner as against the estate of an insolvent debtor before the making of the first dividend.

Schedules. Duties, &c., of officers. 1851, 327, §§ 6, 7, 8.

SECT. 116. The schedules to be furnished shall be prepared and furnished by the treasurer or other financial officer of the corporation, with such assistance as he requires from the other officers; and all the provisions of this chapter which apply to the debtor or set forth his duties in regard to executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away, his money or property, shall in like manner, and with like force, effect, and penalties, apply to each and every officer of the corporation, in relation to the same matters concerning the corporation, and the money and property thereof. And said officers shall at the second meeting severally make and subscribe an oath in substance as follows:—

Oath.

I, ———, (president, &c., or treasurer, &c.) do swear that I verily believe the account of the creditors of the corporation, contained in the schedule signed by A. B., and now on file in court, is in all respects just and true; that I do verily believe that all the property and estate of said corporation, and all its books of account and papers, have been delivered to the messenger or the assignee; and that if any goods or estate not so delivered, hereafter come to my knowledge, I will faithfully and diligently apprise the assignee thereof. And I do further swear that, to the best and utmost of my knowledge, information, and belief, there is no part of the estate or effects of said corporation made over or disposed of in any manner in fraud of the laws relating to insolvency or of the creditors of said corporation.

Franchise of corporation authorized to take toll, may be sold. 1851, 327, § 6.

SECT. 117. In the case of a turnpike, canal, bridge, or other corporation authorized by law to take toll, the assignment to the assignee shall empower him to sell and convey the franchise of the corporation, and any and all property and rights connected with the exercise thereof, to such persons as become the purchasers of the same; and by virtue of such sale and conveyance such purchasers and their associates shall be deemed to be so far the owners of all such franchises, that they may have such corporation organized anew by themselves as its sole members, in the manner provided in section three of chapter sixty-eight, and the provisions of law applicable to such corporation. When the corporation has been thus organized anew, it shall be deemed to be lawfully

possessed, as of its own property, of all the franchises to such corporation previously granted, and of all the property and rights so sold and conveyed with such franchises; and such purchasers, their associates, successors, and assigns, shall be the only members of the corporation. When such corporation is so organized anew, it shall not be liable to any suit at law or in equity, founded on any contract (performable within this state or made with any citizen thereof) which existed prior to such organization, nor for any claim provable under this chapter.

SECT. 118. When an assignee proceeds to sell the franchises of a corporation under the preceding section, he shall, if the judge has so ordered, expose the property, estate, or assets, of the corporation, for sale in shares, in number equal to the whole number of shares of the capital stock of the corporation, and such shares may thereupon be sold separately, and the purchasers thereof may organize anew in the manner in said section provided.

Property may be sold in shares and purchasers organized.  
1851, 327, § 27.

SECT. 119. All claims against any turnpike, canal, or other corporation authorized to take land or materials, for damages for taking land or materials, or laying out such road, canal, or turnpike, shall be preferred debts, next after debts due to the United States and to the commonwealth.

Land damages preferred claims.  
1851, 327, § 19.

SECT. 120. All payments, conveyances, and assignments, made fraudulent and void by sections eighty-nine and ninety-one, when made by a debtor, shall in like manner, to the like extent, and with like remedies, be fraudulent and void when made by a corporation which is subject to the provisions of this chapter.

Void preferences.  
1851, 327, § 9.

SECT. 121. An allowance or discharge shall not be granted to any corporation, or to any person as officer or member thereof.

No discharge, &c., to corporation, &c.

SECT. 122. If a corporation whose goods or estate are attached on mesne process in a civil action founded on a contract for the sum of one hundred dollars or upwards, which is in its nature provable under this chapter, does not within fourteen days from the return day of the writ, if the term of the court to which the process is returnable so long continues, or on or before the last day of the term if the same sooner ends, dissolve the attachment in the manner provided in chapter one hundred and twenty-three; or if a corporation makes any fraudulent payment, conveyance, or transfer, of its property or any part thereof; any of its creditors whose claims provable against its estate under this chapter amount to the sum of one hundred dollars, may apply by petition, stating the facts and the nature of said claim or claims, verified by oath, to the judge in the county in which the corporation is established, praying that its estate may be seized and distributed according to law; and thereupon, after notice of the presentment of the petition given to the corporation by a copy thereof served on its president, treasurer, or clerk, thirty days at least before the return day of the notice, and a hearing of the petitioners and corporation, or after default of the corporation to appear at the time and place in the notice appointed, if the facts set forth in the petition appear to be true, the judge shall forthwith issue his warrant to take possession of the estate of the corporation; and such further proceedings shall be had thereon as upon a warrant issuing upon the petition of a corporation under section one hundred and thirteen.

Proceedings against a corporation.  
1851, 327, § 17.  
1856, 284, § 25.

SECT. 123. If a mortgage is foreclosed pending proceedings under the ten preceding sections and before the appointment of an assignee, the assignee when appointed may redeem the same at any time within sixty days after his appointment, with similar remedies to those provided by law for the redemption of mortgages before foreclosure.

Redemption of mortgages.  
1851, 327, § 20.

SECT. 124. Nothing in the preceding sections shall give validity to or affect any mortgage made by a corporation for any purpose whatever.

Mortgages not affected.  
1851, 327, § 26.



## FEES AND COSTS.

Fees for warrant, &c.  
1856, 284, § 24.

SECT. 125. In each case there shall be allowed and paid the following fees, and none other, viz.:—

For issuing the warrant, five dollars :

For each day on which a meeting is held, seven dollars :

For each order for a dividend, five dollars.

Such fees shall have priority of payment over all other claims out of the estate, and before a warrant issues the petitioner shall deposit with the register, or with the judge to be delivered to the register, forty dollars, as security for the payment thereof; and if there are not sufficient assets for the payment of the fees, the person upon whose petition the warrant is issued shall pay the same, and the court may issue an execution against him to compel payment to the register.

Before any dividend is ordered, the assignee shall pay out of the estate to the messenger the following fees and no more:—

First. For service of the warrant, two dollars :

Second. For all necessary travel, at the rate of four cents a mile :

Third. For each written notice to creditors named in the schedule, ten cents :

Fourth. For custody of property, publication of notices, and other services, his actual expenses, upon returning the same in specific items, and making oath that they have been actually incurred and paid by him, and are just and reasonable :

For cause shown and upon hearing thereon, such further allowance may be made as the court in its discretion may determine.

Register to receive and account for fees.  
1856, 284, § 24.

Costs when attachments are dissolved.  
1841, 124, § 6.  
11 Met. 233.  
2 Cush. 173.  
3 Cush. 342.  
See § 96.

SECT. 126. The register shall receive all fees, and account for and pay over the same to the treasurer of the commonwealth quarter-yearly, on the first Mondays of January, April, July, and October.

SECT. 127. When an attachment on mesne process has been made and is not dissolved before commencement of proceedings in insolvency, if the claim upon which the suit was commenced is proved against the estate of the debtor, the plaintiff may also prove the legal fees, costs, and expenses, of the suit and of the custody of the property, and the amount thereof shall be a privileged debt.

award of.  
1856, 284, § 38.  
1859, 196.

SECT. 128. In all matters of insolvency contested before a court of insolvency, the superior court, or in the supreme judicial court, said courts may in their discretion award costs to either party to be paid by the other, or to either or both parties to be paid out of the estate which is the subject in controversy, as justice and equity may require.

execution may issue for.  
1856, 284, § 39.

SECT. 129. When costs are awarded to be paid by one party to the other, said courts respectively may issue execution therefor.

## VACATING PROCEEDINGS.

Proceedings may be vacated.  
1848, 304, § 13.  
3 Gray, 531.  
6 Gray, 243.

SECT. 130. When a creditor who has proved his debt petitions the judge to vacate the proceedings in a case, the judge may order the proceedings to be stayed, and after due notice to all persons interested in the estate and a hearing of the matter, if no objection is made by the debtor or any such creditor, pass an order vacating all proceedings therein.

## RETURNS.

Judges to make returns. Returns to be recorded and open for inspection.  
1846, 168, § 3.  
1851, 327, § 24.

SECT. 131. Each judge shall on or before the tenth day of each month make a return to the secretary of the commonwealth of the name, residence, and occupation, of each person by or against whom as an insolvent debtor, and of the name of each corporation, the kind of business for which it was created, the place or places where its business was principally done, by or against which, as an insolvent corporation, a petition



has been filed in his court during the next preceding month, with the dates of such petitions. The secretary shall enter such returns, conveniently for reference, in a book which shall be open to the inspection of the public.

CASES BEFORE COMMISSIONERS, &C.

SECT. 132. Nothing in this chapter shall affect the jurisdiction of a commissioner of insolvency or master in chancery in any case pending before him at the time of its enactment; but such jurisdiction shall continue in full with the same fees of such commissioners, masters, and their clerks, as heretofore established.

Jurisdiction of commissioners, &c., in cases pending. 1844, 178, § 15. 1855, 226. 1856, 284, § 2.

SECT. 133. If a commissioner of insolvency or master in chancery before whom proceedings upon any case in insolvency mentioned in the preceding section are pending, dies, is removed from the charge of the case, or for any cause is unable to perform the duties required of him, the case and all papers connected therewith shall be transferred to the court of insolvency for the county in which the case is pending. The court shall thereupon have jurisdiction of the case and proceed therein as if it had been originally commenced in said court.

Removal of cases upon death, &c., of commissioner, &c. 1844, 178, § 15. 1850, 307. 1855, 226. 1856, 284, § 2.

SECT. 134. Upon the closing of proceedings in a case pending before a commissioner of insolvency or master in chancery, all papers and records relating thereto shall be returned to and deposited in the office of the register of probate and insolvency for the county.

Papers, &c., to be deposited in probate office. 1838, 163, § 14. 1856, 284, § 40.

CHAPTER 119.

OF JUDGES AND REGISTERS OF PROBATE AND INSOLVENCY.

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| <p>SECTION</p> <p>JUDGES.</p> <ol style="list-style-type: none"> <li>1. Appointment of judges of probate and insolvency.</li> <li>2. Oath of judge.</li> <li>3. Judges may interchange, &amp;c.</li> <li>4. case of absence, interest, vacancy, &amp;c.</li> <li>5. Register to certify, &amp;c. Bonds, &amp;c.</li> <li>6. Judges not to be counsel or attorney in certain cases.</li> </ol> <p>REGISTERS.</p> <ol style="list-style-type: none"> <li>7. Registers' oaths.</li> <li>8. Bonds of.</li> <li>9. Register not to be of counsel, nor to receive fees in certain cases.</li> </ol> | <p>SECTION</p> <ol style="list-style-type: none"> <li>10. Register to have custody of books, &amp;c., belonging to probate office, &amp;c.</li> <li>11. Assistant registers for Suffolk, Middlesex, Worcester, Essex, and Norfolk.</li> <li>12. duties of.</li> <li>13. Vacancy, how filled.</li> <li>14. Temporary register, when appointed.</li> <li>15. oath, &amp;c., of.</li> </ol> <p>SALARIES AND FEES.</p> <ol style="list-style-type: none"> <li>16. Salaries of judges, registers, and assistant registers.</li> <li>17. Compensation of temporary register.</li> <li>18. Judges, &amp;c., not to receive fees.</li> </ol> |
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JUDGES.

SECTION 1. The judges of probate and insolvency shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur they shall be filled in the manner provided by the constitution, so that there shall be one judge in each county.

Appointment. Const. Ch. 2, § 1, art. 9. Ch. 3, art. 1. 1858, 93, § 1.

SECT. 2. Each judge, before entering upon the duties of his office, in addition to the oaths prescribed by the constitution, shall take and subscribe an oath that he will faithfully discharge said duties, and that he will not during his continuance in office directly or indirectly be interested in or benefited by the fees or emoluments arising from any suit or matter pending in either of the courts of which he is judge; which oath shall be filed in the probate office.

Oath of judge. Const. Ch. 6, art. 1. Amend. const. art. 6. R. S. 83, § 26. 1856, 284, § 16. 1858, 93, §§ 2, 3.

Judges may interchange, &c.  
1859, 110.

1860 Ch. 125  
in case of absence, interest, vacancy, &c.  
R. S. 83, § 15.  
1851, 253.  
1856, 268.  
1856, 384, § 5.  
5 Pick. 483.  
9 Pick. 287.  
21 Pick. 101  
22 Pick. 507  
11 Met. 390.  
3 Cush. 352.  
7 Gray, 391.

Register to certify, &c.  
Bonds, &c.  
1859, 110, § 3.

Judges not to be counsel or attorney in certain cases.

R. S. 83, § 26.  
1856, 284, § 16.  
1858, 93, §§ 2, 3.

Register, oaths of.

Const. Ch. 6, art. 1. Amend. const. art. 6.  
R. S. 83, § 21.  
1856, 284, § 12.  
1858, 93, § 5.

1861 Ch. 95  
bonds of.  
R. S. 83, § 21.  
1856, 284, § 12.  
1857, 15.  
1858, 93, §§ 5, 8.

not to be of counsel, nor to receive fees in certain cases.  
R. S. 83, § 27.  
1856, 284, § 17.  
1858, 93, § 5.

to have custody of books, &c., belonging to probate office, &c.

R. S. 83, § 22.  
1856, 284, § 13.  
1858, 93, § 5.

1861 Ch. 95  
Assistant registers for Suffolk, Middlesex, Worcester, Es-

SECT. 3. The judges may interchange services or perform each other's duties when they find it necessary or convenient.

SECT. 4. If a judge is a party, or interested to the amount claimed of one hundred dollars exclusive of interest, in any case arising in his county, or is absent or unable to perform his duties, and no judge acts for him under the provisions of the preceding section, or if there is a vacancy in the office in any county, the duties shall be performed in the same county by the judge of any other county designated by the register from time to time as necessity or convenience may require.

SECT. 5. The register shall certify on his records the times during which, or the cases in which the judge of another county acts. Bonds required to be given to the judge shall be given to the judge appointed for the county, or in case of vacancy to the acting judge, and his successors in office, and all business shall be done in his name, or the name of the probate court or the court of insolvency for the same county, as the case may be; but bonds may be approved, and other acts required to be done or certified by the judge may be approved, done, or certified, by the acting judge.

SECT. 6. No judge shall be retained or employed as counsel or attorney, either in or out of court, in any suit or matter which may depend on or in any way relate to a sentence, decision, warrant, order, or decree, made or passed by him; nor for or against an executor, administrator, or guardian, appointed within his jurisdiction, in a suit brought by or against the executor, administrator, or guardian, as such; nor in a suit relating to the official conduct of such party; nor for or against a debtor, creditor, or assignee, in a cause or matter arising out of or connected with any proceedings before him; nor in an appeal in such cause or matter.

#### REGISTERS.

SECT. 7. Every register of probate and insolvency, before entering upon the duties of his office, in addition to the oaths prescribed by the constitution, shall take and subscribe an oath that he will faithfully discharge said duties, and that he will not during his continuance in office directly or indirectly be interested in or benefited by the fees or emoluments arising from any suit or matter pending in either of the courts of which he is register; which oath shall be filed in the probate office.

SECT. 8. He shall give bond, with condition that he will faithfully discharge the duties of his office, to the treasurer of the commonwealth in a sum not less than one thousand and not exceeding ten thousand dollars, as ordered by the judge, with one or more sureties approved by him.

SECT. 9. No register shall be of counsel or attorney either in or out of court, in any suit or matter pending in either of the courts of which he is register; nor in an appeal therefrom; nor shall he be executor, administrator, guardian, commissioner, appraiser, divider, or assignee, of or upon an estate within the jurisdiction of either of the courts of which he is register; nor be interested in the fees or emoluments arising from either of said trusts.

SECT. 10. The register shall have the care and custody of all books, documents, and papers, appertaining to the courts of which he is register, or deposited with the records of insolvency or filed in the probate office; and shall carefully preserve the same to be delivered to his successor. He shall perform such other duties appertaining to his office as may be required by law or prescribed by the judge.

SECT. 11. The judges for the counties of Suffolk, Middlesex, Worcester, Essex, and Norfolk, may each appoint an assistant register of probate and insolvency for his county, who shall hold his office for three

years unless sooner removed by the judge. Before entering upon the discharge of his duties the assistant register shall take the oaths prescribed by the constitution, and shall give bond, with condition for the faithful performance of the duties of his office, to the treasurer of the commonwealth in a sum not less than five hundred nor more than five thousand dollars, as ordered by the judge, with one or more sureties approved by him.

sex, and Norfolk.  
Const. Ch. 6,  
art. 1. Amend.  
const. art. 6.  
1858, 93, §§ 6, 8.

SECT. 12. The assistant register shall perform his duties under the direction of the register, and shall pay over to him all fees and sums received as his assistant, to be accounted for as required by law. He may authenticate papers and perform such other duties as are not performed by the register. In case of the absence, neglect, removal, resignation, or death, of the register, the assistant may complete and attest any records remaining unfinished, and act as register until a new register is qualified, or until the disability is removed.

Assistant register, duties of.  
1858, 93, §§ 6, 7.

SECT. 13. If a vacancy occurs in the office of register, the governor with the advice and consent of the council may appoint some person to fill the office until another is elected as provided in chapter ten.

Vacancy in office of register.  
1856, 173, § 8.  
1858, 93, § 12.

SECT. 14. Upon the death, resignation, removal, or absence, of the register, if there is no assistant register, or if he is also absent, the judge shall appoint a suitable person to act as temporary register until a register is appointed or elected and qualified, or until the disability is removed.

Temporary register.  
R. S. 83, § 23.  
1856, 173, § 8.  
1856, 284, § 14.  
1858, 93, §§ 2, 3,  
5, 6.

SECT. 15. Such temporary register shall be sworn before the judge, and a certificate thereof, with his appointment, shall be recorded with the proceedings of each court in which he acts.

oath, &c., of.  
R. S. 83, §§ 24, 25.  
1856, 284, §§ 14,  
15. 1858, 93.

SALARIES AND FEES.

SECT. 16. Judges, registers, and assistant registers, shall receive from the treasury of the commonwealth annual salaries as follows: —

Salaries of judges, registers, &c.  
1858, 93, §§ 13, 14.  
See Ch. 15, § 36.  
Suffolk.  
Middlesex.

For the county of Suffolk, the judge and register each three thousand, and the assistant register fifteen hundred, dollars:

For the county of Middlesex, the judge two thousand, the register fifteen hundred, and the assistant register one thousand, dollars:

For the county of Worcester, the judge eighteen hundred, the register fifteen hundred, and the assistant register one thousand, dollars:

Worcester.

For the county of Essex, the judge and register each fifteen hundred, and the assistant register eight hundred, dollars:

Essex.

For the county of Norfolk, the judge fourteen hundred, the register one thousand, and the assistant register six hundred, dollars:

Norfolk.

For the county of Bristol, the judge eleven hundred, and the register thirteen hundred, dollars:

Bristol.

For the county of Plymouth, the judge and register each one thousand dollars:

Plymouth.

For the county of Berkshire, the judge and register each eight hundred dollars:

Berkshire.

For the county of Hampden, the judge and register each eight hundred dollars:

Hampden.

For the county of Barnstable, the judge and register each seven hundred dollars:

Barnstable.

For the county of Hampshire, the judge six hundred and fifty, and the register seven hundred and fifty, dollars:

Hampshire.

For the county of Franklin, the judge six hundred, and the register seven hundred, dollars:

Franklin.

For the county of Nantucket, the judge and register each three hundred dollars:

Nantucket.

For the county of Dukes County, the judge two hundred and fifty, and the register three hundred and fifty, dollars.

Dukes.  
1859, 178.



Compensation of temporary register.  
R. S. 83, § 24.  
1856, 284, § 14.  
1858, 93.

Judges, &c., not to receive fees.  
R. S. 83, § 52.  
1857, 274, § 2.  
1858, 93, §§ 2, 3, 5.

SECT. 17. When a temporary register is appointed, he shall be entitled to the same compensation as the register, and shall be paid by him if the appointment is caused by his absence. If caused by the death, removal, or resignation, of the register, he shall receive from the treasury of the commonwealth the salary of the register.

SECT. 18. No judge or register of probate and insolvency shall receive any fee or compensation in addition to his salary for holding courts or acting as judge in any county, nor for any thing done in his official capacity, except in cases expressly provided by law.

## CHAPTER 120.

### OF JUSTICES OF THE PEACE.

#### JURISDICTION AND PROCEEDINGS IN CIVIL MATTERS.

##### SECTION

1. Original and exclusive jurisdiction.
2. Concurrent jurisdiction.
3. Justices may issue *scire facias* against executors, &c.
4. Within what time to be served.
5. Proceedings thereon.
6. Writs, forms of, where to run.
7. may run into any county for attachment.
8. service of, on absent defendants.
9. When, &c., causes may be heard.
10. On failure of justice to attend, other justice may attend, &c.
11. Judgment for plaintiff on default, &c.
12. for defendant.
13. Cases concerning real estate may be removed to superior court, &c.
14. If party does not recognize, justice shall try the case.
15. Proceedings on such appeal.
16. Pleas before a justice.
17. Jury in actions over twenty dollars, when, &c.
18. Summoning, attendance, &c., of jury. Judgment.
19. Six jurymen.
20. Proceedings on trial.
21. Duty and fees of officer attending.
22. Jurors' fees.
23. Deficiency in number of jury, how supplied.
24. Chapter one hundred and thirty-two applicable.
25. Appeal allowed to the superior court.
26. Appellant to recognize.
27. to produce papers, &c., or former judgment affirmed.
28. Pleadings on appeal.
29. Proceedings on judgment after death of justice.
30. Same subject.
31. Execution, how issued thereon.

#### JURISDICTION, &C., IN CRIMINAL MATTERS.

32. General powers.

#### TRIAL JUSTICES.

##### SECTION

33. Justices commissioned to try criminal cases.
34. number of.
35. authority to cease on change of domicil.
36. jurisdiction of.
37. Same subject.
38. Jurisdiction of breaches of the peace.
39. to bind over offenders to superior court.
40. by-laws; selling liquor, &c.
41. of larcenies, buying, &c., stolen goods, &c., obtaining property by false pretences, trick, &c. Punishment. Restitution.
- 42, 43. concurrent, in certain cases.
44. of larcenies from building, &c.
45. to arrest, bind over, &c., for felonies, misdemeanors, &c.
46. Appeal allowed to superior court.

#### GENERAL PROVISIONS.

47. Justices to frame and issue necessary writs, &c.
48. may grant summons in criminal cases.
49. may administer oaths, &c.
50. punish for contempts.
51. to keep record.
52. may adjourn courts.
53. not to commence actions before themselves.
54. not to be of counsel or attorney, &c.
55. power of to continue after commission expires to issue execution.
56. when commission of, expires and is renewed.
57. to account for all fines, &c., received.
58. to make annual returns to county treasurers of fees of sheriffs, &c.
59. to secretary, of crimes, costs, &c.
60. penalty on, for neglect.
61. Secretary to furnish forms, &c.
62. This chapter not to affect police courts.

#### JURISDICTION AND PROCEEDINGS IN CIVIL MATTERS.

Original and exclusive jurisdiction.  
R. S. 85, § 1.

SECTION 1. Justices of the peace may severally hold courts within their counties, and shall have exclusive original jurisdiction of all actions of replevin for beasts distrained or impounded in order to recover a

penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for damages alleged to have been done by them; actions of forcible entry and detainer; and actions of contract and tort wherein the debt or damages demanded do not exceed twenty dollars.

R. S. 104, § 4.  
R. S. 113, § 17.  
7 Met. 591.  
6 Cush. 276.  
2 Gray, 117, 410.  
See Ch. 143.

SECT. 2. They shall have original and concurrent jurisdiction with the superior court of all actions of contract, tort, or replevin, where the debt or damages demanded or value of the property alleged to be detained is more than twenty and does not exceed one hundred dollars.

Concurrent jurisdiction.  
R. S. 85, § 2.  
1852, 314, § 1.  
1859, 196.  
1 Met. 309.

SECT. 3. They may issue writs of *scire facias* against executors and administrators, upon a suggestion of waste after judgment against them, and also against the bail taken in a civil action before them, and proceed therein to judgment and execution in the same manner as the superior court might do in like cases.

Justices may issue *scire facias* against executors, &c.  
R. S. 85, § 16.  
See Ch. 128, § 10.

SECT. 4. Such writs shall be served not less than seven nor more than sixty days before the time when they are returnable, and may run into any county in which the defendant may be found.

Within what time to be served.  
R. S. 85, § 17.

SECT. 5. It shall be no bar to such suit that the debt and costs on the original judgment together exceed the sum of one hundred dollars; but judgment and execution may be awarded by the justice for the whole sum due to the plaintiff with the costs of the new suit.

Proceedings thereon.  
R. S. 85, § 18.

SECT. 6. The original writ in all civil actions commenced before a justice of the peace, shall be a summons or a *capias* and attachment, and shall be signed by the justice. The forms of such writs shall be regulated as provided in chapter one hundred and twenty-three; but no writ issued by a justice of the peace shall run into any other county than that in which it is returnable, except as provided in the following section and section seventy-seven of chapter one hundred and forty-two.

Writs, forms of, where to run.  
R. S. 85, § 7.  
See § 4.  
See Ch. 103, § 47.  
Ch. 133, § 21.

SECT. 7. Writs issued by justices of the peace may be directed to the proper officers in any county for the purpose of causing an attachment of property therein; but no more than one dollar and fifty cents shall be chargeable to or taxed against the defendant for the service of such writ.

may run into any county for attachment.  
1838, 121, § 1.

SECT. 8. When an attachment is made upon a writ returnable before a justice of the peace, and the defendant is out of the state, so that no service can be made on him, and he has no agent or attorney residing within the state, the justice may order the action to be continued until notice thereof is given to the defendant in such manner as the justice shall order. Upon proof of such notice having been given, if the defendant fails to appear on the return day of such notice, judgment may be entered and execution issued for the plaintiff, upon his giving bond to the defendant with sufficient surety for double the sum for which execution is to be issued, to repay the amount recovered if within one year from the rendition of the judgment it is reversed.

service of, on absent defendants.  
1838, 121, § 2.  
See Ch. 126.

SECT. 9. Actions before justices of the peace may be heard and determined at their dwelling-houses or any other convenient and suitable places; and writs and processes may be made returnable accordingly, but not earlier than nine o'clock in the forenoon nor later than five o'clock in the afternoon.

When, &c., causes may be heard.  
R. S. 85, § 31.  
1856, 96.  
4 Cush. 455.

SECT. 10. If a justice fails to attend at the time and place to which a civil process is returnable or continued before him, any other justice for the same county may attend and continue the process not exceeding thirty days, without costs and saving the rights of all parties; and he shall make a certificate thereof, which shall be filed with the papers in the case and entered upon the record by the justice before whom the process was returnable.

On failure of justice to attend, other justice may attend, &c.  
1848, 193, §§ 1, 2.

SECT. 11. If any person duly served with process fails to appear and answer thereto, his default shall be recorded and the charge against him in the declaration taken to be true. Upon such default, or when the

Judgment for plaintiff on default, &c.

R. S. 85, § 9.  
2 Gray, 410.

Judgment for  
defendant.  
R. S. 85, § 10.

Cases concern-  
ing real estate.  
R. S. 85, § 3.  
R. S. 104, § 9.  
4 Pick. 169.  
19 Pick. 419.  
1 Met. 309.  
8 Met. 167.  
10 Met. 250.  
6 Cush. 276.  
See Ch. 137, § 10.  
If party does  
not recognize,  
&c.  
R. S. 85, § 4.  
1859, 196.  
19 Pick. 419.  
See Ch. 137, § 9.

Proceedings on  
such appeal.  
R. S. 85, § 5.  
19 Pick. 419.

Pleas before  
a justice.  
R. S. 85, § 11.  
1 Mass. 234.  
6 Mass. 1.  
11 Mass. 313.  
19 Pick. 419.  
8 Met. 167.  
11 Cush. 315.

Jury in actions  
over twenty  
dollars, when,  
&c.  
1852, 314, § 2.  
1858, 71.

Summoning at-  
tendance, &c., of  
jury.  
Judgment.  
1852, 314, § 2.  
See Ch. 152.

Six jurymen.  
1852, 314, § 3.

Proceedings on  
trial.  
1852, 314, §§ 3, 4.

Duty and fees  
of officer attend-  
ing.

plaintiff maintains his action upon a trial, the justice shall award and enter judgment for such sum, not exceeding the amount of his jurisdiction in the case, as he upon inquiry finds the plaintiff is entitled to recover, with costs.

SECT. 12. If the plaintiff fails to enter and prosecute his action, or if upon a trial he does not maintain the same, the defendant shall recover judgment for his costs, to be taxed by the justice.

SECT. 13. When it appears by the pleadings or otherwise, in an action pending before a justice of the peace, that the title to real estate is concerned or brought in question, the fact, if it does not appear by the pleadings, shall be stated on the record, and the case shall at the request of either party be removed to the superior court, to be there tried and determined in like manner as if it had been originally commenced in that court.

SECT. 14. The party requiring the case to be removed shall recognize to the other party in a reasonable sum with sufficient surety or sureties, with condition to enter the action at the superior court next to be held in the county; and if he fails so to recognize, the justice shall hear and determine the case as if there had been no request to remove it.

SECT. 15. The party recognizing shall produce at the court a copy of the record and all papers required to be produced by an appellant, and if he fails so to do, or so to enter the action, he shall upon the complaint of the adverse party be there defaulted or nonsuited, as the case may be, and such judgment shall be thereupon rendered as law and justice may require.

SECT. 16. In civil actions the trial may be had at the election of the defendant, either upon pleadings in writing as heretofore used, or the defendant without filing any written plea may orally deny the plaintiff's right to maintain his action; in which case an entry shall be made on the record that the defendant appears and denies the plaintiff's right to maintain his action, and puts himself on trial, or in words to that effect. Upon the issue so joined a trial may be had, and any matter may be given in evidence by either party which would have been admissible if the defence had been made under any plea in bar.

SECT. 17. Either party to a civil action before a justice of the peace where the debt or damage exceeds twenty dollars, and in actions of replevin where the value of the property alleged to be detained does not exceed one hundred dollars, may on the return day of the writ, upon all parties filing a written waiver of all right of appeal, demand a trial by jury, which shall be granted; and there shall be no right of appeal from the judgment of the justice upon the verdict of the jury.

SECT. 18. Upon granting such trial the justice shall issue a writ of *venire facias*, directed to the sheriff of the county or either of his deputies, or a constable of the city or town where the court is held, requiring the attendance of six jurors from such city or town at the time and place stated in the warrant, but not more than twenty-one days from its date. The same proceedings shall be had in drawing and summoning such jurors as in other cases, except that it shall be sufficient to summon them two days before the trial. The jury so summoned may try any number of cases before the justice, but shall not be detained more than fourteen days, except to finish a case commenced within that time. Judgment shall be entered according to the verdict of the jury.

SECT. 19. The jury shall consist of six persons, who shall be sworn and empanelled by the justice.

SECT. 20. They shall choose a foreman by ballot, and the trial shall be conducted before the justice in the same manner as nearly as may be as jury trials before the supreme judicial court.

SECT. 21. A sheriff or constable shall attend such trials and attend on the jury when they retire to make up their verdict. His fees shall



be one dollar a day for attendance, and such other sum as he may have to pay, not exceeding two dollars a day, for the use of rooms in which to hold the court, to be allowed by the justice. 1852, 314, § 5.

SECT. 22. The fees of the jurors and of the officer who summons the jury and attends on the court, including the charge for rooms, shall be certified by the justice or his clerk, and paid by the county treasurer. Jurors' fees. 1852, 314, § 8.

SECT. 23. When by reason of challenge or otherwise a sufficient number of jurors cannot be obtained for the trial of a cause, the justice shall cause jurors to complete the panel to be returned by the sheriff or constable from the by-standers, or from the city or town. Deficiency in number of jury, how supplied. 1852, 314, § 6.

SECT. 24. The provision of chapter one hundred and thirty-two, so far as applicable, shall extend to jurors and trials before justices of the peace. Chapter 132 applicable. 1852, 314, § 7.

SECT. 25. A party aggrieved by the judgment of a justice of the peace in a civil action, except upon the verdict of a jury, may within twenty-four hours after the entry of the judgment appeal therefrom to the superior court, then next to be held in the county; in which case no execution shall issue on the judgment appealed from, and the case shall be entered, tried, and determined, in the court appealed to, in like manner as if it had been originally commenced there. Appeal allowed to the superior court. R. S. 85, § 13. R. S. 104, § 8. 1859, 195. 11 Met. 436. 11 Cush. 80. 1 Gray, 601, 602. 2 Gray, 555.

SECT. 26. The appellant shall before the allowance of his appeal recognize with sufficient surety or sureties to the adverse party, if required by him, in a reasonable sum with condition to prosecute his appeal with effect, and to pay all such costs as may arise after the appeal. Appellant to recognize. R. S. 85, § 14. See Ch. 137, § 9.

SECT. 27. The appellant shall produce at the court appealed to a copy of the record, and of all the papers filed in the case, except that when depositions or other written evidence or documents are so filed the originals shall be produced in the court appealed to instead of copies; and if the appellant fails to produce such copies or papers, or to enter and prosecute his appeal, the court may on the complaint of the adverse party affirm the former judgment or render such other judgment as law and justice may require. to produce papers, &c., or former judgment affirmed. R. S. 85, § 15. 12 Cush. 133. See Ch. 114, § 15.

SECT. 28. Any case so appealed may be tried at the court appealed to upon the issue joined before the justice, or the court may order the defendant to plead in the usual manner, and the case shall then be tried upon such issue as shall be joined therein. Pleadings on appeal. R. S. 85, § 12.

SECT. 29. When a justice of the peace dies while a judgment rendered by him remains unsatisfied, any other justice in the same county may upon the application of the creditor cause the record of the judgment to be brought before him, and shall thereupon transcribe the same upon his own book of records and deliver the original to the person who produced it, noting on the original that he has so transcribed it. Proceedings on judgment after death of justice. R. S. 85, § 19.

SECT. 30. The justice applied to in such case shall when necessary issue a summons to the executor or administrator of the deceased justice, or to any other person supposed to have the custody of the records, requiring him to produce the same or to submit to an examination on oath as to the place where they may be found; and the justice may commit such person as for contempt until he submits to such examination if required and produces the record if within his custody or control. Same subject. R. S. 85, § 20.

SECT. 31. After the record has been so transcribed by the justice, he may issue execution on the judgment as if it had been rendered by himself, changing the form as the circumstances require; and any copy of the record certified by him shall have the same effect as an authenticated copy of the original. Execution, how issued thereon. R. S. 85, § 21.

## JURISDICTION, &amp;C., IN CRIMINAL MATTERS.

General powers.  
 R. S. 85, § 27.  
 R. S. 87, §§ 7, 33.  
 1854, 335, § 5.  
 1858, 138, § 1.  
 8 Cush. 210.  
 2 Gray, 120.  
 4 Gray, 83.  
 See Ch. 116, § 17.

SECT. 32. Justices of the peace may, as conservators of the peace, upon view of any affray, riot, assault, or battery, within their respective counties, without any warrant in writing, command the assistance of every sheriff, deputy-sheriff, and constable, and of all other persons present, for suppressing the same, and for arresting all who are concerned therein as provided in chapters [one hundred and] sixty-nine and [one hundred and] seventy; and they may issue warrants against persons charged with criminal offences. Persons so arrested shall be brought, and warrants so issued shall be returnable, before some police court or trial justice for examination, and no fees shall be allowed to the justice issuing such warrants.

## TRIAL JUSTICES.

1860 Ch. 187. Justices commissioned to try criminal cases.  
 1858, 138, § 1.  
 1859, 193.

SECT. 33. The justices of the peace designated and commissioned under chapter one hundred and thirty-eight of the statutes of eighteen hundred and fifty-eight, shall continue to hold their offices and powers according to the tenor of their several commissions; and the governor with the advice and consent of the council shall from time to time designate and commission in the several counties a suitable number of justices of the peace as trial justices.

number of.  
 1858, 138, § 2.

SECT. 34. Such trial justices shall be distributed as the convenience of the several counties requires, and the number in commission shall not exceed, in Barnstable, nine; Berkshire, twelve; Bristol, thirteen; Dukes County, two; Essex, nineteen; Franklin, ten; Hampden, ten; Hampshire, eight; Middlesex, thirty; Nantucket, two; Norfolk, seventeen; Plymouth, fifteen; Suffolk, one; Worcester twenty-six.

authority of, to cease on change of domicile.  
 1858, 138, § 2.

SECT. 35. If a trial justice changes his domicile, his authority and jurisdiction as such justice shall thereupon cease, and another trial justice may be designated and appointed in his place.

jurisdiction of.  
 1858, 138, § 1.

SECT. 36. Trial justices shall have and exercise within their respective counties, all the powers, authority, and jurisdiction, in criminal cases hereinafter set forth; and when any criminal jurisdiction is given to justices of the peace it shall be construed to mean trial justices; and justices of the peace not commissioned as trial justices shall have no power, authority, or jurisdiction, in criminal cases, except as conservators of the peace and to receive complaints and issue warrants.

Same subject.  
 1858, 45, § 2.

SECT. 37. Trial justices shall have jurisdiction of all offences which may be subject to the penalties of either a fine or forfeiture not exceeding fifty dollars, or imprisonment in the jail or house of correction not exceeding six months, or both of said penalties.

Jurisdiction of breaches of the peace.  
 R. S. 85, § 24.  
 1854, 328.  
 2 Met. 411.  
 11 Met. 540.  
 10 Cush. 494.  
 11 Cush. 232.  
 See Ch. 174, § 2.

SECT. 38. They may punish by fine not exceeding ten dollars, or imprisonment in the jail or house of correction not exceeding ninety days, all assaults and batteries, and other breaches of the peace, when the offence is not of a high and aggravated nature, and cause to be stayed and arrested all affrayers, rioters, disturbers and breakers of the peace, and all who go armed offensively to the terror of the people, and such as utter menaces or threatening speeches, or are otherwise dangerous and disorderly persons.

to bind over offenders to superior court.  
 R. S. 85, § 25.  
 23 Pick. 281.  
 2 Met. 411.

SECT. 39. Persons arrested for any of said offences shall be examined by the justice, before whom they are brought, and may be tried before him, and if found guilty, may be required to find sureties of the peace, and be punished by fine as before provided; or, when the offence is of a high and aggravated nature, they may be committed or bound over for trial before the superior court, as provided in chapters one hundred and sixty-nine, and one hundred and seventy.

by-laws, &c.  
 R. S. 15, § 13.  
 1849, 211, § 7.

SECT. 40. They shall have jurisdiction of offences against city and town orders and by-laws; of offences mentioned in section thirty of



chapter eighty-six; of offences for keeping billiard tables or bowling alleys contrary to the provisions of section seventy of chapter eighty-eight; of violations of the laws relating to the public health; and of offences against property in cemeteries; but no single penalty imposed for the last named offences shall exceed fifty dollars.

1852, 209.  
1855, 215, §§ 15, 16.  
1857, 194, §§ 1, 2.  
5 Cush. 409.  
5 Gray, 98.  
See Ch. 26.  
Ch. 28, § 12.  
Ch. 122, § 13.

SECT. 41. They shall have jurisdiction concurrent with the superior court,

First. Of larcenies mentioned in section eighteen of chapter one hundred and sixty-one, when the money or other property stolen is not alleged to exceed the value of fifteen dollars, and of all other larcenies when the value of the property stolen is not alleged to exceed the value of five dollars:

of larcenies, buying, &c., stolen goods, &c., obtaining property by false pretences, trick, &c.  
R. S. 126, §§ 18, 23.

Second. Of offences of buying, receiving, or aiding in the concealment of, stolen goods or other property, where they would have jurisdiction of a larceny of the same goods or property:

1855, 135, §§ 1, 2.  
1857, 80.  
5 Cush. 289.  
See Ch. 161.  
§§ 16-18, 21, 25-27, 43-45, 54-57.

Third. Of offences of obtaining property by any false pretence, or by any privy or false token; or by the game of three-card monte, or any other game, device, sleight of hand, pretensions to fortune-telling, trick, or other means, by the use of cards or other implements or instruments, where they would have jurisdiction of a larceny of the same property:

In all which cases the punishment for a first offence shall be by a fine not exceeding fifteen dollars or imprisonment in the jail not exceeding six months; and upon a second conviction of the like offence, committed after a former conviction before a police court or a justice of the peace, the punishment shall be by fine not exceeding twenty dollars or imprisonment in the jail not exceeding one year: *provided*, that if the party convicted of buying, receiving, or aiding in the concealment of, such stolen goods or property, makes satisfaction to the person injured to the full value of the property stolen and not restored, the punishment of the offence may be mitigated as justice may require.

Punishment.

SECT. 42. They shall have jurisdiction concurrent with the superior court of all the offences mentioned in sections eighty-two, eighty-three, and eighty-five, of chapter one hundred and sixty-one, when the value of the trees, fruit, flower, or other property, injured, destroyed, taken, or carried away, or the injury occasioned by the trespass, is not alleged to exceed the sum of fifteen dollars; and in any such case the punishment shall be by imprisonment in the county jail not exceeding thirty days or fine not exceeding fifteen dollars.

Restitution.

Concurrent jurisdiction in certain cases.  
R. S. 126, § 46.  
1846, 52, §§ 1, 2.

SECT. 43. They shall have jurisdiction concurrent with the superior court of offences under section forty-eight of chapter one hundred and sixty-one; but they shall not impose a fine exceeding ten dollars for any such offence.

Same subject.  
1856, 30, § 2.

SECT. 44. They may in their discretion take jurisdiction and punish by fine not exceeding twenty dollars, or imprisonment in the jail or house of correction not exceeding one year, larcenies from a building, ship, or vessel, under section fifteen of chapter one hundred and sixty-one, where the money or property stolen does not exceed in value ten dollars.

Jurisdiction of larcenies from building, &c.  
1851, 156, § 4.  
1852, 4.

SECT. 45. They shall cause to be arrested all persons found within their counties charged with any offences, and persons who after committing any offence within the county escape out of the same; examine into treasons, felonies, high crimes, and misdemeanors; and commit or bind over for trial those who appear to be guilty of crimes or offences not within their jurisdiction, and punish those guilty of such offences within their jurisdiction.

to arrest, bind over, &c., for felonies, misdemeanors, &c.  
R. S. 85, § 26.

SECT. 46. Every person convicted before a justice of the peace of any offence whatever, except militia fines exceeding ten dollars exclusive of costs, may appeal from such sentence to the term of the superior

Appeal allowed to superior court.  
R. S. 12, § 112.



R. S. 85, § 28.  
1849, 31.  
1858, 45, § 3.  
1859, 196.

court then next to be held in the same county for criminal business, as provided in chapter one hundred and seventy-three.

GENERAL PROVISIONS.

Justices to frame, &c., necessary writs, &c.  
R. S. 85, § 29.  
2 Met. 272.  
11 Cush. 262.  
4 Gray, 83.

SECT. 47. Justices of the peace may issue all writs, warrants, and processes, necessary or proper to carry into effect the powers granted to them; and when no form is prescribed therefor by statute, they shall frame one in conformity with the principles of law and the usual course of proceedings in the courts of this state.

may grant summonis in criminal cases.  
R. S. 85, § 39.

SECT. 48. They may grant summonis for witnesses in all criminal cases pending before any court whatever, when requested by the attorney-general or other person acting in the case in behalf of the state, and also when requested by the party prosecuted: *provided*, that in the latter case it shall be expressed in the summonis that it is granted at the request of the party prosecuted, and the witness shall not be required to attend unless upon payment or tender of his legal fees.

may administer oaths, &c.  
R. S. 85, § 36.

SECT. 49. They may administer oaths or affirmations in all cases in which an oath is required, unless a different provision is expressly made by law.

punish for contempts.  
R. S. 85, § 33.  
2 Gray, 123.

SECT. 50. They may punish such disorderly conduct as interrupts any judicial proceedings before them, or is a contempt of their authority or person, by fine not exceeding ten dollars, or by imprisonment in the common jail of the county not exceeding fifteen days.

to keep record.  
R. S. 85, § 35.  
12 Met. 10.

SECT. 51. They shall keep a record of all their judicial proceedings, both in civil and criminal cases.

may adjourn courts.  
R. S. 85, § 32.

2 Gray, 117. 3 Gray, 574. 4 Gray, 29.

SECT. 52. They may adjourn their courts in all cases, civil or criminal, on trial before them, to any other time or place as occasion may require.

not to commence actions before themselves.  
1851, 273.

SECT. 53. They shall not commence or be concerned in the institution of civil actions returnable before themselves.

not to be of counsel or attorney, &c.  
R. S. 85, § 34.  
6 Cush. 332.  
10 Cush. 494.  
11 Cush. 315.  
2 Gray, 120, 410.

SECT. 54. They shall not be retained or employed as counsel or attorney before any court, upon appeal or otherwise, in any suit or action previously determined before themselves; nor shall they try any civil action commenced by themselves or by their order or direction; and every civil action so commenced shall be dismissed with costs for the defendant.

power of to continue after commission expires, &c.  
R. S. 85, § 22.

SECT. 55. When the commission of a justice of the peace expires while a judgment rendered by him remains unsatisfied, he shall nevertheless be authorized to issue execution thereon with the same effect as if his commission had continued in force.

when commission expires and is renewed.  
R. S. 85, § 23.  
1852, 283, § 4.

SECT. 56. When a justice of the peace is commissioned and qualified anew at or before the expiration of his former commission, his authority shall be considered as having continued without interruption; and all business commenced by or before him under the former commission may be prosecuted and completed in the same manner as if that commission had continued in force.

to account for all fines, &c., received.  
R. S. 85, § 37.

SECT. 57. Justices of the peace shall twice in every year account with the treasurers of their respective counties and towns, for all fines, forfeitures, and costs, received upon convictions or other proceedings before them, and shall pay over to said treasurers respectively all moneys due and payable to them on such account.

to make annual returns to county treasurers of fees of sheriffs, &c.  
1847, 274, § 1.

SECT. 58. They shall annually on the first day of January return to the county treasurers of their respective counties, with a schedule thereof, all fees of sheriffs, deputy sheriffs, constables, and witnesses, taxed and allowed three years previously thereto, and then remaining in their hands.

to secretary of

SECT. 59. Justices of the peace before whom criminal causes have

been commenced or examined previously to the first day of October in any year, shall on or before the fifteenth day of said month return to the secretary of the commonwealth, under oath, a true statement of all such causes, setting forth therein the date of such examinations, the names of the parties prosecuted, the crimes, offences, or misdemeanors, for which the prosecutions were had, the results thereof, the judgment of the court thereon, the amount of the bill of costs in each case, and how the same was paid.

state, of crimes, costs, &c. 1852, 289, § 1. 1857, 40. 1858, 46. 1858, 155, § 1. See Ch. 14, §§ 9-14. Ch. 176, § 3.

SECT. 60. Any officer neglecting to make the returns required of him by the preceding section, shall forfeit two hundred dollars.

Penalty on justices for neglect. 1852, 289, § 3.

SECT. 61. The secretary of the commonwealth shall annually in September furnish to justices of the peace and police courts, blank forms for returns under the two preceding sections, with said sections printed thereon. Upon the receipt of such returns the secretary shall transmit the same to the auditor, who shall examine and report upon them to the general court.

Secretary to furnish forms, &c. 1852, 289, § 4. 1858, 155, § 2.

SECT. 62. Nothing in this chapter shall control the regulations concerning any police court whereby a different provision is made for the exercise of any of the powers of justices of the peace.

This chapter not to affect police courts. R. S. 85, § 40. 1849, 137, § 1.

## CHAPTER 121.

### OF CLERKS, ATTORNEYS, AND OTHER OFFICERS OF JUDICIAL COURTS.

- SECTION CLERKS OF THE COURTS.
1. Clerk of S. J. C. for commonwealth. Appointment, &c.
  2. Assistant clerk.
  - 3, 4. Clerk, duties of.
  5. Clerk to account for fees, &c.
  6. Clerks, &c., to be clerks of county commissioners.
  7. vacancies in office of, how filled.
  8. Assistant clerks, tenure of office of. Vacancies, how filled.
  9. If clerks are unable to perform duties, clerks *pro tempore* may be appointed. Record to be made.
  10. not present at terms, court may appoint clerk *pro tempore*.
  11. Clerks to be sworn.
  12. to give bonds.
  13. general duties of.
  14. to make alphabetical list of names of parties.
  15. to exhibit records to S. J. C. at every term thereof.
  16. justices to inspect records of, &c.
  17. forfeiture of bond of. Proceedings.
  18. Sum so recovered, how applied.
  19. But this not to exempt clerks from other suits.
  20. Assistant clerks, duties of.
  21. to pay fees to clerk or other officer according to law.
  22. Clerks to account under oath for all fees, except, &c.
  23. to retain salary, and one half of excess of fees.
  24. salaries of, in the several counties.
  25. When clerk may retain all fees.
  26. Salaries of assistant clerks.

- SECTION
27. Salaries of clerks *pro tempore*.
- ATTORNEYS AT LAW.
28. Attorneys at law, how admitted to practice.
  29. Same subject.
  30. to be sworn, &c.
  31. oath of office of.
  32. No distinction of counsellors, attorneys, &c.
  33. Attorneys, &c., from other states.
  34. Attorneys may be removed for malpractice, &c. Expenses thereof, how paid.
  35. Parties may manage their own suits.
  36. Any person specially authorized may manage suit, &c.
  37. Attorney to have lien for fees, &c.
  38. penalty on, for not paying over to client.
  39. not to act in suit previously decided by him.
  40. Sheriffs, &c., not to act as attorneys. Penalty.
- MASTERS IN CHANCERY.
41. Masters in chancery. Tenure of office, &c.
  42. duties of.
  43. fees of.
  44. when court may appoint.
  45. to finish proceedings, if commission expires.
- AUDITORS.
46. Auditors, when appointed, &c.
  47. to give notice to parties.
  48. report of majority of, valid.
  49. court may discharge, &c.
  50. compensation of.
- REPORTER.
51. Reporter, appointment of, &c.
  52. to make and publish reports annually.

SECTION

53. Reporter, how to report cases.  
54. when court to give statement of decision to.

SECTION

55. Reporter, if absent, deputy to be appointed.  
56. compensation of.

CLERKS OF THE COURTS.

Clerk of S. J. C. for commonwealth. Appointment, &c. 1859, 196, § 40.

SECTION 1. The clerk of the supreme judicial court for the commonwealth shall be appointed by the court, and hold his office for five years, unless sooner removed. The clerk of the court for the county of Suffolk shall act as such clerk until one is appointed and qualified.

Assistant clerk. 1859, 196, § 40.

SECT. 2. An assistant clerk of the court may be appointed by the court for the commonwealth, to hold his office for three years from the first day of January next after his appointment, unless sooner removed by the court.

Clerk, duties of. 1859, 196, § 42.

SECT. 3. The clerk shall attend all sessions of the court, preserve all the files and papers thereof, keep a docket record of all questions transferred, and all petitions, complaints, or other process presented to the court, entering thereon the name of the parties in full and the name of the counsel appearing in behalf of either party, with a brief description of the kind of action or proceeding. He shall record thereon accurate minutes of all orders, decrees, or directions of the court in each case, transmit forthwith to the clerks of courts in the several counties all rescripts made or ordered by the court, together with the papers belonging to the supreme and superior court in each case, and receive and keep safely all papers transmitted to him by the clerks of the courts.

same subject. 1859, 196, § 43.

SECT. 4. He shall make copies of all papers on file in said court, and of the docket record thereof when desired, and certify the same under the seal of the court; and shall issue such writs or other process as the court directs; he shall charge the fees provided by law for like services for clerks of courts, and when no express sum is fixed receive a fair compensation for the services required of him in analogy to like services for which a compensation is fixed by law: *provided*, that the fees for entry upon the docket, the record, the transmission of all necessary papers and the rescript in each case, shall not exceed one dollar and fifty cents in the whole.

to account for fees, &c. 1859, 196, § 43. See Ch. 15, § 30.

SECT. 5. The clerk shall annually before the last Wednesday of December, account with and pay over to the treasurer of the commonwealth all fees received by him, and receive from the treasurer an annual salary of three thousand dollars.

1860 Ch. 11.

Clerks of county commissioners. 1857, 1. 1860, 11.

SECT. 6. The clerks and assistant clerks of the courts of the several counties shall be clerks of the county commissioners.

Clerk of courts, vacancy in office of, how filled. 1856, 173, § 9.

SECT. 7. If a vacancy occurs in the office of clerk of the courts in any county, or of the clerk of the supreme judicial court in the county of Suffolk, the justices of said court, or a majority of them, may appoint a clerk, who shall hold the office until the next annual election, or until another is elected or appointed in his stead. Upon a vacancy in the county of Suffolk in the office of a clerk of the superior court, the justices of that court shall in like manner appoint a clerk for a similar term.

Assistant clerks, tenure of office of. Vacancies, how filled. 1850, 236. 1851, 38. 1855, 449, § 2. 1856, 37, § 1. 1859, 196, § 9. 13 Gray, 74.

SECT. 8. The assistant clerks of the courts in the counties of Middlesex and Worcester, of the supreme judicial and superior courts in the county of Suffolk, shall continue to hold their offices according to the tenor of their respective appointments. As vacancies occur, the justices of the supreme judicial court, or a majority of them, shall appoint an assistant clerk for the counties of Suffolk, Middlesex, and Worcester respectively, who shall hold their offices for the term of three years, subject to removal by the court. Upon the occurrence of a vacancy in the office of assistant clerk of the superior court in the county of Suffolk, the justices of said court shall in like manner appoint an assistant clerk.



SECT. 9. If, by reason of sickness or other cause, the clerk of the courts in any county or of the supreme judicial court is unable to discharge the duties of his office, and there is no assistant clerk or he is also unable, the justices of the supreme judicial court, or a majority of them, may appoint a clerk *pro tempore*, who shall perform the duties of the office until the clerk or assistant clerk resumes his duties. The justices of the superior court may in like manner appoint a clerk *pro tempore*, when the clerk and assistant clerk of that court in the county of Suffolk cannot perform the duties of the office. When, after any such temporary appointment, the clerk or assistant clerk resumes his duties, he shall make a record of that fact, with the date, under his signature, in the then latest book of records in each of the courts.

If clerks are unable to perform duties, clerks *pro tempore* may be appointed. Record to be made. 1851, 158, §§ 1, 3. 1859, 196, § 9.

SECT. 10. If at a term of any court neither the clerk nor assistant clerk is present, the court may appoint a clerk *pro tempore*, who shall perform the duties of the office during the term or until the clerk or assistant clerk resumes his duties; unless an appointment under some one of the preceding sections or an election pursuant to law is sooner made.

not present at terms, court may appoint clerk *pro tempore*. R. S. 81, § 14. R. S. 88, § 13.

SECT. 11. The clerk, assistant clerk, and clerk *pro tempore* of a court shall be sworn before a judge thereof.

Clerks to be sworn. R. S. 86, § 8. R. S. 88, §§ 1, 14. 1850, 236, § 1.

SECT. 12. The clerk and assistant clerk of the supreme judicial court for the commonwealth shall give bond, approved by the court, with sufficient surety or sureties in the sum of two thousand dollars, to the treasurer of the commonwealth, with a condition for the faithful performance of the duties of their respective offices, before entering upon the same. The clerks and assistant clerks shall give bond in like manner to the treasurers of their respective counties, in a sum not less than five hundred nor more than two thousand dollars, to be determined by the court; and the clerks *pro tempore* appointed under section nine shall give bond in like manner, if required by the court.

to give bonds. R. S. 88, § 3. 1843, 7, § 2. 1850, 236, § 1. 1851, 38, § 1. 1851, 158, § 2. 1856, 37, § 3. 1859, 196, § 41.

SECT. 13. The clerks shall attend all the courts of which they are clerks when held in their respective counties, and the sessions of the county commissioners, and record their proceedings; and shall have the care and custody of all the records, books, and papers appertaining to and filed or deposited in their respective offices.

general duties of. R. S. 88, § 5. See §§ 6, 20, 21.

SECT. 14. They shall keep in every book of records an alphabetical list of the names of all the parties to any suit or judgment therein recorded, with a reference to the page where it is recorded; and when there are several persons, either plaintiffs or defendants, the name of every person, with a like reference, shall be inserted in its appropriate place in the alphabetical list.

to make alphabetical list of names of parties. R. S. 88, § 7.

SECT. 15. At every term of the supreme judicial court, the clerk shall exhibit the then latest book of records of each of the courts in the county, and such others as are required, so that the court may have notice of any errors or defects in the keeping of the records, and cause the same to be corrected as occasion requires.

to exhibit records to S. J. C. at every term thereof. R. S. 88, § 11.

SECT. 16. The justices of the several courts shall inspect the doings of the clerks from time to time, and see that the records are made up seasonably and kept in good order; and if the records are left incomplete for more than six months at any one time, such neglect, unless caused by sickness or other extraordinary casualty, shall be adjudged a forfeiture of the clerk's bond.

justices to inspect records of, &c. R. S. 88, § 8.

SECT. 17. In case of any neglect causing a forfeiture of the clerk's or assistant clerk's bond, the justices shall forthwith give notice thereof in writing to the treasurer having custody of the bond, who shall thereupon cause the bond to be put in suit.

Forfeiture of bond of. Proceedings. R. S. 88, § 9.

SECT. 18. The sum recovered in such suit shall be applied to making up the deficient records under the direction of the court in

Sum so recovered, how applied.

R. S. 88, § 10.

But this not to exempt clerks from other suits.

R. S. 88, § 12.

Assistant clerks' duties. 1850, 236, § 2. 1851, 38, § 2. 1856, 37, § 2.

to pay fees to clerk or other officer.

1850, 236, § 2. 1851, 38, § 2. 1856, 37, § 2.

Clerks to account, under oath, for all fees, except, &c. R. S. 88, § 15. 1859, 196.

to retain salary, and one half of excess of fees.

R. S. 88, § 16. 1859, 196.

1860 ch. 121 § 9 salaries of. R. S. 88, § 17. 1857, 272. 1859, 196.

When clerk may retain all fees. R. S. 88, § 18.

1860 ch. 121 § 9 Salaries of assistant clerks. 1852, 267. 1854, 215. 1856, 37, § 1. 1859, 196, § 40.

of clerks *pro tempore*. R. S. 88, § 14.

whose records the deficiency happens, and the surplus, if any, shall be carried into his account as treasurer of the county or commonwealth.

SECT. 19. Nothing contained in the preceding sections shall be construed to exempt the clerks from a suit for any other breach of the condition of their bonds, or from their liability in any other way or to any party for neglect or misconduct in their offices.

SECT. 20. The assistant clerks may perform such of the duties of the clerk as are not performed by him.

SECT. 21. Each assistant clerk shall perform his duties under the direction of the clerk, and pay over to him all fees and sums received as such assistant. Upon the absence, resignation, death, or removal of the clerk, the assistant clerk shall perform his duties, under the direction of the court, until a clerk is elected or appointed and qualified. In case of the death, removal, or resignation of the clerk, the assistant clerk shall account with and pay over the money in his hands to the officer with whom the clerk is by law required to account.

SECT. 22. The clerks of the courts in the several counties and of the supreme judicial and superior courts in the county of Suffolk, shall keep an account of all fees received by them for their official acts and services, except fees for copies they are not required by law to furnish; and shall on the first Wednesday of January in every year render to the treasurer of the county their account on oath of all fees so received within the year then past.

SECT. 23. Each clerk of the courts in the several counties, and of the supreme judicial court and superior court in the county of Suffolk, shall retain the sum hereinafter provided for his annual salary; and also one-half of any excess of that sum, for his own use, and pay the residue to the treasurer for the use of the county; and at the same rate for any part of a year.

SECT. 24. The sums which the clerks in the several counties may retain for their annual salaries, shall be as follows, to wit:—

The clerk in the county of Barnstable, one thousand dollars: Berkshire, fourteen hundred dollars: Bristol, sixteen hundred dollars: Dukes County, two hundred and fifty dollars: Essex, two thousand dollars: Franklin, twelve hundred dollars: Hampden, eighteen hundred dollars: Hampshire, twelve hundred dollars: Middlesex, two thousand dollars: Nantucket, four hundred dollars: Norfolk, fifteen hundred dollars: Plymouth, fourteen hundred dollars: Worcester, two thousand dollars: Suffolk, the clerk of supreme judicial court and superior court for civil business, three thousand dollars each; and of the superior court for criminal business, two thousand dollars.

SECT. 25. If the fees received by the several clerks do not amount to the salary above provided, the clerk shall retain what is received in full for his services for the year.

SECT. 26. The assistant clerks shall receive annual salaries, as follows:—

Of the supreme judicial court for the commonwealth, fifteen hundred dollars, to be paid by the commonwealth:

In the county of Suffolk, of the supreme judicial court, fifteen hundred dollars: of the superior court, for civil business, eighteen hundred dollars:

In the county of Middlesex, twelve hundred dollars: and

In the county of Worcester, sixteen hundred dollars; to be paid quarterly by each county respectively.

SECT. 27. The several clerks *pro tempore* shall receive for their services such compensation as the court appointing them may determine, to be paid by the clerk or from the county treasury, as the court shall direct.



ATTORNEYS AT LAW.

SECT. 28. A citizen of this state, or an alien who has made the primary declaration of his intention to become a citizen of the United States, and who is an inhabitant of this state, of the age of twenty-one years and of good moral character, who has devoted three years to the study of the law in the office of some attorney within this state, shall, on application to the supreme judicial court, or superior court, be admitted to practice as an attorney in any court of this state, on complying with the other requisitions contained in this chapter.

Attorneys at law, how admitted to practice. R. S. 88, § 19. 1852, 154. 1859, 196. 6 Mass. 382. 10 Met. 239.

SECT. 29. Any person having the other qualifications required in the preceding section, although he has not studied the term therein prescribed, may, on the recommendation of an attorney, petition the supreme judicial court, or superior court, to be examined for admission as an attorney, whereupon the court shall assign a time and place for the examination, and if satisfied with his acquirements and qualifications he shall be admitted as if he had studied three full years.

Same subject. R. S. 88, § 20. 1859, 196.

SECT. 30. Whoever is admitted as an attorney shall in open court take and subscribe the oaths to support the constitution of the United States, and of this commonwealth, and the oath of office.

to be sworn, &c. Amend. const. art. 6. R. S. 88, § 21.

SECT. 31. The oath of office is as follows:—

You solemnly swear that you will do no falsehood, nor consent to the doing of any in court; you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you, God.

Oath of office of. 1785, 23, § 1. R. S. 88, § 22.

SECT. 32. A person admitted in any court may practise in every other court in the state; and there shall be no distinction of counsellors and attorneys.

No distinction of counsellors and attorneys, &c. R. S. 88, § 23. Attorneys, &c., from other states. R. S. 88, § 24.

SECT. 33. A person admitted an attorney or counsellor of the highest judicial court of any other state of which he was an inhabitant, and who afterwards becomes an inhabitant of this state, may be admitted to practice here upon satisfactory evidence of his good moral character and his professional qualifications.

SECT. 34. An attorney may be removed by the supreme judicial court or superior court for any deceit, malpractice, or other gross misconduct, and shall also be liable in damages to the party injured thereby, and to such other punishment as may be provided by law; and the expenses and costs of the inquiry and proceedings in any court for the removal of an attorney, shall be paid as in criminal prosecutions in the same courts.

Attorneys may be removed for malpractice, &c. Expenses thereof, how paid. R. S. 88, § 25. 1859, 196.

SECT. 35. Parties may manage, prosecute, or defend their own suits personally, and by such counsel or attorneys as they may engage; but no more than two persons for each party shall without permission of the court be allowed to manage any case therein.

Parties may manage their own suits. R. S. 88, § 26.

SECT. 36. Any person of good moral character may manage, prosecute, or defend a suit if he is specially authorized by the party for whom he appears, in writing or by personal nomination in open court.

Persons specially authorized, &c. R. S. 88, § 27.

SECT. 37. An attorney lawfully possessed of an execution, or who has prosecuted a suit to final judgment in favor of his client, shall have a lien thereon for the amount of his fees and disbursements in the cause, but this shall not prevent the payment of the execution or judgment to the judgment creditor without notice of the lien.

Attorney to have lien for fees, &c. R. S. 88, § 28. 3 Greenl. 34. 5 Mass. 309. 11 Mass. 236. 13 Mass. 525. 4 Gray, 358.

SECT. 38. If an attorney at law unreasonably neglects to pay money collected by him for and in behalf of a client, when demanded by the client, he shall forfeit and pay to such client five times the lawful interest of the money, from the time of the demand.

penalty on, for not paying over to client. 1859, 166, § 1.

SECT. 39. No person shall be employed or allowed to appear as

not to act in



suit previously decided by him.  
R. S. 89, § 8.  
Sheriffs, &c., not to act as attorneys.  
Penalty.  
R. S. 88, §§ 29, 30.  
6 Pick. 483.  
10 Pick. 45.

counsel or attorney before a court in a suit previously determined before himself as a judge, or justice of the peace.

SECT. 40. A sheriff, deputy-sheriff, coroner, or constable shall not appear in a court nor before a justice of the peace as attorney or counsel for or in behalf of a party in a suit, nor shall he draw, make, fill up, or alter, a writ, declaration, plea, or process, for such party. Whoever so offends shall forfeit the sum of fifty dollars.

## MASTERS IN CHANCERY.

Masters in chancery. Tenure of office, &c.  
R. S. 88, §§ 31, 32. 1838, 162.  
1844, 9, 173.  
1845, 22.  
1848, 277.

SECT. 41. The masters in chancery now in office shall hold their respective offices according to the tenor of their commissions. As vacancies occur, the governor, with the advice and consent of council, shall make appointments, so that there shall be not more than five in any county. They shall be sworn, and shall hold their offices for the term of five years, unless sooner removed by the governor and council.

duties of.  
R. S. 88, § 33.

SECT. 42. They shall, under the direction of the supreme judicial court, perform the duties appertaining to the office according to the practice in equity, and shall be allowed therefor such fees as the court shall order.

fees of.  
R. S. 88, § 34.

SECT. 43. Their fees shall be taxed with the other costs, and paid by such party or in such manner as the court orders.

when court may appoint.  
R. S. 88, § 35.

SECT. 44. If the masters appointed in any county are of counsel or interested in the suit, or otherwise disqualified or unable to act therein, the court upon ordering a reference of any matter in such suit shall appoint some person to act as master.

to finish proceedings, if commission expires.  
1844, 138.

SECT. 45. Proceedings and processes commenced under the direction of a master in chancery before the termination of his commission, shall be proceeded in to their termination by him in the same manner and with the same effect as if his commission remained in force.

## AUDITORS.

Auditors, when appointed, &c.  
R. S. 96, §§ 23, 30.  
1856, 202, § 1.  
6 Pick. 133.  
11 Pick. 359.  
1 Met. 216.  
11 Met. 297.  
1 Cush. 233.  
7 Cush. 137, 148, 443.

SECT. 46. When a cause is at issue in any court, whether the form of the action be contract, tort, or replevin, the court may in their discretion appoint one or more auditors to hear the parties, examine their vouchers and evidence, state accounts, and report upon such matters therein as may be ordered by the court; and the report shall be *prima facie* evidence upon such matters only as are expressly embraced in the order.

to give notice to parties.  
R. S. 96, § 26.

SECT. 47. The auditors shall give notice to the parties of the time and place appointed for their meeting, and may adjourn from time to time as may be necessary.

report of majority of, valid.  
R. S. 96, § 27.

SECT. 48. If there is more than one auditor, all shall meet and hear the cause, but a report by a majority shall be valid.

court may discharge, &c.  
R. S. 96, § 29.  
4 Pick. 283.

SECT. 49. The court may for cause discharge the auditors and appoint others, and may recommit the report for revision or further examination to the same or to other auditors.

compensation of.  
R. S. 96, § 31.

SECT. 50. The court shall award reasonable compensation to auditors, to be paid by the plaintiff and taxed in his bill of costs if he prevails.

## REPORTER.

Reporter, appointment of, &c.  
R. S. 88, §§ 36, 37.

SECT. 51. The reporter of the decisions of the supreme judicial court shall be sworn to the faithful performance of his duties, and shall hold his office according to the tenor of his commission. Whenever a vacancy occurs, a reporter shall be appointed by the governor, by and with the advice and consent of the council, to be removed at their pleasure.

SECT. 52. He shall attend the court personally at all the law terms and capital trials, make true reports of decisions on all legal questions argued by counsel, and publish the same annually. The reports of the decisions upon all questions of law argued and determined before the first day of September in each year shall be published within ninety days thereafter.

Reporter to make and publish reports annually.  
R. S. 88, § 38.  
1838, 100.  
See Ch. 112, § 12.

SECT. 53. He shall at his discretion report the several cases more or less at large according to their relative importance, so as not unnecessarily to increase the size or number of the volumes of reports.

how to report cases.  
R. S. 88, § 39.

SECT. 54. When in any of the cases mentioned in the two preceding sections judgment shall be entered at any other than a law term, the court shall communicate to the reporter a statement in writing of their decision or opinion.

when court to give statement of decision to.  
R. S. 88, § 40.

SECT. 55. If the reporter is necessarily prevented from attending at a term, he shall depute some suitable person to attend for him and take notes of the decisions; or the court may appoint a person to officiate in his stead until he resumes the performance of his duties, or until another is appointed.

if absent, deputy to be appointed.  
R. S. 88, § 41.

SECT. 56. The reporter shall receive from the treasury of the commonwealth an annual salary of three hundred dollars, and in the same proportion for any part of a year; which, with the profits arising from the publication of his reports, shall be in full compensation for his services.

compensation of.  
R. S. 88, § 42.  
1843, 9, § 1.  
See Ch. 15, § 36.

## CHAPTER 122.

### SPECIAL PROVISIONS RESPECTING COURTS AND THE ADMINISTRATION OF JUSTICE.

SECTION

1. First day of term, how designated.
2. When justice may change time and place of court.
3. Change, how ordered, &c.
4. Courts not to be open Sunday, &c., unless, &c.
5. Sheriffs, &c., to serve processes.
6. Attorneys, &c., not to buy, &c., demands for collection.

SECTION

7. Penalty.
8. What courts may naturalize.
9. Proceedings to be in open court, &c.
10. Other courts not to receive applications, &c.
11. Penalty.
12. Who to act as eriers.
13. Judge, &c., not disqualified by interest as inhabitant of town, &c.

SECTION 1. In writs, processes, records, and judicial proceedings, civil and criminal, the day on which any term is to commence may be designated as the first, second, or other Monday, or other day in the week, in the month in which the same happens.

First day of term, how designated.  
R. S. 82, § 44.

SECTION 2. If by reason of war, pestilence, or other public calamity, it is unsafe or inexpedient to hold a court at the time and place appointed, a justice of the court may appoint another time and place within the same county for holding the same.

When justice may change time and place of court.  
R. S. 89, § 2.

SECTION 3. Such adjournment shall be made by an order in writing, signed by the justice or justices, and served by the person to whom it is directed by public proclamation, in the shire town or as near thereto as is safe, and also by publication in such newspaper or in such other manner, as required in the writ.

Change, how ordered, &c.  
R. S. 89, § 3.

SECTION 4. Courts shall not be opened on Sunday, Thanksgiving, Fast, Christmas day, the twenty-second day of February, the fourth day of July, or the following day when either of the two days last mentioned occurs on Sunday, unless for the purpose of entering or continuing cases,

Courts not to be open Sunday, &c., unless, &c.  
R. S. 89, § 4.  
1856, 113, § 1.  
2 Bay. 232.

13 Mass. 347.  
15 Johns. R.  
119, 177.

Sheriffs, &c., to  
serve process.  
R. S. 14, § 68; 83,  
§ 11; 84, § 3; 85,  
§ 30; 1856, 284,  
§ 8. 1 Gray, 53.

Attorneys, &c.,  
not to buy, &c.,  
demands for  
collection.  
R. S. 89, §§ 5, 6.  
13 Pick. 79.

Penalty.  
R. S. 89, § 7.

What courts  
may naturalize.  
1856, 47, § 1.  
1858, 44.

Proceedings to  
be in open  
court, &c.  
1856, 47, § 2.

Other courts  
not to receive  
applications,  
&c.  
1855, 28, § 1.  
1856, 47.  
5 Gray, 559.

Penalty.  
1855, 28, § 2.

Who to act as  
criers.  
1859, 207.

Judge, &c., not  
disqualified by  
interest as in-  
habitant of  
town, &c.  
R. S. 90, § 124.  
R. S. act of  
amend. § 13.  
11 Cush. 411.  
10 Cush. 494.

instructing or discharging a jury, receiving a verdict, or adjourning; but this section shall not prevent the exercise of the jurisdiction of any magistrate in criminal cases to preserve the peace or arrest offenders.

SECT. 5. Sheriffs, deputy-sheriffs, coroners, constables, and other officers, shall serve all lawful processes legally directed to them, issued by a court, judge, judicial officer, or county commissioners.

SECT. 6. Counsellors, attorneys, justices of the peace, sheriffs, deputy-sheriffs, coroners, or constables, shall not directly or indirectly buy or be interested in buying, or directly or indirectly loan or advance or agree to loan or advance any money or other goods, or give or promise any valuable consideration whatever to any person, as an inducement to place or in consideration of having placed in the hands of any person any bond, note, book debt, or right of action, for collection, with intent to make themselves any gain from the fees arising from such collection by a suit at law.

SECT. 7. Whoever commits either of the offences described in the preceding section shall for each offence forfeit a sum not less than twenty or exceeding five hundred dollars.

SECT. 8. The supreme judicial and superior courts shall respectively have jurisdiction of applications for naturalization.

SECT. 9. Proceedings upon such applications shall be had in open court, recorded and entered upon the docket of the term when the primary declaration is made, and also of the term when the final application is made.

SECT. 10. No other court established by this state shall entertain any primary or final declaration or application made by or in behalf of an alien to become a citizen of the United States, receive any registry of an alien, or entertain jurisdiction of the naturalization of aliens. Nor shall any clerk of such court receive such application or papers.

SECT. 11. If any clerk or other person shall record or file such application or declaration, or issue a certificate of naturalization, in violation of the provisions of the preceding section, he shall be punished by a fine of ten dollars.

SECT. 12. The clerks or assistant clerks of courts, sheriffs, or their deputies, as the court directs, shall perform the duties of criers, without additional compensation. But any officer may adjourn the court by order thereof.

SECT. 13. No person shall be disqualified from acting as judge, magistrate, appraiser, or officer of any kind, in a suit or proceeding in which any city or town is interested, by reason of his interest as an inhabitant thereof. And no juror shall be disqualified by reason of being an inhabitant of the city of Boston.



## TITLE II.

### OF ACTIONS AND PROCEEDINGS THEREIN.

- CHAPTER 123. — Of the Commencement of Actions and Service of Process.
- CHAPTER 124. — Of Arrest, Imprisonment, and Discharge.
- CHAPTER 125. — Of Bail.
- CHAPTER 126. — Of Proceedings against Absent Defendants, and upon Insufficient Service.
- CHAPTER 127. — Of Actions which survive, and the Death and Disabilities of Parties.
- CHAPTER 128. — Of Actions by and against Executors and Administrators.
- CHAPTER 129. — Of Pleadings and Practice.
- CHAPTER 130. — Of Set-off and Tender.
- CHAPTER 131. — Of Witnesses and Evidence.
- CHAPTER 132. — Of Juries.
- CHAPTER 133. — Of Judgment and Execution.

## CHAPTER 123.

### OF THE COMMENCEMENT OF ACTIONS AND SERVICE OF PROCESS

VENUE OF ACTIONS.	SECTION
SECTION	23, 24. Summons, how served.
1. Transitory actions, where to be brought.	25. if no personal service is made.
2. Actions concerning land in different counties, &c.	26. on absent defendant if co-defendant in the state, &c.
3. against counties, where to be brought.	27. in real actions against persons out of state.
4. by counties.	28. Defendant in all cases, if out of state, &c., to have further notice.
5. when certain corporations are parties.	29. Summons, how to be served on certain corporations.
6. by and against city of Boston.	30. how on other corporations.
7. if brought in county of Suffolk, may be removed to another county.	31. Service in suits in equity.
8. where to be brought for recovery of forfeitures.	
FORMS, ISSUING, AND RETURN, OF WRITS.	ATTACHMENT OF PROPERTY — GENERAL PROVISIONS.
9. Original writs in civil actions.	32. Property liable to attachment.
10. different kinds.	33. Successive attachments on same writ.
11. Separate summons, if property attached.	34. Proceeds of property attached and sold may be again attached.
12. When writ and summons may be combined.	35. Goods replevied from officer, liable to further attachment.
13. Writs in actions before justices of the peace.	36. Plaintiff in replevin liable for whole value.
14. Forms of writs, &c.	37. Goods may be further attached after death, &c., of first attaching officer.
15. to be under control of S. J. C.	38. Proceedings in such case.
16. Proceedings when defendant's name is unknown.	39. Mode of attaching goods replevied.
17. Writs, how issued.	40. Attachment to continue though attaching officer dies.
18. Subpœna in suits in equity, how issued.	41. of land that is mortgaged.
19. Writs to be returnable to the next ensuing term, &c.	42. Goods, &c., attached, held for thirty days after judgment. In Nantucket, &c., for sixty days in certain cases.
20. by persons out of state to be indorsed, &c.	43. Attachment dissolved by judgment for defendant.
SERVICE ON THE DEFENDANT.	
Original writs, when to be served.	
22. When, if against certain corporations.	

## SECTION

44. Judgment intended in two preceding sections.
45. Attachment dissolved by death of defendant, unless, &c.
46. Proceedings in such case.
47. Officer liable only for net proceeds.
48. Creditor liable therefor, if paid over to him.
49. No set-off allowed in such case.

## ATTACHMENT OF REAL ESTATE AND LEASEHOLD ESTATES.

50. Attachment, how made.
51. Copy of writ and officer's return to be deposited in clerk's office.
52. Officer's duty and fees.
53. Clerk's duty and fees.
54. When such attachment takes effect.
55. Attachment of real estate fraudulently conveyed, &c.
56. Clerk to enter name of persons having legal title, &c.

## ATTACHMENT OF GOODS, &amp;C., WHICH CANNOT BE REMOVED.

- 57, 58. Attachment of goods too bulky to be removed.

## ATTACHMENT OF SHARES IN CORPORATIONS.

- 59, 60. Shares in corporations, how to be attached.
61. Penalty on recording officer for refusal or false certificate.

## ATTACHMENT, &amp;C., OF PERSONAL PROPERTY MORTGAGED OR PLEDGED.

62. Attachment of mortgaged goods.
63. Mortgagee to state amount due him, &c.; liability of creditor.
64. Penalty for demanding too much.
65. Debt to be repaid out of proceeds of sales.
66. Or by mortgagor.
67. Personal property mortgaged in debtor's possession may be attached, and mortgagee summoned as trustee.
68. Court to ascertain what is justly due, and creditor to pay same to mortgagee, or attachment void.
69. Validity of mortgage may be denied by creditor, and tried by jury.
70. Creditor to retain amount paid by him, &c.
71. not recovering judgment, to hold property until repaid, &c.

## SALE, BY CONSENT, OF PERSONAL PROPERTY ATTACHED.

72. Goods attached may be sold by consent.

## PERISHABLE PROPERTY ATTACHED.

73. Property attached if perishable, &c., may be appraised and sold.
74. Proceedings upon application for appraisal.

## SECTION

75. Notice to defendant when out of the state.
76. Appraisers, how appointed.
77. Upon decision of appraisers, goods may be sold.
78. or delivered to defendant upon his depositing money or giving bond, &c.
79. Bond to be returned with the writ.
80. Action thereon to be brought by creditors.
81. Money recovered to belong to them.
82. to be distributed by court.
83. Prior attachments to be protected.
84. Creditor not joining in suit on bond, &c.
85. Limitation of action on bond, and of *scire facias* on judgment.
86. Creditor may be paid, leaving enough for prior attachments.

## JOINT PERSONAL PROPERTY ATTACHED ON A WRIT AGAINST PART OWNER.

87. Goods attached may be appraised at request of part owner not a defendant.
88. and delivered to such part owner upon his giving bond, &c.
89. If such part owner pays, the goods become pledged.
90. To be restored on dissolution of attachment.
91. Return of officer; and proceedings in suit upon bond.

## ATTACHMENTS DISPUTED BY PERSONS HAVING SUBSEQUENT LIENS, &amp;C.

92. Fraudulent attachments, how defeated.
93. Petition by the person objecting thereto.
94. to be supported by affidavit.
95. Prior attachment may be dissolved in case, &c. Questions of fact to be tried by jury.
96. Proceedings not affected by answer, &c., of defendant.
97. Grounds of defence in such case.
98. Damages and costs may be awarded.
99. Petitioner to give security for damages and costs.
100. Proceedings upon appeal.
101. Decision to bar action for fraud against prior attaching creditor.
102. To what cases applied.

## REDUCTION OF EXCESSIVE ATTACHMENTS.

103. Excessive attachments may be reduced on application to court.

## DISSOLUTION OF ATTACHMENTS BY GIVING BOND.

- 104, 105. Attachments dissolved by giving bond with sufficient sureties for payment of judgment.
106. Fees for approving bonds, &c.

## WHEN OFFICER TO ATTACH OR ARREST.

107. Plaintiff may direct the service of writs by attachment or arrest.

## VENUE OF ACTIONS.

SECT. 1. Transitory actions, except in cases in which it is otherwise provided, if any one of the parties lives in the state, shall be brought in the county where some one of them lives or has his usual place of business; and if brought in any other county the writ shall abate, and the defendant shall be allowed double costs. If neither party lives in the state the action may be brought in any county.

SECT. 2. Where a tract of land lies in different counties, any action concerning the same may be brought in either county, and the court may

Transitory actions, where to be brought. R. S. 90, §§ 14, 15. 1854, 322. 1856, 70. 4 Mass. 593. 21 Pick. 257. 3 Met. 209.

Action concerning land in dif-

6 Cush. 528. 10 Cush. 415. 6 Gray, 122.

allow amendments to declarations so as to include the whole tract; this provision shall not apply if a county, the city of Boston, or one of the corporations enumerated in section five, is a party.

SECT. 3. Actions, whether local or transitory, against the inhabitants of a county, shall be brought either in the county where the plaintiff lives or in the defendant county, or in a county adjoining thereto, at the plaintiff's election.

SECT. 4. Such actions by the inhabitants of a county shall be brought in the county in which the defendant lives, or in a county adjoining the plaintiff county; and when the defendant lives in the plaintiff county it shall be brought in an adjoining county.

SECT. 5. When a corporation, other than a county or the city of Boston, is a party to an action, it may be brought as follows, to wit:

First. When both parties are cities or towns, school districts, or parishes; in the county in which either of the cities, towns, school districts, or parishes, is situated:

Second. When it is between a city, town, school district, or parish, and a natural person; either in the county in which such city, town, school district, or parish, is situated, or in that in which the other party lives:

Third. When one of the parties is a corporation of any other description than is before mentioned in this section; in any county in which such corporation has an established or usual place of business, or has held its last annual meeting, or usually holds its meetings; or if the other party is a natural person, in the county where such person lives.

SECT. 6. Actions, suits, and prosecutions by and against the city of Boston may be brought in either of the counties of Suffolk, Essex, Middlesex, or Norfolk, or in the county where the plaintiff lives; but if brought by the city in the county of Suffolk, may be removed to one of the other of said counties, as provided in the following section.

SECT. 7. The defendant or tenant, at the term at which his appearance is entered, may file a motion in writing for the removal of the suit, and the court shall thereupon order it to be removed to the proper court in such one of the other of said counties as the attorney of the city of Boston elects. Said attorney shall enter the same accordingly in the court so designated, at the then next term, and file therein certified copies of the writ or other process and of the order of removal; and the proceedings shall be conducted in like manner as if the suit had been originally commenced in that county.

SECT. 8. Every civil action for the recovery of a forfeiture shall be brought in the county in which the offence was committed, unless a different provision is made in the statute imposing the forfeiture.

FORMS, ISSUING, AND RETURN, OF WRITS.

SECT. 9. Civil actions, except those founded on *scire facias* or other special writs, shall be commenced by original writs, which shall be signed, sealed, and bear teste, as required by the constitution.

SECT. 10. The original writ may be framed, either,—

To attach the goods or estate of the defendant, and for want thereof, to take his body; or,

It may be an original summons, with or without an order to attach the goods or estate.

SECT. 11. When goods or estates are attached on either of the writs before mentioned, there shall be a separate summons, to be served on the defendant after the attachment, and the service thereof shall be a sufficient service of the original summons.

SECT. 12. In actions against corporations, and in other cases in

ferent counties, &c. 1859, 37.

Actions against counties, where to be brought. R. S. 90, § 19.

by counties. R. S. 90, § 20.

when certain corporations are parties. R. S. 90, § 16. R. S. act of amend. § 12. 9 Mass. 321. 4 Met. 212. 4 Cush. 588. 6 Cush. 524. 5 Gray, 311.

by and against city of Boston. R. S. 90, §§ 120, 121. R. S. act of amend. § 13.

if brought in county of Suffolk, may be removed to another county. R. S. 90, §§ 122, 123. R. S. act of amend. § 13.

where to be brought for recovery of forfeitures. R. S. 90, § 17.

Original writs in civil actions. Const. Ch. 6, art. 5.

R. S. 90, § 1. different kinds thereof. R. S. 90, § 3. 13 Met. 475.

Separate summons, if properly attached. R. S. 90, § 4. 13 Met. 375.

When writ and



summons may be combined.  
R. S. 90, § 5.  
See Ch. 123, § 5.

Writs in actions before justices of the peace.  
R. S. 90, § 7.

Forms of writs, &c.  
1784, 28.  
R. S. 90, § 8.  
3 Mass. 196.

to be under control of S. J. C.  
R. S. 90, § 9.

Proceedings when defendant's name is unknown.  
R. S. 90, § 54.  
10 Met. 436.

Writs, how issued. Const. Ch. 6, art. 5.  
R. S. 82, § 35 ; 90, §§ 2, 6 ; act of amend. § 9.  
1859, 196.  
8 Cush. 556.

Subpœna in equity suits, how issued.  
R. S. 90, § 118.  
5 Pick. 360.  
See Ch. 113, § 3.

Writs to be returnable to the next ensuing term, &c.  
R. S. 90, § 116.  
1859, 196.

by persons out of state to be indorsed, &c.  
R. S. 90, §§ 10, 11.  
R. S. 100, § 28.  
R. S. 112, § 24.  
3 Greenl. 27.  
5 Greenl. 313.  
8 Greenl. 286.  
9 Greenl. 51.  
6 Mass. 494.  
8 Pick. 25.  
11 Pick. 66.  
12 Pick. 569.

which goods and estate may be attached, but in which the defendant is not liable to arrest, the writ of attachment and original summons may be combined in one, requiring the officer to attach the goods and estate, and to summon the defendant.

SECT. 13. Original writs in actions before justices of the peace shall be signed by the justice before whom the action is brought, and shall be dated and filled up like the other writs before mentioned.

SECT. 14. The forms of writs in civil actions shall be the same as heretofore established by law and the usage and practice of the courts; but alterations may be made or allowed by the courts, when necessary to adapt them to changes in the law, or for other sufficient reasons.

SECT. 15. All changes in the forms of writs shall be subject to the final control of the supreme judicial court; and said court may by general rules regulate such changes in all the courts.

SECT. 16. When the name of a defendant is not known to the plaintiff, the writ may be issued against him by a fictitious name, and if duly served, shall not be abated for that cause, but may be amended on such terms as the court deems reasonable.

SECT. 17. Original writs in the supreme judicial court and all writs and processes in the superior court shall be signed and may be issued in term time or vacation by the clerk, may be returnable to the same court in any other county, may run into any county, and shall be executed and obeyed throughout the state.

SECT. 18. The subpœna on bills in equity shall be issued from the clerk's office either in term time or vacation, upon a bill there filed, shall bear teste of the first justice of the court who is not a party to the suit, and shall be under the seal of the court and signed by the clerk.

SECT. 19. Original writs issuing from the supreme judicial court, or superior court, if required to be served fourteen days before the return day, shall be made returnable at the court next to be held after the expiration of fourteen days from the date of the writ; and if required to be served thirty days before the return day, shall be made returnable at the court next to be held after the expiration of thirty days from the date of the writ: *provided*, that writs and processes of the supreme judicial court may be made returnable at any adjourned term, in like manner as at a term established by law.

SECT. 20. Original writs, writs of *audita querela*, *scire facias* by private persons on judgment or recognizance, writs of error in civil cases, petitions for certiorari, and bills in equity, in which the plaintiff is not an inhabitant of the state, shall before the entry thereof be indorsed by some sufficient person who is such inhabitant; but if one of the plaintiffs is an inhabitant of the state the process need not be so indorsed. Every indorser, in case of avoidance or inability of the plaintiff, shall be liable to pay all costs awarded against the plaintiff, if the suit therefor is commenced within one year after the original judgment.

18 Pick. 226. 3 Met. 59. 8 Cush. 98. 11 Cush. 89. See Ch. 129, § 29.

#### SERVICE ON THE DEFENDANT.

Original writs, when to be served.  
R. S. 85, § 8.  
R. S. 90, § 21.  
1859, 196.  
5 Met. 334.

SECT. 21. Original writs issuing from the supreme judicial court, or superior court, shall be served fourteen days at least before the term at which they are returnable, and original writs issued by a police court or justice of the peace shall be served not less than seven and not more than sixty days before the day on which they are returnable.

When, if against certain corporations.  
R. S. 90, § 22.  
5 Mass. 100.

SECT. 22. When an action is brought against a county, city, town, precinct, parish, religious society, or school district, or against proprietors of common and undivided lands, or general fields or wharves lying in common, the writ shall be served thirty days at least before the return day.

SECT. 23. When there is a separate summons to be served after an attachment of goods or estate, it shall be served by delivering the summons to the defendant or leaving it for him as hereinafter directed; and when there is an original summons without an attachment, it shall be served by reading it to the defendant, or by delivering to him a copy thereof attested by the officer who serves it, or by leaving such copy for him as hereinafter directed.

Summons, how served.  
R. S. 90, § 39  
13 Met. 475.

SECT. 24. The separate summons may be served at any time after the attachment is made: *provided*, it is served the number of days at least before the return day required with respect to the service of the original writ, and the certificate of the service of the summons shall be indorsed on the original writ.

same subject.  
R. S. 90, § 40.

SECT. 25. If the summons is not served personally on the defendant, the original or a copy, as the case may be, shall be left at his last and usual place of abode if he has any within the state known to the officer, and if he has none it shall be left with his tenant, agent, or attorney, if he has any within the state known to the officer. If he has no such last and usual place of abode, and no tenant, agent, or attorney, no service on him shall be required, except as is provided in the three following sections.

if no personal service is made.  
R. S. 90, §§ 41, 45.  
5 Met. 400.  
6 Cush. 354.

SECT. 26. If an absent defendant whose goods or estate are attached is sued with one or more others on a joint contract, and he has no such last and usual place of abode, and no tenant, agent, or attorney, within the state, the summons for him, or a copy, as the case may be, shall be left with one of the co-defendants, if there be any within the state.

on absent defendant, if co-defendant in the state, &c.  
R. S. 90, § 46.  
6 Cush. 354.  
3 Gray, 508.

SECT. 27. In real actions, if the defendant or tenant in the action is out of the state and has no last and usual place of abode here known to the demandant, the summons or an attested copy shall, in addition to any other service required, be left for him with the tenant or occupant of the demanded premises if there is any, and if not, in some conspicuous place on the premises.

in real actions against persons out of state.  
R. S. 90, § 47.  
11 Met. 370.  
2 Cush. 32.

SECT. 28. In all cases when the defendant is out of the state or his place of residence is not known to the officer, and no personal service is made on him, he shall, in addition to the service as herein prescribed, be entitled to further notice of the suit as provided in chapter one hundred and twenty-six.

Defendant in all cases, if out of state, &c., to have further notice.  
R. S. 90, § 48.  
6 Cush. 354.  
11 Met. 370.

SECT. 29. In suits against a county the summons shall be served by leaving an attested copy thereof with one of the county commissioners, or with one of the officers who by law exercise the powers of county commissioners. In suits against a city, town, precinct, parish, religious society, or school district, or against the proprietors of common and undivided lands, or general fields or wharves lying in common, the summons shall be served by leaving an attested copy thereof with the clerk of the corporation or proprietors, and another like copy with the mayor or one of the aldermen or one of the selectmen of the city or town, or one of the assessors or standing committee of the parish or religious society, or one of the proprietors of such land or other estate, as the case may be; and if there is no such clerk found within the county, the copy shall be left with one of the other officers before mentioned, or with one of said proprietors; and if there are no such officers, the copy shall be left with one of the inhabitants of the city or town or one of the members of the corporation.

Summons, how to be served on certain corporations.  
R. S. 90, § 42.

SECT. 30. In suits against a corporation other than those mentioned in the preceding section, the summons shall be served by leaving the original or copy, as the case may be, with the clerk, cashier, secretary, agent, or any other officer having charge of its business; and if there is no such officer found within the county, the summons may be served on any member of the corporation.

how, on other corporations.  
R. S. 90, § 43.



Service in suits in equity.  
R. S. 90, §§ 118, 119.

SECT. 31. Every writ of original summons or subpoena issued in suits in equity shall be served in the same manner and the same number of days, at least, before the day on which it is returnable, as would be required for the service of an original writ at common law between the same parties.

ATTACHMENT OF PROPERTY — GENERAL PROVISIONS.

Property liable to attachment.  
R. S. 90, §§ 23, 24, 1853, 269, § 2, 1859, 183, 5 Greenl. 453, 7 Mass. 123, 11 Mass. 184, 13 Mass. 128, 17 Mass. 409, 3 Pick. 368, 11 Pick. 341, 2 Met. 510, See Ch. 103; Ch. 118, § 78; Ch. 133, §§ 27-32.  
Successive attachments on same writ.  
R. S. 90, § 55.

SECT. 32. All real estates, goods, and chattels, liable to be taken on execution, (except such goods and chattels as, from their nature or situation, have been considered as exempt according to the principles of the common law as adopted and practised in this state,) may be attached upon the original writ, in any action in which debt or damages are recoverable, and held as security to satisfy such judgment as the plaintiff may recover; *provided*, that no attachment of lands or tenements shall be made on a writ returnable before a justice of the peace, or police court, unless the debt or damage demanded therein exceed twenty dollars.

SECT. 33. Different attachments may be made successively upon the same writ by one or more officers and in one or more counties, at any time before the service of the summons; but no further attachment shall be made after the summons is served.

Proceeds of property attached and sold may be again attached.  
R. S. 90, §§ 71, 72.  
See §§ 72, 73.

SECT. 34. When goods are sold or disposed of, by consent of the parties or after an appraisal as hereinafter provided, the proceeds while remaining in the hands of the officer shall be liable to be further attached by him as the property of the original defendant in like manner as the goods themselves would have been liable if they had remained in the possession of the officer; and the proceeds so attached shall be held and disposed of in the same manner as if the attachment had been made on the goods themselves before the sale thereof. But this shall not prevent the officer from paying over to the defendant the surplus of the proceeds of such sale, after retaining enough to satisfy all the attachments actually existing at the time of such payment.

Goods replevied from officer liable to further attachment.  
R. S. 90, § 99.

SECT. 35. All goods taken by replevin from an officer who has attached them shall be considered as still remaining in his custody and control so far as to be liable to further successive attachments, in like manner as if the goods themselves had remained in his possession.

Plaintiff in replevin liable for whole value.  
R. S. 90, § 100.

SECT. 36. If there is judgment for a return of the goods so replevied, the plaintiff in the replevin and his sureties shall be liable for the whole of the goods, or the value thereof, although the attachment for which they are eventually held was made after the taking of the goods by the replevin.

Goods may be further attached, after death, &c., of first attaching officer.  
R. S. 90, § 101.

SECT. 37. If an officer after making an attachment of goods dies or is removed from office while the attachment remains in force, the same goods, whether replevied or remaining in possession of the officer or of his executors or administrators, may be further attached by any other officer so as to bind the goods or the proceeds thereof, in like manner as if the latter attachment had been made by the first-mentioned officer.

Proceedings in such case.  
R. S. 90, §§ 102, 103.

SECT. 38. The officer making the latter attachment in such case shall not take the goods themselves, but the attachment shall be made by a return setting forth an attachment in the common form and stating by whom the goods were previously attached, and, if the goods have not been replevied, by leaving a certified copy of the writ, (without the declaration,) and of the return of that attachment, with the former officer if living, or if he is dead with his executor or administrator, or whoever else then has possession of the goods; or if the goods have been replevied and the officer who made the original attachment is dead, such copy shall be left with the plaintiff in replevin, or his executors or



administrators, and the attachment shall be considered as made when such copy is delivered in either of the modes before provided.

SECT. 39. Goods taken by replevin from an attaching officer shall not be further attached as the property of the original defendant, in any other manner than that provided in the four preceding sections, so long as they are held by the person who replevied them, or by any one holding under him, unless the original defendant has acquired a new title to the goods.

Mode of attaching goods replevied.  
R. S. 90, § 104.

SECT. 40. Goods and chattels attached by an officer, whether remaining in his custody at the time of his death or taken from him by replevin or otherwise, and also all claims for damages to goods so taken from him, shall remain subject to the attachment in like manner as if the officer had lived, and shall not be considered as assets in the hands of his executors or administrators.

Attachment to continue, though attaching officer dies.  
R. S. 90, § 95.

SECT. 41. If real estate that is attached is subject to a mortgage or other encumbrance, and the mortgage is redeemed or the encumbrance removed before the levy of the execution, the attachment shall hold the premises discharged of the mortgage or encumbrance, and the execution may be levied in the same manner and with the same effect as if the mortgage or other encumbrance had never existed.

of land that is mortgaged.  
R. S. 90, § 32.  
10 Mass. 424.  
13 Mass. 51.  
2 Met. 510.

SECT. 42. If final judgment in any case is rendered for the plaintiff, the goods and estate attached shall be held for thirty days after the judgment, in order to their being taken on execution; and if the attachment is made in the county of Nantucket and the judgment is rendered in any other county, or if the judgment is rendered in Nantucket and the attachment is made in any other county, the goods and estate shall be held for sixty days after final judgment, unless in either case the attachment has been dissolved as hereinafter provided.

Goods, &c., attached held for thirty days after judgment. In Nantucket, &c., for sixty days, in certain cases.  
R. S. 90, § 25.

SECT. 43. If the final judgment is for the defendant, the attachment shall be forthwith dissolved.

R. S. 90, § 26.

Attachment dissolved by judgment for defendant.

SECT. 44. The final judgment intended in the two preceding sections is that which is rendered in the original action, whether upon appeal or otherwise, and not such as may be rendered upon a writ of error or writ of review.

4 Mass. 99. 9 Mass. 241.

Judgment intended in two preceding sections.  
R. S. 90, § 27.

SECT. 45. When real estate, goods, chattels, or effects, are attached, and the debtor dies before they are taken or seized on execution, the attachment shall be dissolved if administration of the estate of the deceased is granted in this state within one year after his decease, or if application therefor is made within said year and administration is afterwards granted upon such application. If no such administration is granted, the property attached shall continue bound by the attachment in like manner as if the debtor were still living.

Attachment dissolved by death of defendant, unless, &c.  
R. S. 90, § 105.  
7 Mass. 254.  
9 Mass. 209.  
7 Pick. 239.  
11 Cush. 463.  
6 Gray, 114, 523.

SECT. 46. When the attachment is of goods, the officer shall upon demand deliver them to the executor or administrator, if any is appointed in this state within the time limited in the preceding section, upon receiving from the executor or administrator his legal fees and charges for attaching and keeping the goods.

Proceedings in such case.  
R. S. 90, § 106.  
5 Met. 356.

SECT. 47. If the officer has sold the goods on execution before such demand, or if he has sold in like manner any other chattel interest, or any right of redeeming real estate attached as aforesaid, he shall not be considered a trespasser for so doing; but he shall be liable only for the proceeds of the sale after deducting his legal fees and charges for attaching, keeping, and selling, the goods, and such proceeds may be recovered by the executor or administrator in an action of contract for money had and received.

Officer liable only for net proceeds.  
R. S. 90, § 107.  
1852, 312.

SECT. 48. If the officer in such case has paid over the proceeds of the sale to the judgment creditor before such demand, he shall be exempt from all further liability therefor, and the executor or administrator, if appointed as before provided, may recover from the judgment

Creditor liable therefor, if paid over to him.  
R. S. 90, § 108.  
1852, 312.

creditor the amount so paid to him, in an action of contract for money had and received.

No set-off allowed in such case.  
R. S. 90, §109.

SECT. 49. The defendant, in an action founded on either of the three preceding sections, shall not be allowed in any manner to set off a demand against the executor or administrator, or against the estate of the deceased.

ATTACHMENT OF REAL ESTATE AND LEASEHOLD ESTATES.

Attachment, how made.  
R. S. 90, § 31.  
1847, 267, § 3.  
5 Greenl. 453.  
13 Mass. 128.  
11 Pick. 341.  
11 Met. 235.

Copy of writ and officer's return to be deposited in clerk's office.  
R. S. 90, § 28.  
1839, 89.  
1847, 267, § 3.  
1 Met. 212.  
2 Met. 486.  
10 Met. 142.  
11 Met. 244.

Officer's duty and fees.  
1838, 186.  
1839, 89.  
1847, 267, § 3.  
2 Met. 486.  
5 Met. 517.

Clerk's duty and fees.  
R. S. 90, § 30.  
1856, 209.

1860 Ch. 70  
When such attachment takes effect.  
R. S. 90, § 29.

Attachment of real estate fraudulently conveyed, &c.  
1844, 107, § 2.  
1855, 453.

Clerk to enter name of persons having legal title, &c.

SECT. 50. In attaching real estate or any right or interest in land, it shall not be deemed necessary that the officer should enter upon the land or be within view of it. In attaching leasehold estates the officer shall state in his return in general terms the leasehold property attached.

SECT. 51. No attachment of real estate or of any leasehold estates on mesne process shall be valid against a subsequent attaching creditor, or against a person who afterwards purchases the same for a valuable consideration and in good faith, unless the original writ or a copy thereof, and so much of the officer's return thereon as relates to the attachment of the estate, is deposited in the office of the clerk of the courts for the county in which the lands lie, or in the office of the clerk of the supreme judicial court if the lands lie in the county of Suffolk, which copy shall be certified by the officer, but need not contain the declaration in the writ.

SECT. 52. Every officer making such attachment shall deposit the writ or copy in the clerk's office according to the provisions of the preceding section; and he shall be entitled to receive four cents a mile for his travel from the place of service to the office of the clerk, together with his fee for the copy.

SECT. 53. The clerk shall note on every such writ or copy the day, hour, and minute, when he receives it, and shall file the same in his office. He shall also enter in a book to be kept for that purpose the name of the plaintiff and name of each defendant whose estate is attached, the time when the attachment was made, and the time when the writ or copy was deposited. His fee in each case shall be twenty-five cents, for which he shall not be holden to render any account, and which shall be paid on the delivery of the writ or copy, and may be taxed for the plaintiff in his bill of costs.

SECT. 54. If the writ or copy is deposited as aforesaid within three days after the day on which the attachment is made, the attachment shall take effect from the time it was made, otherwise from the time when the writ or copy is so deposited.

SECT. 55. When an attachment on mesne process is made of real estate or any right or interest therein which has been fraudulently conveyed by the debtor to a third person; or which has been purchased or the purchase money of which has been directly or indirectly paid by the debtor and the title thereto retained in the vendor or conveyed to another person, with the design and for the purpose of fraudulently securing the same from attachment by a creditor of such debtor, or with the intent and for the purpose of delaying, defeating, or defrauding, creditors; it shall not be valid against a subsequent attaching creditor, or against a person who afterwards purchases the estate for a valuable consideration and in good faith, unless the officer in addition to the return required by the preceding sections also returns a brief description of the estate attached, by its locality, situation, boundaries, or otherwise, as known to him, and the name or names of the person or persons in whom the record or legal title stands.

SECT. 56. The clerk in such case, in addition to the names of the parties to the writ which he is required to enter as provided in section fifty-three, shall also enter in his book of attachments the names of the



persons in whom the record or legal title stands as returned by the officer, in the same manner as if the estate of such persons were attached as defendants in the writ. 1844, 107, § 3.

ATTACHMENT OF GOODS, &C., WHICH CANNOT BE REMOVED.

SECT. 57. When an attachment is made of articles of personal estate which by reason of their bulk or other cause cannot be immediately removed, a certified copy of the writ, (without the declaration,) and of the return of the attachment, may at any time within three days thereafter be deposited in the office of the clerk of the city or town in which it is made; and such attachment shall be equally valid and effectual as if the articles had been retained in the possession and custody of the officer. Attachment of goods too bulky to be removed. R. S. 90, §§ 33, 34. 8 Pick. 402. 2 Met. 36. 4 Cush. 425. See Ch. 133, § 42.

SECT. 58. The clerk shall receive and file all such copies, noting thereon the time when received, and keep them safely in his office, and also enter a note thereof, in the order in which they are received, in the books kept for recording mortgages of personal property; which entry shall contain the names of the parties to the suit and the date of the entry. The clerk's fee for this service shall be twenty-five cents, to be paid by the officer and included in his charge for the service of the writ. Same subject. R. S. 90, § 35.

ATTACHMENT OF SHARES IN CORPORATIONS.

SECT. 59. The share or interest of a stockholder in any corporation organized under authority of this state may be attached by leaving an attested copy of the writ, (without the declaration,) and of the return of the attachment, with the clerk, treasurer, or cashier, of the company, if there is such officer; otherwise with any officer or person who has at the time the custody of the books and papers of the corporation. Shares in corporations, how to be attached. R. S. 40, § 13. R. S. 90, § 36. See Ch. 133, § 42.

SECT. 60. Any share or interest so attached, with all the dividends thereafter accruing thereon, shall be held as security to satisfy the final judgment in the suit, in like manner as any other personal estate is held. Same subject. R. S. 90, § 37. See Ch. 133, § 48.

SECT. 61. If the officer having a writ of attachment against such stockholder exhibits the writ to the officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, and requests a certificate of the number of shares or amount of the interest held by the defendant in the suit, such officer of the company shall give such certificate to the officer holding the writ. If he unreasonably refuses to do so, or if he wilfully gives a false certificate thereof, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in an action of tort, unless the judgment is satisfied by the original defendant. Penalty on recording officer for refusal or false certificate. R. S. 90, § 38. 1852, 312. See Ch. 133, § 46.

ATTACHMENT, &C., OF PERSONAL PROPERTY MORTGAGED OR PLEDGED.

SECT. 62. Personal property of a debtor that is subject to a mortgage, pledge, or lien, and of which the debtor has the right of redemption, may be attached and held in like manner as if it were unencumbered: *provided*, the attaching creditor pays or tenders to the mortgagee, pawnee, or holder, of the property, the amount for which it is so liable, within ten days after the same is demanded. 1 Cush. 278. 6 Cush. 106. 4 Gray, 550. Attachment of mortgaged goods. R. S. 90, § 78. 1844, 148, § 1. 1 Pick. 399. 3 Met. 268. 11 Met. 226. 13 Met. 204.

SECT. 63. Every such mortgagee, pawnee, or holder, shall, when demanding payment of the money due to him, state in writing a just and true account of the debt or demand for which the property is liable to him, and deliver it to the attaching creditor or officer. If the same is not paid or tendered to him within ten days thereafter, the attachment shall be dissolved and the property shall be restored to him; and the attaching creditor shall moreover be liable to him for any damages he has sustained by the attachment. Mortgagee to state amount due him, &c. R. S. 90, § 79. 1844, 148, § 1. 23 Pick. 321. 1 Met. 172, 294, 325, 515. 3 Met. 144. 10 Met. 7, 487. 3 Cush. 306, 575. 1 Gray, 254. 3 Gray, 490.



Penalty for demanding too much.  
R. S. 90, § 80.  
1852, 312.

SECT. 64. If he demands and receives more than the amount due to him, he shall be liable for the excess, with interest thereon at the rate of twelve per cent. a year, to be recovered by the attaching creditor in an action of contract for money had and received.

Debt to be repaid out of proceeds of sales.  
R. S. 90, § 81.

SECT. 65. When property attached and redeemed as aforesaid is sold on mesne process or on execution, the proceeds thereof, after deducting the charges of the sale, shall be first applied to repay the attaching creditor the amount so paid by him, with interest.

or by defendant.  
R. S. 90, § 82.

SECT. 66. If the plaintiff after having redeemed the goods does not recover judgment in the suit, he shall nevertheless be entitled to hold the goods until the defendant repays to him the sum which he paid for the redemption, or as much thereof as the defendant would have been obliged to pay to the mortgagee, pawnee, or holder, of the goods, if they had not been attached, with interest from the time when the same is demanded of the defendant.

Personal property mortgaged in debtor's possession may be attached, and mortgagee summoned, &c.  
1844, 148, § 2.  
3 Cush. 306.  
6 Cush. 100.

SECT. 67. Personal property of a debtor subject to a mortgage, and being in the possession of the mortgagor, may be attached in the same manner as if it was unencumbered; and the mortgagee or his assigns may be summoned in the same action in which the property is attached, as the trustee of the mortgagor or his assigns, to answer such questions as may be put to him or them by the court or their order touching the consideration of the mortgage and the amount due thereon.

Court to ascertain what is justly due, and creditor to pay same to mortgagee, or attachment void.  
1844, 148, § 3.

SECT. 68. If upon such examination, or verdict of a jury as herein-after provided, it appears to the court that the mortgage is *bona fide*, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the mortgagee or his assigns within such time as it orders; and if the attaching creditor does not pay or tender the sum within the time prescribed, the attachment shall be void and the property be restored.

Validity of mortgage may be denied by creditor, and tried by jury.  
1844, 148, § 4.

SECT. 69. If the attaching creditor denies the validity of the mortgage and moves that the same may be tried by a jury, the court shall order such trial on an issue to be framed under the direction of the court, and if upon such examination or verdict the mortgage is adjudged valid, the mortgagee or his assigns shall recover his costs.

Creditor to retain amount paid by him, &c.  
1844, 148, § 5.

SECT. 70. When the creditor has paid to the mortgagee or his assigns the sum directed by the court, he shall be entitled to retain out of the proceeds of the property attached, when sold, the sum so paid with interest, and the balance shall be applied to the payment of his debt.

not recovering judgment, to hold property until repaid, &c.  
1844, 148, § 6.

SECT. 71. If the attaching creditor after having paid the sum directed by the court does not recover judgment in the suit, he shall nevertheless be entitled to hold the property until the debtor has repaid the sum so paid by order of court, with interest.

#### SALE BY CONSENT OF PERSONAL PROPERTY ATTACHED.

Goods attached may be sold by consent.  
R. S. 90, § 57.  
17 Pick. 429.  
1 Met. 34.  
4 Met. 437, 504.  
6 Met. 94.  
10 Met. 236.  
4 Cush. 393.  
See § 34.  
Ch. 133, §§ 34-42.

SECT. 72. When personal property is attached, whether on one or more writs, and the debtor and all the attaching creditors consent in writing to the sale, the attaching officer shall sell it in the manner prescribed by law for selling like property on execution; and the proceeds of the sale, after deducting the necessary charges, shall be held by the officer subject to the attachments, and shall be disposed of in like manner as the property would have been held and disposed of if it had remained unsold.

#### PERISHABLE PROPERTY ATTACHED.

Property attached if perishable, &c., may

SECT. 73. When an attachment is made of live animals, or of goods or chattels which are liable to perish, waste, or be greatly reduced in

value by keeping, or which cannot be kept without great and disproportionate expense, and the parties do not consent to a sale thereof as before provided, the property so attached shall upon the request of either of the parties interested be examined, appraised, and sold or otherwise disposed of, in the manner following.

be appraised and sold.  
R. S. 90, § 58.  
18 Pick. 407.  
See § 34.

SECT. 74. Upon such application made by either party to the attaching officer, he shall give notice to all the other parties or their attorneys, prepare a schedule of the goods, and cause three disinterested persons acquainted with the nature and value of such goods to be appointed and sworn before a magistrate, or the attaching officer, to the faithful discharge of their duty as appraisers.

Proceedings upon application for appraisement.  
R. S. 90, § 59.  
1852, 1, § 3.

SECT. 75. If the defendant is not within the state and has no attorney therein, the notice shall be left in writing at his last and usual place of abode in the state if he has any, otherwise it shall be delivered to, or left at the dwelling-house or place of business of, the person who had possession of the property at the time of the attachment.

Notice to defendant when out of the state.  
1837, 185.

SECT. 76. The appraisers shall be appointed, one by the creditor or creditors in the several suits, one by the debtor or debtors, and one by the officer; and if the debtors or creditors respectively neglect to appoint such appraiser, or do not agree in the nomination, the officer shall appoint one in their behalf.

Appraisers, how appointed.  
R. S. 90, § 60.

SECT. 77. The appraisers shall examine the attached property, and if they are of opinion that the same or any part thereof is liable to perish or waste, or to be greatly reduced in value by keeping, or that it cannot be kept without great and disproportionate expense, they shall proceed to appraise the same according to the best of their skill and judgment at the value thereof in money; and the goods shall thereupon be sold by the officer and the proceeds held and disposed of in the manner before provided in the case of a sale by consent of parties, unless the goods are taken by the debtor as provided in the following section.

Upon decision of appraisers, goods may be sold.  
R. S. 90, § 61.  
4 Cush. 393.  
See § 72.

SECT. 78. The goods so appraised shall be delivered to the debtor, if he requires it, upon his depositing with the attaching officer the appraised value thereof in money, or giving bond to him in a sufficient penalty and with two sufficient sureties, conditioned to pay to him the appraised value of the goods or satisfy all such judgments as may be recovered in the suits in which the goods were attached, if demanded within the time during which the goods would have been held by the respective attachments, or within thirty days after the time when the creditors respectively would have been entitled to demand payment out of the proceeds of the goods if they had been sold as before provided.

or delivered to defendant upon his depositing money or giving bond, &c.  
R. S. 90, § 62.

SECT. 79. The officer taking such bond shall return the same with the writ on which the first attachment is made, in like manner as bail bonds are returned, with a certificate of his doings in relation thereto, and if the bond is forfeited, the creditors or any of them may bring an action of contract thereon in the name of the officer.

Bond to be returned with the writ.  
R. S. 90, § 63.  
1852, 312.

SECT. 80. The writ in such action shall in addition to the usual indorsement have also indorsed on it the names of the creditors by whom the action is brought; and if judgment is rendered for the defendants, executions for the costs shall be issued against all the creditors whose names are so indorsed.

Action thereon to be brought by creditors.  
R. S. 90, § 64.

SECT. 81. If judgment is rendered for the plaintiff, the money recovered shall be first applied, under the order of the court, to pay the reasonable expenses of prosecuting the suit, so far as the same are not reimbursed by the costs recovered of the defendant; and the residue shall belong to all the attaching creditors according to their respective rights.

Money recovered, to belong to them.  
R. S. 90, § 65.

SECT. 82. The court may upon a hearing in equity determine the rights of the several attaching creditors, and award a separate execution

to be distributed by court.  
R. S. 90, § 66.

for the amount due or payable to each, to be served and levied to his own use in the manner provided when a judgment is rendered on an administration bond; or they may award one execution for the whole sum due on the bond, and cause the money received to be distributed among the creditors according to their respective rights.

Prior attachments to be protected.  
R. S. 90, § 67.

SECT. 83. No judgment or execution shall be awarded for the use of a creditor without reserving as much as may be due upon any prior attachment, whether the creditor in such prior suit is or is not one of those by whom the action is brought on the bond.

Creditor not joining in suit on the bond, &c.  
R. S. 90, § 68.

SECT. 84. Any creditor entitled to the benefit of the bond who has not joined in bringing the action thereon, may bring a writ of *scire facias*, on the judgment, and recover any sum due to him upon the bond; or he may upon motion, at any time before final judgment, be allowed upon such terms as the court prescribes to become a party to the action, as if he had been one of those by whom it was originally brought.

Limitation of action on bond, and of *scire facias* on judgment.  
R. S. 90, § 69.

SECT. 85. No creditor whose cause of action on such bond accrued more than one year before the commencement of the action, shall have judgment or execution in such action, and no creditor shall sue out a writ of *scire facias* on the judgment, unless within one year after his cause of action accrues.

Creditor may be paid, leaving enough for prior attachments.  
R. S. 90, § 70.

SECT. 86. When goods which are sold or appraised and delivered to the debtor in the manner before provided are attached by several creditors, any one of them may demand and receive satisfaction of his judgment notwithstanding a prior attachment, if he is otherwise entitled to demand the money, and if a sufficient sum of the proceeds of the goods, or of the appraised value, is left to satisfy all prior attachments.

#### JOINT PERSONAL PROPERTY ATTACHED ON A WRIT AGAINST PART OWNER.

Goods attached may be appraised at request of part owner not a defendant.  
R. S. 90, § 73.  
2 Met. 36.  
7 Gray, 416.

SECT. 87. When personal property belonging to two or more persons is attached in a suit against one or more of the part owners thereof, it shall, upon the request of any other of the part owners, be examined and appraised in the manner before provided for an appraisement when made at the request of a party in the suit; except that the part owner who makes the application shall appoint one of the appraisers, and the debtor shall not appoint any.

and delivered to such part owner upon his giving bond, &c.  
R. S. 90, § 74.

SECT. 88. The property so appraised shall be delivered to the part owner at whose request it was appraised, upon his giving bond to the attaching officer, in a sufficient penalty and with two sufficient sureties, conditioned to restore the same in like good order, or to pay the officer the appraised value of the defendant's share or interest therein, or satisfy all such judgments as may be recovered in the suit in which it is attached, if demanded within the time during which the property would have been held by the respective attachments.

If such part owner pays, the goods become pledged.  
R. S. 90, § 75.

SECT. 89. If such appraised value or any part thereof is so paid, the defendant's share of the property shall thereby become pledged to the party to whom it was delivered, and he may sell it, if not redeemed, and shall account to the defendant for the balance of the proceeds of the sale.

To be restored on dissolution of attachment.  
R. S. 90, § 76.

SECT. 90. If the attachment is dissolved, the party to whom the defendant's share was delivered shall restore the same to the defendant, or to the officer to be by him delivered to the defendant.

Return of officer, and proceedings in suit upon bond.  
R. S. 90, § 77.

SECT. 91. The doings of the officer, together with the bond, shall be returned by him in the manner before provided in the case of a bond given by a debtor upon the delivery to him of property attached; and upon the forfeiture of such bond like proceedings may be had as are provided upon the forfeiture of the bond given by a debtor.



ATTACHMENTS DISPUTED BY PERSONS HAVING SUBSEQUENT LIENS, &c.

SECT. 92. When a person claims title or interest by force of a subsequent attachment, purchase, or mortgage, or in any other manner, in any estate real or personal that is attached in a suit between other persons, he may dispute the validity and effect of the prior attachment, on the ground that the sum demanded in the first suit was not justly due, or was not payable when the action was commenced.

Fraudulent attachments, how defeated.  
R. S. 90, § 83.  
19 Pick. 3s1.  
9 Met. 69.

SECT. 93. The person objecting to the attachment may file his petition in the court in which the first suit is pending, at any time before final judgment therein, praying that the prior attachment may be dissolved, and setting forth the facts and circumstances on which his petition is founded, and the grounds of his own claim.

Petition by the person objecting thereto.  
R. S. 90, § 84.

SECT. 94. The petitioner or some person in his behalf shall make oath that his claim is just and legal, and that all the other facts set forth in the petition are true, or are believed by the deponent to be so.

to be supported by affidavit.  
R. S. 90, § 85.

SECT. 95. The court upon the hearing of the petition shall at the motion of either party direct a trial by jury of any question of fact arising in the inquiry, and if it appears to the court that any part of the sum demanded in the prior suit is not justly due, or was not payable when the action was commenced, it shall order the attachment therein made to be dissolved in whole or in part as justice requires; but such order shall have no other effect on the prior suit.

Prior attachment may be dissolved in case, &c.  
R. S. 90, § 86.  
5 Pick. 410.  
8 Pick. 165.  
12 Pick. 199.

SECT. 96. The proceedings between the two adverse claimants or plaintiffs shall not be affected by any answer, plea, or other act, of the defendant in the prior suit, nor by the judgment rendered therein.

Proceedings not affected by answer, &c., of defendant.  
R. S. 90, § 88.

SECT. 97. No attachment shall be dissolved in manner aforesaid by reason of any defence to the action founded on the laws for the limitation of actions, restraining usury, requiring certain contracts to be made in writing, or of any other like defence, if it appears to the court that the demand is otherwise well founded, and is justly and equitably due.

Grounds of defence in such case.  
R. S. 90, § 89.

SECT. 98. The court may upon such inquiry award to either party reasonable costs; and if the prior attachment is maintained, the courts may award to the attaching creditor reasonable damages, and execution may be issued for such costs and damages.

Damages and costs may be awarded.  
R. S. 90, § 90.  
2 Met. 229.

SECT. 99. The court shall also, upon the filing of the petition, require a bond or recognizance of the petitioner, or of some person in his behalf, with sufficient surety or sureties, conditioned to pay to the adverse party all such damages and costs as may be awarded to him in the proceedings upon the petition.

Petitioner to give security for damages and costs.  
R. S. 90, § 91.

SECT. 100. If, during the pendency of the proceedings, the action in which the attachment is made is carried to a higher court, the inquiry concerning the attachment shall be carried to the same court, and there heard and determined as if the action had been originally commenced there.

Proceedings upon appeal.  
R. S. 90, § 92.

SECT. 101. The decision or judgment of the court upon such an inquiry, whether the attachment is thereby vacated or held to be valid and effectual, shall be a bar to any action brought by the petitioner against the party who made the attachment, for any supposed fraud or deceit therein.

Decision to bar action against prior attaching creditor for fraud.  
R. S. 90, § 93.

SECT. 102. Nothing contained in the ten preceding sections shall apply to any action commenced before a justice of the peace or police court.

To what cases applied.  
R. S. 90, § 94.  
6 Gray, 528.

REDUCTION OF EXCESSIVE ATTACHMENTS.

SECT. 103. If an excessive attachment of goods or estate is made on mesne process, the defendant may apply in writing, in any county, to a justice of the court to which such process is returnable, for a

Excessive attachments may be reduced on application to court.

1852, 312, § 59. reduction of the amount of the attachment; and such justice shall order a notice to the plaintiff, returnable before himself or any other justice of the same court as speedily as circumstances permit. If, upon summarily hearing the parties, it is found that the attachment is excessive, the justice shall order it to be reduced, or a part of the goods or estate to be released, and thereafter the attachment shall be deemed to be reduced or partially released, according to such order.

DISSOLUTION OF ATTACHMENTS BY GIVING BOND.

Attachments dissolved by giving bond, with sufficient sureties, for payment of judgment.  
 1838, 163, § 20.  
 1842, 71.  
 1850, 27, § 1.  
 1851, 327, § 18.  
 1 Cush. 535.  
 3 Cush. 189.  
 7 Cush. 333.  
 6 Gray, 112.

SECT. 104. Any person or corporation whose goods or estate are attached on mesne process in a civil action may, at any time before final judgment, dissolve such attachment, by giving bond, with sufficient sureties, to be approved by the plaintiff or his attorney in writing, or by a master in chancery, with condition to pay to the plaintiff the amount, if any, that he may recover within thirty days after the final judgment in such action. No sureties shall be deemed sufficient unless satisfactory to the plaintiff, or it is made clearly to appear to the master that each one, if there are only two, is worth, above what will pay his debts, a sum equal to that for which the attachment is laid; or, if there are more than two, that they are together worth twice such sum.

Same subject.  
 1846, 122.  
 1850, 27, § 1.  
 See Ch. 131,  
 §§ 18-21.

SECT. 105. Before such bond is approved by a master, the party whose goods or estate are attached, or some one in his behalf, shall make application in writing to a master, specifying therein the names and places of residence of the persons proposed as sureties. The same notice of the time and place of the hearing thereon shall be given to the plaintiff or his attorney, as is required in taking depositions; but the plaintiff or his attorney may in writing waive such notice, or may approve the bond at any time.

Fees for approving bonds, &c.  
 1850, 27, § 2.

SECT. 106. The fees of the master for approving a bond shall be one dollar for the hearing and decision, and fifty cents for the citation. If the attachment is dissolved, such fees shall be taxed in the defendant's costs, if he prevails in the suit.

WHEN OFFICER TO ATTACH OR ARREST.

Plaintiff may direct the service of writs, by attachment or arrest.  
 R. S. 90, § 56.  
 4 Mass. 60.

SECT. 107. When the writ requires the officer to attach the goods or estate of the defendant, and for want thereof to take his body, the plaintiff or his attorney may by written or verbal directions require the officer to serve the writ, by an attachment of goods or estate or by arresting the defendant, and the officer shall serve the writ according to such directions, if it is in his power to do so.

CHAPTER 124.

OF ARREST, IMPRISONMENT, AND DISCHARGE.

ARREST ON MESNE PROCESS AND EXECUTION.

SECTION

1. Arrest on mesne process in actions of contract.
2. in actions of tort.
3. not in actions for slander.

SECTION

4. Officer need not arrest without order.
5. Arrest on execution.
6. on execution for costs.
7. of woman.
8. No arrest after sunset.

DISCHARGE OF PERSONS ARRESTED ON MESNE PROCESS AND EXECUTION.

SECTION

9. Defendant, when arrested, to be allowed time to procure bail, &c.; to be carried before magistrate.
10. If defendant or debtor desires to take oath, but does not wish time fixed, &c., magistrate may take recognizance, &c.
11. A person surrendered, &c., may recognize anew.
12. When defendant or debtor desires to take oath, notice to be given.
13. Service of notice.
14. New notice not to be given until after seven days, unless, &c.
15. Defendant or debtor to be examined.
16. Examination may be adjourned, &c.
17. Pending examination, recognizance may be taken, &c. No recognizance after oath has been refused.
18. Defendant may be discharged if he was not intending to leave the state. Proceedings.
19. Examination concerning ability to pay, &c.
20. Debtor not entitled to oath, if he mispends his property, &c.
21. If magistrate is satisfied, &c., he may administer oath.
22. Certificate of magistrate and effect of discharge. Death of creditor not to affect proceedings.
23. Debtor on bail, &c., may be discharged, &c.
24. not entitled to oath, after *scire facius*, until payment of costs.

IMPRISONMENT.

25. Debtor, when arrested on mesne process in an action of tort, &c., may be committed, &c.
26. on execution, &c., may be committed, &c.
27. support of, in jail.
28. creditor may discharge.
29. goods and estate of, to remain liable.
30. liable for all sums paid for his support.

PUNISHMENT OF FRAUDULENT DEBTORS.

SECTION

31. When fraud is charged, debtor to plead, &c.
32. Either party may appeal.
33. Proceedings on appeal.
34. Upon default or conviction debtor may be denied oath, &c.

DISCHARGE OF PERSONS IMPRISONED ON WARRANTS OF DISTRESS IN FAVOR OF THE STATE.

- 35, 36, 37. Proceedings when committed on warrant of distress in favor of state.

DISCHARGE OR REMOVAL OF INSANE PERSONS IMPRISONED IN CIVIL CASES.

38. Insane debtors, how released from confinement on mesne process or execution.
39. Legal rights of creditors not affected.

SPECIAL PROVISIONS FOR PERSONS IN PRISON OR ON BAIL IN CIVIL ACTIONS WHEN JUDGMENT IS RECOVERED AGAINST THEM.

40. Discharge of persons in jail or on bail when final judgment is rendered against them.
- 41, 42. Proceedings when execution issues.
43. Bond may be given by person surrendered by bail after final judgment.
44. Debtor may be committed within thirty days after judgment.

SURRENDER OF PRINCIPAL ON RECOGNIZANCES.

45. Proceedings when principal is surrendered on recognizance.

REMEDY ON RECOGNIZANCES AND BONDS, AND FOR ESCAPES.

46. Remedy on recognizances and bonds.
47. for an escape.

FEEES.

48. Fees of magistrate.
49. of the judge, under section thirty-eight.
50. of jailer.

ARREST ON MESNE PROCESS AND EXECUTION.

SECTION 1. No person shall be arrested on mesne process in an action of contract, unless the plaintiff or some person in his behalf makes affidavit and proves to the satisfaction of some justice of a court of record, police court, judge of a probate court, master in chancery, commissioner of insolvency, and except in the county of Suffolk, trial justice, or of any justice of the peace:—

Arrest on mesne process in actions of contract. 1857, 141, § 17. 1859, 166, § 3. See Ch. 17, § 60. Ch. 52, § 26; Ch. 118, § 78; Ch. 165, § 36.

First. That he has a good cause of action, and reasonable expectation of recovering a sum amounting to twenty dollars, exclusive of all costs which have accrued in any former action:

Second. That he believes, and has reason to believe, the defendant has property not exempt from being taken on execution, which he does not intend to apply to the payment of the plaintiff's claim: and

Third. That he believes, and has reason to believe, that the defendant intends to leave the state, so that execution if obtained cannot be served upon him:

Or, (instead of the second and third,) that the defendant is an attorney at law; that the debt sought to be recovered is for money collected by the defendant for the plaintiff; and that the defendant unreasonably neglects to pay the same to the plaintiff.

And such affidavit and the certificate of the magistrate that he is satisfied the same is true shall be annexed to the writ.



Arrest on mesne process in actions of tort.  
1855, 249, § 1.  
7 Gray, 51.  
See Ch. 17, § 60.  
Sec Ch. 165, § 36.

SECT. 2. No person shall be arrested on mesne process in an action of tort unless the plaintiff or some person in his behalf makes oath to the satisfaction of some magistrate named in section one, that he believes, and has reason to believe, that he has a good cause of action against the defendant, that he has a reasonable expectation of recovering a sum equal at least to one-third the damages claimed in the writ, and that he has reason to believe that the defendant is likely to remove beyond the jurisdiction of the court to which the writ is returnable, so that execution, if obtained, cannot be served upon him; and such affidavit with a certificate of the magistrate that he is satisfied the same is true shall be annexed to the writ.

not in actions for slander.  
1855, 249, § 2.  
Officer need not arrest without order.  
R. S. 90, § 110.

SECT. 3. No person shall be arrested on mesne process in a civil action for slander or libel.

SECT. 4. The officer who serves an original writ shall not be liable for not having arrested the defendant unless he has been expressly required by the plaintiff or his attorney to make the arrest.

Arrest on execution.  
1857, 141, §§ 1, 2, 3.  
1859, 166, § 2.  
See Ch. 17, § 60.  
Ch. 118, § 78.  
Ch. 165, § 36.

SECT. 5. No person shall be arrested on an execution issued for debt or damages in a civil action, except in actions of tort, unless the judgment creditor or some person in his behalf, after execution is issued amounting to twenty dollars exclusive of all costs, which make part of said judgment, whether the same have accrued in the last action or any former action on the same original cause of action, and while so much as that amount remains uncollected, makes affidavit and proves to the satisfaction of some magistrate named in section one; or if the execution was issued by a justice of the peace the affidavit may be made before him:

First. That the debtor has property not exempt from being taken on execution, which he does not intend to apply to the payment of the plaintiff's claim; or,

Second. That since the debt was contracted, or the cause of action accrued, the debtor has fraudulently conveyed, concealed, or otherwise disposed of some part of his estate, with a design to secure the same to his own use or defraud his creditors; or,

Third. That since the debt was contracted, or the cause of action accrued, the debtor has hazarded and paid money or other property to the value of one hundred dollars or more in some kind of gaming prohibited by the laws of this state; or,

Fourth. That since the debt was contracted the debtor has wilfully expended and misused his goods or estate, or some part thereof, for the purpose of enabling himself to swear that he has not any estate to the amount of twenty dollars except such as is exempt from being taken on execution; or,

Fifth, (if the action was founded on contract.) That the debtor contracted the debt with an intention not to pay the same; or,

Sixth. That the debtor is an attorney at law; that the debt upon which the judgment on which the execution issued was for money collected by the debtor for the creditor, and that said attorney unreasonably neglects to pay the same. And such affidavit and the certificate of the magistrate that he is satisfied there is reasonable cause to believe the charges therein contained, or some one of them, are true, shall be annexed to the execution.

on execution for costs.

SECT. 6. No affidavit shall be required to authorize arrest upon an execution issued for costs only, but the debtor arrested shall be committed thereon, unless he requires the officer to take him before some magistrate authorized by this act, and all other proceedings in relation to such debtor so arrested shall be in conformity with the provisions of this chapter relative to arrests on other executions.

of woman.  
1857, 141, § 20.

SECT. 7. No woman shall be arrested on any civil process except for tort.

1860 Ch. 213

SECT. 8. No arrest shall be made after sunset, unless specially authorized by the magistrate making the certificate, upon satisfactory cause shown.

No arrest after sunset.  
1857, 141, § 30.

DISCHARGE OF PERSONS ARRESTED ON MESNE PROCESS AND EXECUTION.

SECT. 9. When arrested on mesne process the defendant shall be allowed reasonable time to procure bail, and when arrested on such process in an action of contract, or on execution, he shall be allowed reasonable time to procure sureties for his recognizance hereinafter mentioned. When arrested on mesne process in an action of contract, if he does not give bail, and when arrested on execution in any case, he shall be taken before some justice of a court of record, police court, judge of a probate court, master in chancery, commissioner of insolvency, and except in the county of Suffolk, trial justice or two justices of the quorum.

When arrested, to be allowed time to procure bail, &c.  
To be carried before magistrate.  
1857, 141, §§ 4, 18, 22.  
1857, 258, § 1.  
7 Gray, 381.

SECT. 10. When taken before the magistrate, if the defendant or debtor desires to take an oath as hereinafter mentioned, but does not desire any time fixed for his examination, the magistrate may take his recognizance with surety or sureties in a sum not less than double the amount of the execution, or of the *ad damnum* in the writ, if he is arrested on mesne process, that within thirty days from the day of his arrest he will deliver himself up for examination before some magistrate authorized to act, giving notice of the time and place thereof as herein provided, and appear at the time fixed for his examination, and from time to time until the same is concluded, and not depart without leave of the magistrate, making no default at any time fixed for his examination, and abide the final order of the magistrate thereon: *provided*, that if he is arrested on mesne process and the writ is returnable within thirty days, the number of days within which he shall deliver himself up shall be limited by the magistrate so as not to extend beyond the return day of the writ.

If defendant or debtor desires to take oath, but does not wish time fixed, &c., magistrate may take recognizance, &c.  
1857, 141, §§ 10, 18.  
7 Gray, 548.

SECT. 11. A person taken on execution and recognizing for his appearance to take the oath for the relief of poor debtors, may if surrendered by his surety recognize anew for such appearance at the time, place, and upon the conditions, expressed in the first recognizance.

A person surrendered, &c., may recognize anew.

SECT. 12. If the defendant or debtor when taken before the magistrate or at any time when entitled thereto desires to take an oath as hereinafter provided and to have a time fixed therefor, the magistrate shall appoint a time and place for his examination and issue notice thereof to the plaintiff or creditor, signed by him and designating his official capacity, substantially in the following form:—

When defendant or debtor desires to take oath, notice to be given.  
1857, 141, §§ 4, 5, 18, 20.  
8 Cush. 289.  
1 Gray, 170.

To A—— B——: C—— D——, arrested on mesne process (or execution) in your favor, desires to take the oath for the relief of poor debtors, (or, if arrested on mesne process in an action of contract, the oath that he does not intend to leave the state,) at (naming the day and hour and place.)

E—— F——, (Magistrate.)

Notice may be given that the defendant arrested on mesne process as aforesaid desires to take both of said oaths, and the form of notice be varied accordingly.

SECT. 13. The notice shall be served by any officer qualified to serve civil process, by giving to the plaintiff or creditor, his agent or attorney, an attested copy thereof, or by leaving such copy at the last and usual place of abode of the plaintiff or creditor, his agent or attorney, allowing not less than one hour before the time appointed for the examination, and time for travel at the rate of not less than one day for every twenty-four miles' travel. When there is more than one person plaintiff or creditor, or more than one agent or attorney, service on one shall be sufficient. When the plaintiff or creditor is dead or not a resident in

Service of notice.  
1857, 141, §§ 4, 5.  
7 Met. 287.  
11 Met. 77.  
7 Cush. 263, 265.  
6 Gray, 251.

1861 Ch. 112



the county where the arrest is made, the notice shall be served upon the agent or attorney if he lives in the county or has his usual place of business therein; but if no such agent or attorney is found within the county, the notice may be served on the officer who made the arrest. The person who made the writ may always be regarded as the attorney of the plaintiff or creditor when an arrest is made on the writ or any execution issued thereon.

New notice not to be given until after seven days, unless, &c.  
1857, 141, § 27.

SECT. 14. When a defendant or debtor has given notice of his desire to take the oath for the relief of poor debtors, no new notice of the same shall be given until the expiration of seven days from the service of the former notice, unless the former notice was insufficient in form or service.

1860 Ch. 213  
Defendant or debtor to be examined.  
1857, 141, §§ 6, 7.  
6 Gray, 251.

SECT. 15. When the notice mentioned in section twelve has been duly served, the magistrate who issued it, or any other magistrate named in section one, shall attend at the time and place therein specified and examine the defendant or debtor as herein provided.

Examination may be adjourned, &c.  
1857, 141, § 7.

SECT. 16. The magistrate may adjourn the case from time to time, and shall have the same powers with respect to all other incidents thereto, as justices of the peace or other courts have in civil actions; and witnesses duly summoned shall attend as required in civil cases.

1 Allen 262  
Pending examination, recognizance may be taken, &c. No recognizance after oath has been refused.  
1857, 141, §§ 10, 18.

SECT. 17. Pending the examination and at any time after the defendant or debtor is carried before a magistrate, the magistrate may accept his recognizance with surety or sureties in a sum not less than double the amount of the execution, or of the *ad damnum* in the writ if he is arrested on mesne process, that he will appear at the time fixed for his examination, and from time to time until the same is concluded, and not depart without leave of the magistrate, making no default at any time fixed for his examination, and abide the final order of the magistrate thereon. No recognizance under this chapter, except in case of appeal under section thirty-three, shall be accepted at any time after the oath has been once refused to the debtor.

Defendant may be discharged if he was not intending to leave the state. Proceedings.  
1857, 141, § 20.

SECT. 18. If the defendant, arrested on mesne process in an action of contract, has given notice that he desires to take an oath that he does not intend to leave the state, he shall be examined in relation thereto, and any legal and pertinent evidence may be introduced by either party. If the magistrate is satisfied that the defendant did not, when arrested, and does not at the time of examination, intend to leave the state, he shall make certificate thereof, and discharge the defendant from arrest.

Examination concerning ability to pay, &c.  
1857, 141, §§ 6, 18.

SECT. 19. If the defendant or debtor has given notice that he desires to take the oath for the relief of poor debtors, the magistrate shall examine him on oath concerning his estate and effects, the disposal thereof, and his ability to pay the debt or satisfy the cause of action for which he is arrested; and shall hear any legal and pertinent evidence that may be introduced by either party. The plaintiff or creditor may upon such examination propose to the defendant or debtor any interrogatories pertinent to the inquiry, and the examination shall, if required by either party, be in writing, in which case it shall be signed and sworn to by the defendant or debtor and preserved by the magistrate.

Debtor not entitled to oath if he misspends his property, &c.  
1857, 141, § 16.

SECT. 20. If any person, arrested on execution, after such arrest, misspends or misuses his goods, effects, or credits, to the amount of forty dollars, not exempt from being taken on execution, but which cannot be attached by ordinary process of law, or so much as is equal to the sum for which he is arrested or committed, without having first offered the same to the arresting creditor in satisfaction or part satisfaction of his debts, he shall not be entitled to the benefit of the oath for the relief of poor debtors.

If magistrate is satisfied, &c., he may administer oath.

SECT. 21. If, upon the examination, the magistrate is satisfied of the truth of the facts set forth in the oath to be taken by the defendant or debtor, and in the certificate to be made by the magistrate, and it



appears to him that the defendant or debtor is entitled to his discharge under the provisions of this chapter, the magistrate shall administer to him the following

*Oath for the Relief of Poor Debtors.*

I (here repeat the name) do solemnly swear that I have not any estate, real or personal, to the amount of twenty dollars, except the estate, goods, and chattels, which are by law exempt from being taken on execution; and that I have not any other estate now conveyed, concealed, or in any way disposed of, with the design to secure the same to my own use or to defraud my creditors: So help me, God.

Form of oath.

SECT. 22. After administering the oath the magistrate shall make a certificate thereof under his hand, as follows, to wit:—

Certificate of magistrate and effect of discharge. Death of creditor not to affect proceedings. 1857, 141, §§ 9, 19.

S——, ss. I hereby certify, that A—— B——, a poor prisoner, arrested upon execution, (or on mesne process in an action of contract,) has caused E—— F——, the creditor (or plaintiff) at whose suit he is arrested, to be notified according to law of his desire to take the benefit of the law for the relief of poor debtors; that in my opinion said A—— B—— has not any estate, real or personal, to the amount of twenty dollars, except the estate, goods, and chattels, which are by law exempt from being taken in execution; and has not any other estate now conveyed, concealed, or in any way disposed of, with design to secure the same to his own use or defraud his creditors. And I have after due examination of said A—— B——, administered to him the oath for the relief of poor debtors.

Witness my hand, this —— day of ——, in the year ——.

A—— B——, (Magistrate.)

Upon taking the oath, the defendant or debtor shall be discharged from arrest or imprisonment, and shall be forever exempt from arrest on the same execution, or any process founded on the judgment, or on the same cause of action, unless convicted of having wilfully sworn falsely on his examination. If he is arrested or committed on execution, the judgment shall remain in full force against his estate, and the creditor may take out a new execution against his goods and estate as if he had not been committed; and if he is committed on mesne process, any execution which may afterwards issue on a judgment for the same cause of action, shall issue against his goods and estate, and not against his body. The death of the execution creditor shall not affect any proceedings instituted under the provisions of this chapter.

SECT. 23. When a person has given bail or is imprisoned on mesne process in an action of contract, or is arrested or imprisoned on any execution, he may be discharged in the same manner, and subject to the same provisions of law, so far as applicable, as a person arrested on an execution mentioned in section five.

Debtor on bail, &c., may be discharged, &c. 1857, 141, § 23. 1857, 258.

SECT. 24. No debtor shall be entitled to the benefit of the oath for the relief of poor debtors after a writ of *scire facias* on the bail bond given by him in the original action has been served upon his bail, unless he pays all costs which have accrued on such *scire facias*.

not entitled to oath, after *scire facias*, until payment of costs. 1857, 141, § 23.

IMPRISONMENT.

SECT. 25. If the defendant when arrested on mesne process in an action of tort shall not give bail; or when arrested on mesne process in an action of contract and carried before the magistrate, does not desire to take an oath, or fails to recognize to the satisfaction of the magistrate as before provided, and does not give bail; or if on his examination he does not swear to the satisfaction of the magistrate that he does not intend to leave the state, and the oath for the relief of poor debtors is refused him, the magistrate shall make a certificate thereof, and the defendant shall be conveyed to jail and there kept until final judgment in the suit in which he was arrested. If the final judgment is against him, he shall be held for thirty days thereafter, in order that he may be taken on execution: unless (if the oath for the relief of poor debtors has not been refused him) he recognizes as aforesaid or gives bail, or

when arrested on mesne process in an action of tort, &c., may be committed, &c. 1857, 141, §§ 21, 22. 2 Gray, 210.

bond as provided in section forty, or takes the oath for the relief of poor debtors, or an oath that he does not intend to leave the state, or is discharged by the plaintiff.

A debtor arrested on execution, &c., may be committed, &c. 1857, 141, § 11.

SECT. 26. If the debtor arrested on execution and taken before the magistrate does not desire to take the oath for the relief of poor debtors, or fails to procure surety or sureties to the satisfaction of the magistrate as before provided, or if upon his examination said oath is refused to him, of which refusal a certificate shall be annexed to the execution and signed by the magistrate, he shall be conveyed to jail, and there kept until he has recognized as herein provided, (if the oath for the relief of poor debtors has not been refused him,) or the execution is satisfied, or until he is released by the creditor, or has given notice as before provided and taken the oath for the relief of poor debtors.

support of, in jail. 1857, 141, § 25.

SECT. 27. When a person confined in close prison on mesne process or execution in any civil action claims support as a pauper, the jailer shall furnish his support at the rate of one dollar and seventy-five cents a week, to be paid by the creditor. The plaintiff or creditor in such case shall, if required by the jailer, either from time to time advance the money necessary for the support of the prisoner, or give the jailer satisfactory security therefor. If the plaintiff or creditor neglects so to do for twenty-four hours after demand, the jailer may discharge the prisoner. Such demand may be made of the officer who made the commitment, or of the plaintiff or creditor or his attorney, at any time after the prisoner has claimed such support.

creditor may discharge. R. S. 97, § 58.

SECT. 28. If a debtor committed on execution claims support as a pauper, the creditor may at any time thereafter order him to be discharged.

goods and estate of, to remain liable. R. S. 97, § 59. 9 Cush. 290.

SECT. 29. When a debtor is so discharged by order of the creditor, or by the jailer for want of security or an advance of money as before provided, the debt and costs with all sums paid by the creditor for his support in prison shall remain a legal claim against his goods and estate, and may be enforced accordingly in the same manner as if he had not been committed on the execution; but his body shall never thereafter be liable to arrest or imprisonment for the same debt, costs, or charges.

liable for all sums paid for support. R. S. 97, § 60.

SECT. 30. If the debtor undertakes to satisfy the execution, he shall not be entitled to his discharge therefrom until he has paid all charges for his support in prison, both upon the arrest on the original writ and upon the commitment on execution, in addition to the sum due on the execution and the costs and charges thereon.

#### PUNISHMENT OF FRAUDULENT DEBTORS.

When fraud is charged, debtor to plead, &c. 1857, 141, §§ 12, 18. 1 Gray, 172.

SECT. 31. When either of the charges named in section five, numbered second, third, fourth, fifth, and sixth, is made as therein provided, or when the plaintiff or creditor or any one in his behalf, at any time pending the examination of the defendant or debtor who has given notice of his desire to take the oath for the relief of poor debtors, files such charges in writing, subscribed and sworn to by the plaintiff or creditor or some person in his behalf, the charges shall be considered in the nature of a suit at law, to which the defendant or debtor may plead that he is guilty or not guilty, and the magistrate may thereupon hear and determine the same. The plaintiff or creditor shall not upon such hearing give evidence of any charges of fraud not so made or filed, nor of any fraudulent acts of the debtor committed more than three years before the commencement of the original action.

Either party may appeal.

SECT. 32. When the hearing is had on the charges of fraud mentioned in the preceding section, and judgment is rendered thereon by

the magistrate, either party may appeal to the superior court, in like manner as from the judgment of a justice of the peace in civil actions. And the trial in the court appealed to shall be by a jury, unless the court with the consent of both parties hears and determines it without a jury.

1857, 141, § 13.  
1859, 196.

SECT. 33. If the plaintiff or creditor appeals, he shall before the allowance of the appeal recognize with sufficient surety or sureties to enter and prosecute his appeal with effect, to produce at the court appealed to a copy of all the proceedings upon said charges, and to pay all costs if judgment is not reversed. If the defendant or debtor appeals, he shall recognize in like manner and with the further condition that if final judgment is against him he will within thirty days thereafter surrender himself to be taken on execution and abide the order of the court, or pay to the plaintiff or creditor the whole amount of the original judgment against him.

Proceedings on appeal.  
1857, 141, § 14.

SECT. 34. If the defendant or debtor after either of said charges has been made or filed against him voluntarily makes default at any time appointed for the hearing, or if upon a final trial he is found guilty of any of them, he shall have no benefit from the proceedings under this chapter, and may be sentenced, by the magistrate or court before whom the trial is had, to confinement at hard labor in the house of correction for a term not exceeding one year, or to confinement in jail not exceeding six months.

Upon default or conviction debtor may be denied oath, &c.  
1857, 141, § 15.  
9 Met. 447.  
3 Gray, 318.  
See Ch. 125, § 1.

DISCHARGE OF PERSONS IMPRISONED ON WARRANTS OF DISTRESS IN FAVOR OF THE STATE.

SECT. 35. When a person committed to prison on a warrant of distress in favor of the commonwealth is unable to pay the debt for which he is imprisoned, he shall be entitled to his discharge in like manner as poor debtors arrested on execution; and all the proceedings shall conform as nearly as may be to the provisions of law in relation to such debtors, except as hereinafter provided.

Proceedings when committed on warrant of distress in favor of state.  
1855, 276, §§ 1, 2.

SECT. 36. If he represents to the jailer that he is desirous to take the oath for the relief of poor debtors, the jailer shall make the same known to some magistrate mentioned in section one. The magistrate shall thereupon appoint a time and place for the examination of the debtor, and shall notify the district-attorney for the district by a notice which shall be served on him by an attested copy thereof in hand, or by leaving the same at his usual place of abode, thirty days at least before the time appointed for the examination.

Same subject.  
1855, 276, §§ 2, 3.  
7 Cush. 536.

SECT. 37. When the place appointed for the examination is out of the city or town where the district-attorney resides, or he from any cause is unable to attend the examination, he may appoint counsel in his stead; and for such attendance by himself or counsel, suitable allowance shall be made by the superior court for the county.

Same subject.  
1855, 276, § 5.

DISCHARGE OR REMOVAL OF INSANE PERSONS IMPRISONED IN CIVIL CASES.

SECT. 38. When a person confined in jail on mesne process or execution is supposed to be insane, and thereby rendered incapable of taking the oath for the relief of poor debtors, any person interested for his removal from jail on account of his supposed insanity may apply by petition to the judge of the probate court for the county in which he is imprisoned, setting forth the facts. The judge shall appoint a time and place for a hearing and examination in the premises, and shall order notice thereof to be given to the creditor or his attorney seven days previously to the time appointed. If satisfied upon the exami-

Insane debtors, how released from confinement on mesne process or execution.  
1845, 320, § 1.



nation that the person is insane, the judge may order his discharge or removal to either of the state lunatic hospitals, or to such other place as is provided by law for insane persons in any city or town in the state.

Legal rights of creditor not affected. 1848, § 20, § 3.

SECT. 39. When a person is so discharged or removed from jail, the legal rights of the creditor shall not be affected thereby, but shall remain as though no commitment had taken place.

SPECIAL PROVISIONS FOR PERSONS IN PRISON OR ON BAIL IN CIVIL ACTIONS WHEN JUDGMENT IS RECOVERED AGAINST THEM.

Discharge of persons in jail or on bail when final judgment is rendered against them. 1837, 198, § 1. 1857, 141.

SECT. 40. Every person held in prison in a civil action at the time when final judgment in such action is rendered against him, shall be discharged upon giving to the creditor a bond with sufficient surety or sureties to be approved by some magistrate named in section one, in a penalty not less than double the amount of the judgment, with condition that he shall surrender himself at the same prison, to the keeper thereof, between the hours of eight and ten o'clock of the forenoon of the thirtieth day next after the rendition of said judgment, or if said thirtieth day falls on Sunday, on the next following day, which day shall be specified in the bond, and there remain until five o'clock of the afternoon of the same day, so that he may be taken on the execution issuing on said judgment.

Proceedings when execution issues. 1837, 198, § 3. 1857, 141, § 3.

SECT. 41. If an execution issuing on such judgment amounting to twenty dollars exclusive of costs, and while so much as that amount remains uncollected, is delivered to an officer qualified to serve the same, with the affidavit required for the arrest of a debtor on execution, he may at any time within thirty days after the rendition of the judgment on which the same is issued leave said execution, or a copy thereof, with the jailer; and in such case the debtor shall upon the surrender of himself as provided in said bond be committed and held by the jailer upon the execution in like manner as if he had been taken and committed thereon by the officer to whom the execution was delivered. The officer shall return the taking and commitment in like manner, and be entitled to the same fees, as if the execution had been served in the common form.

Same subject. 1837, 198, §§ 3, 4.

SECT. 42. The jailer shall immediately after the expiration of said term of thirty days certify under his hand, upon the execution or copy so left with him, the fact that such debtor has or has not surrendered himself, according to the truth of the case, and give a similar certificate to the officer on request, to be annexed to his return on the execution; and such certificate shall be deemed sufficient authority to the officer to make his return accordingly. Such return with the certificate annexed shall be deemed *prima facie* evidence of the fact, as well on the question of breach of condition of the bond as in other cases. If the jailer gives a false certificate, it shall be deemed misconduct in office, for which any party injured shall have a remedy in damages.

Bond may be given by person surrendered by bail after final judgment. 1837, 198, § 5.

SECT. 43. If a person who has given bail on mesne process in a civil action is surrendered by his bail after final judgment in such action, he shall be enlarged upon giving to the creditor a bond like that before prescribed in section forty, except that the condition thereof shall be for his surrender at the same prison on the thirtieth day next after the surrender by his bail. The particular day on which the same will fall, and where there is more than one prison in the same county the particular prison at which the surrender is to be made, shall be specified in the condition of the bond. All the other provisions relating to the bond mentioned in section forty shall apply to the bond prescribed in this section.

Debtor may be committed within thirty

SECT. 44. Nothing contained in the four preceding sections shall prevent an officer from taking the debtor and committing him to prison

on such execution at any time within said thirty days after the rendition of judgment or surrender by the bail, as he might have done if such bond had not been given. And the commitment of the debtor in such case shall be deemed equivalent to his surrender according to the condition of his bond, and shall discharge the same.

days after judgment.  
1837, 198, § 6.

SURRENDER OF PRINCIPAL ON RECOGNIZANCES.

SECT. 45. Whoever recognizes as surety for another as provided in this chapter, may at any time before breach of recognizancee surrender his principal and exonerate himself from all further liability, in the manner provided for the surrender by bail, and all the proceedings on such surrender shall be the same as provided in the case of bail.

Proceedings when principal is surrendered on recognizance.  
1857, 141, § 26.  
See Ch. 125.

REMEDY ON RECOGNIZANCES AND BONDS, AND FOR ESCAPES.

SECT. 46. When any recognizance or bond taken under this chapter is broken, the creditor may have a remedy thereon by action of contract, to be commenced within one year after such breach; and judgment shall be entered for the amount of the penalty, but execution shall issue for so much thereof only as may be justly and equitably due: *provided*, that if the recognizance was taken on an execution, the execution shall not issue for less than the amount due on the original judgment, with all the lawful costs and charges arising after the issuing of the original execution.

Remedy on recognizances and bonds.  
1837, 198, § 2.  
1857, 141, § 28.

SECT. 47. When an escape is made by a prisoner arrested or committed on execution in a civil action, whether the escape be negligent or voluntary on the part of the officer, the creditor may in an action of tort against the officer recover such damages as he has suffered by the escape, and may also have his remedy against the original debtor by a *scire facias*, or an action of contract on the judgment.

for an escape.  
R. S. 97, §§ 71, 72.  
1852, 312.  
2 Gray, 214.

FEES.

SECT. 48. The fees of the magistrate shall be: for hearing an application for a certificate to arrest, one dollar; for approving sureties and taking a recognizance after arrest, one dollar; for an examination, two dollars for each day spent therein. And the plaintiff or creditor causing an arrest shall pay these fees in advance. If the oath is not administered, they shall be allowed as part of the service of the writ or execution. If the plaintiff or creditor shall, at any time after request, make default in payment of the fees, or if the plaintiff or creditor, or some one in their behalf, shall not attend the examination, the defendant or debtor shall, without examination and without payment of any fees, be discharged from arrest or imprisonment, and shall be forever exempt from arrest on the same execution or any process founded on the judgment; and a certificate of such discharge under the hand of the magistrate shall be annexed to the writ or execution: *provided*, that if, after the oath shall have been once refused, the defendant or debtor shall again apply for the benefit of the same, the fees for such subsequent application and examination thereon shall be paid by him. The fee of a magistrate for approving a bond under the provisions of sections forty and forty-three shall be one dollar, to be paid by the applicant.

Fees of magistrate.  
1855, 249, § 1.  
1855, 276, § 6.  
1857, 141, § 29.

SECT. 49. The fee of the judge for receiving a petition, issuing the order of notice, and for the examination and adjudication under the provisions of section thirty-eight, shall be five dollars, to be paid by the petitioner.

of judge under section thirty-eight.  
1848, 320, § 2.

SECT. 50. The fees of the jailer, under the provisions of sections

of jailer.

1837, 198, § 4.

forty-one and forty-two, shall be as follows: on a surrender of a debtor, fifty cents; and for a certificate thereof, or of the non-surrender of the debtor, twenty-five cents, to be paid by the officer and charged with the expenses of serving the execution. In other cases where a certificate is required, the jailer shall be entitled to a fee of twenty-five cents, to be paid by the party requiring the same.

## CHAPTER 125.

### OF BAIL.

#### TAKING BAIL.

##### SECTION

1. Defendant arrested on mesne process may give bail, &c.
2. Bail, how taken.
3. Officer may require two sureties, &c.
4. Bond may be approved, &c. Fees.
5. to bind those who execute it, though, &c.
6. to be returned with the writ.
7. Obligations of the bail.
- 8, 9. Suit on the bail bond.
10. To be brought within one year.
11. Answer of defendants.

#### SURRENDER OF PRINCIPAL, &C.

12. Principal may be surrendered in court, &c.
13. and committed.
14. may be surrendered out of court.
15. to keeper of the county jail.
- 16, 17. Proceedings in such case.

##### SECTION

18. Notice to plaintiff.
19. Bail to pay costs on *scire facias* when, &c.
20. Treatment of principal after surrender.
21. Principal may be surrendered on the original suit.

#### BAIL IN ACTIONS BEFORE JUSTICES OF THE PEACE, &C.

22. Proceedings on bail bond before a justice of the peace or police court.
23. Surrender of principal in such a case.
24. Officer to attend, if requested.
- 25, 26. Proceedings upon surrender.
27. Fees of officer.

#### SUPPORT OF PRINCIPAL.

- 28, 29. When debtor is surrendered by bail and claims support as pauper, &c.
30. When bail are liable for support of prisoner.
31. When liability of creditor commences.

#### TAKING BAIL.

Defendant arrested on mesne process may give bail, &c. 1857, 141, § 22. See Ch. 124, §§ 31-34. Bail, how taken.

R. S. 91, § 1. 2 Mass. 481. 10 Mass. 20. 12 Mass. 434. 12 Met. 564. 4 Gray, 301.

Officer may require two sureties, &c. R. S. 91, § 2. 1850, 199, § 1. 1852, 211. 9 Mass. 479.

Bond may be approved, &c. Fees. 1857, 141, § 22.

to bind those who execute it, though, &c.

SECTION 1. A defendant arrested on mesne process shall be released on giving bail; but if he has been sentenced to imprisonment on any charge of fraud under the provisions of chapter one hundred and twenty-four, the giving of bail shall not discharge him therefrom.

SECT. 2. Bail in a civil action shall be taken as heretofore practised, by a bond to the sheriff, if the writ is served by him or his deputy, otherwise to the coroner or other officer by whom the writ is served, with condition that the defendant shall appear and answer to the plaintiff, abide the final judgment of the court, and shall not avoid.

SECT. 3. An officer shall not be required to accept a bail bond unless with two sureties at least, each of them having sufficient property within the state; and he may examine, on oath to be administered by him, the persons offered as sureties, as to their sufficiency. If he takes a bail bond with one surety only, he shall be liable to the plaintiff for any loss sustained by the insufficiency of the bail, although the surety was actually sufficient when taken.

SECT. 4. The bond may be approved by any justice of a court of record or police court, judge of a probate court, master in chancery, commissioner of insolvency, trial justice, or by a justice of the peace and of the quorum, and when so approved the sureties shall be deemed sufficient. The magistrate shall be paid by the applicant one dollar for the examination and approval or disapproval of the bond.

SECT. 5. A bail bond shall bind the persons who execute it, though taken with one surety only, or with two or more sureties when they or



either of them have not sufficient property within the state, or when it is not approved as aforesaid.

SECT. 6. The bond shall be returned and filed with the writ, and the clerk shall note on the writ that a bond is so filed. Upon an appeal, the bond shall be sent with the other papers to the court appealed to.

SECT. 7. In case of the avoidance of the principal and a return on the execution that he is not found, his bail shall be obliged to satisfy the judgment, with interest thereon from the time it was rendered, unless he discharges himself by surrendering the principal before final judgment against him on the writ of *scire facias*, or by other sufficient defence in that suit.

SECT. 8. The bail bond shall be considered so far a matter of record and of the nature of a recognizance, that the creditor may take out a writ of *scire facias* thereon in his own name against the bail, in which it shall be sufficient to allege, substantially, that the defendants became bail, without setting forth the bond.

SECT. 9. The *scire facias* shall be issued from the court in which the judgment against the principal is rendered, and may be taken out of the clerk's office in vacation as well as term time.

SECT. 10. No such action shall be maintained against any person as bail, unless the writ of *scire facias* is served on him within one year after the rendition of final judgment against the principal.

SECT. 11. The defendants in such action may appear and answer either jointly or severally to the plaintiff's allegations.

SURRENDER OF PRINCIPAL, &C.

SECT. 12. The bail may surrender the principal in the court where the *scire facias* is pending at any time before final judgment therein against them, and on paying the costs of the *scire facias* up to that time they shall be discharged.

SECT. 13. The principal so surrendered shall be committed to the jail, there to remain thirty days in order to his being taken on execution, unless he is discharged as provided in chapter one hundred and twenty-four.

SECT. 14. The bail may at any time before final judgment against him on a writ of *scire facias*, exonerate himself from further responsibility, by surrendering his principal as provided in the five following sections.

SECT. 15. Such surrender may be made to the keeper of the jail, either in the county in which the principal was arrested or in that to which the original writ against the principal was returnable, and the jailer shall receive the prisoner and hold him in custody in like manner as if he had been committed by the officer who arrested him on the original writ.

SECT. 16. The jailer shall not be obliged to receive a person so surrendered, unless the bail delivers to him a copy of the bail bond attested by the officer who took it or the clerk in whose custody it may be. The delivery of such copy shall be a sufficient warrant for the jailer, although the surrender and commitment prove to be unlawful on the part of the bail.

SECT. 17. The bail shall within fourteen days after such surrender deliver to the jailer a copy of the original writ or process whereby the prisoner was arrested, with a copy of the return indorsed thereon, attested by the officer who served the writ or the clerk into whose office it is returned.

SECT. 18. He shall also within the same time give notice in writing to the plaintiff or his attorney, of the time when and the place where the prisoner was so committed.

R. S. 91, § 3.  
1850, 199, § 1.  
2 Pick. 284.  
2 Met. 490.

Bond to be re-  
turned with  
writ.

R. S. 91, § 4.  
17 Mass. 602.  
9 Met. 564.

Obligations of  
bail.  
R. S. 91, § 5.  
2 Met. 328.

Suit on bond.  
R. S. 91, § 6.  
2 N. H. R. 359.  
2 Mass. 484.  
17 Mass. 602.  
13 Pick. 339.  
2 Met. 587.

same subject.  
R. S. 91, § 7.

to be brought  
within one  
year.

R. S. 91, § 8.  
5 Gray, 397.

Answer of de-  
fendants.  
R. S. 91, § 9.  
1852, 312, §§ 12,  
14.

Principal may  
be surrendered  
in court, &c.  
R. S. 91, § 10.

and commit-  
ted.  
R. S. 91, § 11.

may be sur-  
rendered out of  
court, &c.  
R. S. 91, § 12.

to keeper of  
the county jail.  
R. S. 91, § 13.

Proceedings in  
such case.  
R. S. 91, § 14.

Same subject.  
R. S. 91, § 15.  
8 Cush. 137.

Notice to plain-  
tiff.  
R. S. 91, § 16.

Bail to pay costs on *scire facias* when, &c.  
R. S. 91, § 17.  
11 Cush. 16.

SECT. 19. If the surrender is made after a writ of *scire facias* is taken out against the bail, he shall within fourteen days after the surrender pay the costs of suit on the *scire facias* to the creditor or his attorney, or to the jailer for his use: *provided*, that if the writ of *scire facias* has not been served on the bail, he shall not be required to pay the costs thereof until twenty-four hours after he has notice of the issuing of the writ, and after a demand of the costs made on him by the creditor.

Treatment of principal after surrender.  
R. S. 91, § 18.

SECT. 20. Every person surrendered and committed shall be received by the jailer, and held in custody. He may be forthwith bailed, whether notice of the surrender has or has not been given to the plaintiff, and shall in all respects have the same rights and privileges as if committed upon the original arrest.

Principal may be surrendered on the original suit.  
R. S. 91, § 19.

SECT. 21. Nothing contained in the preceding sections shall impair the right of bail, in all cases, to surrender their principal in the court in which the original suit is pending, at any time before final judgment; or, after judgment, to surrender him to the officer holding the execution, at any time before the return thereof.

#### BAIL IN ACTIONS BEFORE JUSTICES OF THE PEACE, &c.

Proceedings on bail bond before a justice of the peace or police court.  
R. S. 91, § 20.

SECT. 22. When bail is taken in an action before a justice of the peace or police court, the justice or court may issue a *scire facias* against the bail, although the amount of the debt and costs on the original judgment exceeds the amount to which his jurisdiction is otherwise limited; and the rights and obligations of the bail, and all proceedings as to the surrender of the principal and the action against the bail, shall be substantially the same as are provided with regard to bail when taken in suits in other courts.

Surrender of principal in such case.  
R. S. 91, § 21.

SECT. 23. When the bail in a suit before a justice of the peace or police court proposes to surrender his principal in court, either during the pendency of the original suit or the *scire facias*, he shall procure the attendance of some officer qualified to serve legal process in the case, to whom the principal may be committed.

Officer to attend, if requested.  
R. S. 91, § 22.

SECT. 24. Every such officer who is seasonably notified and requested to attend for the purpose aforesaid, shall attend, and receive and take charge of the principal if committed to his custody by the justice.

Proceedings upon surrender.  
R. S. 91, § 23.

SECT. 25. When the principal is surrendered in such suit, an entry thereof shall be made on the record, and he shall be forthwith committed to the officer in attendance, to be conveyed to jail or otherwise disposed of according to law.

Same subject.  
R. S. 91, §§ 24, 25.

SECT. 26. If the principal is surrendered before final judgment in the original suit, the bail shall deliver to the officer a copy of the original writ, with the return indorsed thereon, attested by the justice. If the surrender is after final judgment in the original suit, the bail shall deliver to the officer a copy of the entry of the surrender, attested in like manner. The officer shall deliver the copy to the jailer, on committing the prisoner to his custody; and such copy shall be a sufficient warrant to the officer and the jailer, for receiving, committing, and holding the prisoner according to law.

Fees of officer.  
R. S. 91, § 26.

SECT. 27. The officer shall be allowed the same fees, to be paid by the bail, as are provided for arresting and committing a defendant on mesne process.

#### SUPPORT OF PRINCIPAL.

When debtor is surrendered by bail and claims support as pauper, &c.  
R. S. 97, § 54.

SECT. 28. When a principal, surrendered by his bail and committed to jail, claims support as a pauper, the jailer may require the plaintiff, or his attorney in the suit, to give security or advance the money for the support of the defendant in like manner as if the commitment had

been made by an officer. If the plaintiff neglects so to do for twenty-four hours after being so required, the jailer may discharge the defendant.

SECT. 29. The jailer in such case may at the time of the surrender demand of the bail the advance of money for the support of the principal or security therefor, instead of demanding the same of the plaintiff; and if the bail neglects, for twenty-four hours after such demand, to give such security or advance the money for the support of the principal, the jailer may discharge him; and the bail and the principal shall thereupon continue liable to the plaintiff in all respects as if the surrender had not been made.

When debtor is surrendered by bail and claimant's support as pauper, &c.  
R. S. 97, § 55.

SECT. 30. The bail, if such demand is made of him, shall be liable for the support of the principal until the expiration of seven days after he has given notice of the surrender to the plaintiff or his attorney in the suit.

When bail liable for support of prisoner.  
R. S. 97, § 56.

SECT. 31. The plaintiff shall be liable for the support of the defendant after the expiration of said seven days; and if he neglects to advance the money or give security therefor as before provided at or before the expiration of said time, the jailer may discharge the defendant.

When liability of creditor commences.  
R. S. 97, § 57.

## CHAPTER 126.

### OF PROCEEDINGS AGAINST ABSENT DEFENDANTS AND UPON INSUFFICIENT SERVICE.

SECTION

1. Actions against persons out of the state.
2. Plaintiff out of state liable to cross-action, &c.
3. Each of several defendants may have cross-action.
4. Writ, how served in such case.
5. Proceedings in such actions. Following provisions not to apply.
6. Notice to be given to defendant out of state, or whose residence is unknown, &c.
7. If defendant does not appear, &c., after notice, judgment to be rendered, &c.
8. Bond, when to be given by plaintiff, upon default of absent defendant.

SECTION

9. Bond, how taken and disposed of.
10. Execution levied on real estate of absent defendant.
11. Judgment in a real action against him.
12. Absence of one of several defendants in actions on tort.
13. in actions on contract.
14. Action may proceed against those served with process.
15. Other joint contractors liable to new action.
16. Absence of one of several tenants in real actions.
17. of one of several defendants in mixed actions.

SECTION 1. No personal action shall be maintained against a person who is out of the state at the time of the service of the summons, unless he had before that time been an inhabitant of the state, or unless an effectual attachment of his goods, estate, or effects, is made on the original writ, except in cases in which it is otherwise specially provided.

Actions against persons out of the state.  
R. S. 90, § 44.  
3 Mass. 420.  
5 Met. 400.  
5 Cush. 52.  
10 Cush. 183.  
3 Gray, 508.

SECT. 2. When an action is brought by a person who is not an inhabitant of this state or who cannot be found therein to be served with process, he shall be held to answer to any action brought against him here by the defendant in the first action, if the demands in the two cases are of such a nature that the judgment or execution in the one case can be set off against the judgment or execution in the other.

Plaintiff out of state liable to cross-action, &c.  
R. S. 90, § 49.

SECT. 3. If there are several defendants in the original action, each of them may bring such cross-action against the original plaintiff, and may be allowed to set off his judgment against that which may be recovered against himself and his co-defendants in like manner as if the latter judgment had been against himself alone. 16 Mass. 478. 1 Met. 80.

Each of several defendants may have a cross action.  
R. S. 90, § 50.  
4 T. R. 123.  
7 Mass. 140.

SECT. 4. The writ in such cross-action may be served on the person Writ, how



served in such case.  
R. S. 90, § 51.

Proceedings in such actions. Following provisions not to apply.  
R. S. 90, § 52.  
R. S. 92, § 16.

Notice given to defendant out of state, or whose residence is unknown, &c.  
R. S. 90, § 53.  
R. S. 92, § 3.  
2 Met. 135, 490.  
5 Met. 403.  
11 Met. 372.  
2 Cush. 32.  
5 Cush. 52.  
6 Cush. 354.  
3 Gray, 509.  
See Ch. 123, §§ 25-28.

If defendant does not appear, &c., after notice, judgment to be rendered, &c.  
R. S. 90, § 53.  
R. S. 92, § 3.  
See Ch. 146, § 20.

Bond, when to be given by plaintiff, upon default of absent defendant.  
R. S. 92, § 6.  
19 Pick. 64.  
13 Gray, 1.

how taken and disposed of.  
R. S. 92, § 7.

Execution levied on real estate of absent defendant.  
R. S. 92, § 8.

Judgment in a real action against him.  
R. S. 92, § 9.

Absence of one of several defendants in actions on tort.  
R. S. 92, § 10.

who appears as the attorney of the plaintiff in the original suit, and such service shall be as valid and effectual as if made on the party himself within this state.

SECT. 5. The court in which the actions or either of them are pending may order continuances as they think necessary or proper to enable the absent party to defend the action brought against him, and also to enable either party to set off his judgment or execution against that which is recovered against him, but the actions shall not be unreasonably delayed by the neglect or default of either party. None of the following rules concerning actions brought against persons out of the state shall apply to a cross-action brought under the three preceding sections.

SECT. 6. If a defendant is absent from the state or his place of residence is not known to the officer serving a writ, and no personal service is made on him, or if the service of a writ is defective or insufficient by reason of mistake on the part of the plaintiff or officer as to the place where or the person with whom the summons or copy ought to have been left, the court upon suggestion thereof by the plaintiff shall order the action to be continued from term to term until notice of the suit is given in such manner as the court may direct. In any case in which the defendant does not appear, the court may in their discretion order the action to be continued and further notice given to him in such manner as the court may direct.

SECT. 7. If, after such notice in either case, the defendant does not appear at the term to which the action is continued, and within the first ten days of the term file such affidavit as he would have been required to file if sufficient legal service had been made upon him before the entry of the action, judgment may be rendered against him upon default.

SECT. 8. When judgment in a personal action is rendered as provided in the preceding section upon the default of a defendant who is out of the state or whose residence is unknown, the plaintiff shall not take out execution thereon within one year thereafter, unless he first gives bond to the defendant with one or more sufficient sureties in a sum equal to double the amount recovered, with condition to repay the amount so recovered if the judgment is reversed, or so much of the amount as shall be recovered back upon a review to be brought by the original defendant at any time within one year after the original judgment.

SECT. 9. The bond shall be deposited with the clerk of the court for the use of the defendant, and the clerk shall decide on the sufficiency of the sureties, saving a right of appeal from his decision to any justice of the court in which the judgment is rendered.

SECT. 10. If the execution in such action is levied on real estate, no alienation thereof by the original plaintiff shall prevent the defendant from retaking the same, or as much thereof as may be necessary to satisfy the judgment he recovers on such review: *provided*, that the writ of review be sued out within one year after the original judgment.

SECT. 11. If the original judgment be for seisin of the premises demanded in a real action, the demandant may take out his writ of seisin without giving bond; and if the judgment be reversed in whole or in part upon a review, whether sued out within the year or afterwards, the original tenant may have restitution of the premises in like manner as upon a reversal on a writ of error.

SECT. 12. In personal actions founded on tort against several defendants, if any one of them is out of the state at the time of the service of the writ, the suit shall be conducted with regard to him, in every thing relating to the service of the writ, judgment, review thereof, and execution, in like manner as if he had been the only defendant in the case.

SECT. 13. If an action founded on contract is brought against several defendants, of whom any one is within the state and any other is absent, and the plaintiff recovers judgment, he shall take it without any of the conditions and regulations above provided as to review, giving bond, and alienating real estate; but he shall not take judgment against any such absent defendant, unless under such circumstances as would have entitled him to judgment against the absent party if he had been the only defendant in the case.

Absence of one of several defendants in actions on contract.  
R. S. 92, § 11.

SECT. 14. If an action founded on contract is brought against several defendants, and the writ is duly served on one or more of them, but no legal service is made on the others, either by attachment of property or otherwise, by reason of their absence from the state, or for other sufficient cause, the action may proceed against those who are duly served with process, without further proceedings against the others.

Action may proceed against those served with process.  
R. S. 92, § 12.  
8 Mass. 423.  
5 Mass. 193.  
13 Met. 256.

SECT. 15. If judgment is rendered against one or more of several joint contractors in the manner provided in the preceding section, and remains unsatisfied, an action on the same contract may be afterwards maintained against any of the other joint contractors, in like manner as if the contract had been joint and several.

Other contractors liable to new action.  
R. S. 92, § 13.  
6 Cranch, 254.  
13 Mass. 148.

SECT. 16. In real actions against several tenants, if any one of them is out of the state the suit shall be conducted with regard to him in like manner as if he had been the only person sued.

Absence of one of several tenants, &c.  
R. S. 92, § 14.

SECT. 17. In mixed actions, if the defendant or any one of two or more joint defendants, is out of the state, the suit shall be conducted with regard to the absent defendant, in every thing relating to the judgment, review, and bond, in the manner before provided with respect to personal actions founded on tort; and in every thing relating to the service of the writ and the notice of the suit to be given to the defendant, it shall be considered and conducted as a real action.

of one of several defendants in mixed actions.  
R. S. 92, § 15.

## CHAPTER 127.

### OF ACTIONS WHICH SURVIVE, AND THE DEATH AND DISABILITIES OF PARTIES.

ACTIONS WHICH SURVIVE.	SECTION
SECTION	15. When survivors may prosecute alone.
1. Actions which survive.	16. Proceedings when tenant dies.
DEATH OF PARTIES IN PERSONAL ACTIONS.	17. when any of several dies.
2. Death of officer not to abate suit for goods attached.	DEATH OF PARTIES IN PETITION FOR PARTITION, &c.
3. Judgment in such case for executor, &c.	18. Same proceedings in suits in partitions.
4. against the executor, &c.	19. Except in certain cases.
5. General provisions as to actions which survive.	20. Further exceptions.
6. Executor or administrator may prosecute or defend.	DEATH OF PARTIES ENTITLED TO APPLY TO COUNTY COMMISSIONERS.
7. may be cited for that purpose.	21. If person having right to jury, &c., dies, heirs, &c., may apply.
8. Citation, how served and returned.	MARRIAGE.
9. Executor, &c., not appearing, may be nonsuited or defaulted.	22. Marriage of a female party.
10. Provision as to costs in such cases.	INSANITY.
11. Death of joint plaintiff, &c.	23. Insanity of a party.
12. of all the plaintiffs or defendants.	DEATH OR REMOVAL OF A PUBLIC OFFICER, &c.
DEATH OF PARTIES IN REAL AND MIXED ACTIONS.	24. Death or removal of a public officer, &c.
13. In real or mixed actions devisee or heir may prosecute.	
14. jointly with survivor, if any.	

## ACTIONS WHICH SURVIVE.

## Actions which

survive.

R. S. 14, § 66.  
 R. S. 93, § 7.  
 1842, 89, § 1.  
 1852, 312.  
 6 Greenl. 427.  
 8 Greenl. 123.  
 3 Mass. 228.  
 4 Mass. 480.  
 7 Mass. 395.  
 5 Pick. 257.  
 See Ch. 150, § 35.

SECTION 1. In addition to the actions which survive by the common law the following shall also survive: actions of replevin; of tort for assault, battery, imprisonment, or other damage, to the person; for goods taken and carried away or converted by defendant to his own use; or for damage done to real or personal estate; and actions against sheriffs for malfeasance or nonfeasance of themselves or their deputies.

19 Pick. 47. 21 Pick. 250. 6 Met. 94. 4 Cush. 413. 5 Cush. 543. 9 Cush. 108, 478. 7 Gray, 544.

## DEATH OF PARTIES IN PERSONAL ACTIONS.

## Death of officer not to abate suit for goods attached.

R. S. 99, § 96.  
 1852, 312.  
 See Ch. 128.

SECT. 2. When goods or chattels attached by an officer are claimed or taken away by another person, and an action of replevin or tort therefor is brought by or against the officer, the action shall not be abated by the death of either party, but may be prosecuted by or against the executor or administrator of the deceased party.

## Judgment in such case for executor, &amp;c.

R. S. 90, § 97.

SECT. 3. If judgment in such case is recovered by the executor or administrator of the officer, the goods or money recovered shall be held, appropriated, and disposed of, in the same manner as they would and ought to have been by the officer if he had lived and recovered the same himself.

## against the executor, &amp;c.

R. S. 90, § 98.

SECT. 4. If judgment is rendered against the executor or administrator of the officer, the goods and damages recovered shall be returned, delivered, and paid in full, by the executor or administrator, if he has sufficient therefor, although the estate of the deceased is insolvent.

## General provision as to actions which survive.

R. S. 93, § 1.  
 4 N. H. 385.

SECT. 5. In personal actions, the cause of which survives, if there is only one plaintiff or defendant, and the sole plaintiff or defendant dies after the commencement of the action at any time before final judgment, the action may proceed and be prosecuted by or against the surviving party, and the executor or administrator of the deceased party, in the manner provided in this chapter.

## Executor or administrator may prosecute or defend.

R. S. 93, § 2.

SECT. 6. The action or an appeal therein may be entered in such cases, if not already entered, and the death of the party suggested on the record; and his executor or administrator may, at the same term or within such further time as the court shall allow, appear and take upon himself the prosecution or defence of the suit; and it shall be thenceforth conducted in the same manner as if it had been originally commenced by or against the same executor or administrator.

## may be cited for that purpose.

R. S. 93, § 3.

SECT. 7. If the executor or administrator does not voluntarily appear, the surviving party may take out a citation from the court or justice of the peace before whom the cause is pending, requiring the executor or administrator to appear and take upon himself the prosecution or defence of the action.

## Citation, how served and returned.

R. S. 93, § 4.

SECT. 8. The citation if taken in term time may be made returnable at the same or the next succeeding term, as the court shall order; if taken in vacation, it shall be returnable at the next term; and if issued by a justice of the peace, or police court, it shall be made returnable at such time as the justice or court shall direct. In all cases it shall be served fourteen days at least before the return day.

## Executor not appearing, &amp;c., may be nonsuited or defaulted.

R. S. 93, § 5.

SECT. 9. If the executor or administrator does not appear on the return of the citation, or within such further time as the court or justice may allow, he shall be nonsuited or defaulted, and judgment shall be rendered against him in like manner as if the action had been originally commenced by or against him, in his said capacity, except as provided in the following section.

## Provision as to costs in such case.

R. S. 93, § 6.

SECT. 10. When an executor is nonsuited or defaulted without having taken upon himself the prosecution or defence of the action, he shall not be personally liable for costs in the action; but the estate of the deceased in his hands shall be liable for the costs, as well as for the debt or damages if any are recovered.



SECT. 11. When there are several plaintiffs or defendants in a personal action the cause of which survives, and any of them die before final judgment, the action shall proceed at the suit of the surviving plaintiff, or against the surviving defendant, as the case may be.

Death of joint plaintiff, &c.  
R. S. 93, § 12.  
7 Greenl. 421.  
4 Pick. 308.  
7 Pick. 62.  
9 Pick. 528.

SECT. 12. If in such case all the plaintiffs or all the defendants die, the action may be prosecuted or defended by or against the executor or administrator of the last surviving plaintiff or defendant respectively, in like manner as if the survivor had been originally the only plaintiff or defendant.

of all the plaintiffs or defendants.  
R. S. 93, § 13.  
9 Pick. 532.

DEATH OF PARTIES IN REAL AND MIXED ACTIONS.

SECT. 13. In real and mixed actions, if the demandant dies before final judgment, his heir or devisee of the land demanded or of the right of action may, at the same term when the death is suggested, or within such further time as the court shall allow, appear and prosecute the suit in the same manner as if it had been originally commenced by him. And in case of a devise, if the first estate in possession under the devise is not a fee simple, the devisee of the first freehold estate in possession shall have the right to appear and prosecute, and the judgment if in his favor shall be conformed to his title.

In real and mixed actions devisee or heir may prosecute.  
R. S. 93, § 14.  
1852, 312, § 55.  
10 Met. 294.  
12 Met. 501.  
1 Cush. 395.

SECT. 14. If there are several demandants, and any of them die before final judgment, the heir or devisee of the deceased party shall be admitted, on motion, to prosecute the suit jointly with the survivors, in the same manner as if he had originally joined with them in commencing the suit.

jointly with survivor, if any.  
R. S. 93, § 15.  
10 Mass. 189.  
11 Mass. 56.

SECT. 15. If the interest of the deceased party passes to the surviving demandants, or if there is no motion for the admission of another person as heir or devisee at the term when the death of the deceased party is suggested, or within such further time as the court shall allow, the surviving demandants may prosecute the suit for so much of the premises in question as may then be claimed by them.

or survivor may prosecute alone.  
R. S. 93, § 16.

SECT. 16. If the tenant dies before final judgment, his heir or devisee of the land demanded, may at the term when the death is suggested, or within such further time as the court shall allow, appear and take upon himself the defence of the suit, which shall thenceforth be conducted in the same manner as if it had been originally commenced against him. If the heir or devisee does not voluntarily appear, the demandant may take out a citation from the court before whom the cause is pending, requiring him to appear and take upon himself the defence of the suit.

Proceedings when tenant dies.  
1855, 364, §§ 1, 2.

SECT. 17. When any of several tenants in a real or mixed action die before final judgment, the action may be prosecuted against the surviving tenants for so much of the premises as they hold or claim.

when any of several dies.  
R. S. 93, § 17.  
2 Mass. 480.  
2 Pick. 23.  
19 Pick. 243.

DEATH OF PARTIES IN PETITIONS FOR PARTITION, &C.

SECT. 18. The same proceedings as are prescribed in the five preceding sections shall be had in all petitions and actions for partition of lands, in case of the death of any of the parties, except as is provided in the two following sections.

Same proceedings in suits for partition.  
R. S. 93, § 18.  
2 Mass. 479.  
10 Mass. 5.

SECT. 19. If upon the death of either of several plaintiffs or petitioners in a suit for partition the interest of the deceased party passes to the surviving plaintiffs or petitioners, or to any person admitted to join them in the suit, it shall be prosecuted in the manner before provided respecting real actions; but if the interest of the deceased party passes to any person not so admitted as a plaintiff or petitioner, such person may by order of the court be made a defendant or respondent, and the same proceedings may be had against him as would have been necessary to make him an original defendant or respondent.

Except in certain cases.  
R. S. 93, § 19.

Further excep-  
tions.  
R. S. 93, § 20.

SECT. 20. If upon the death of either of several defendants or respondents the interest of the deceased party passes to the surviving defendants or respondents, the suit may proceed against them without any new process; but if the interest of the deceased party passes to any other person, that person may be made a defendant or respondent in the manner prescribed in the preceding section.

DEATH OF PARTIES ENTITLED TO APPLY TO COUNTY COMMISSIONERS.

If person hav-  
ing right to ju-  
ry, &c., dies,  
heirs, &c., may  
apply.  
1839, 228

SECT. 21. When a person having a right to apply to county commissioners for a jury to assess damages or to hear and determine any other matter, dies without so applying and within the time limited therefor, his executor, administrator, heir or devisee, if interested, may, within one year after his interest vests in him, make such application in the same manner, with the same effect, as if made by the deceased in his lifetime.

MARRIAGE.

Marriage of a  
female party.  
R. S. 93, § 21.  
1855, 304.  
1857, 249.  
14 Mass. 295.  
17 Mass. 342.

SECT. 22. If an unmarried woman who is a party to a suit either alone or with others marries before final judgment, she may continue to prosecute or defend the suit in like manner as if she were sole, and her husband need not be admitted as a party thereto.

INSANITY.

Insanity of a  
party.  
R. S. 93, § 22.  
13 Mass. 412.  
5 Pick. 431.

SECT. 23. If during the pendency of an action or suit either party becomes insane, the action may be prosecuted or defended by his guardian in like manner as if it had been commenced after the appointment of the guardian, or the court may appoint a guardian for the suit, as the case may require.

DEATH OR REMOVAL OF A PUBLIC OFFICER, &c.

Death or re-  
moval of a pub-  
lic officer, &c.  
R. S. 13, § 24.  
R. S. 93, § 23.  
R. S. 100, § 25.  
2 Mass. 440.  
12 Mass. 575.  
2 Met. 47.  
6 Cush. 230.

SECT. 24. An action on a note, bond, contract, or other liability made to or with the treasurer of the commonwealth, or of a county, city, town, parish, or other corporation, or to or with any other public officer, or trustee appointed under a statute, may after his removal, resignation, or death, be commenced or if before commenced, may be prosecuted by his successor as it might have been by the person with whom the contract was made.

CHAPTER 128.

OF ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

SECTION

1. Actions which survive may be commenced against executor, &c.
2. Damages recoverable in tort against executor, &c.
3. Recovery by executor, &c., in right of another.
4. Goods returned on replevin by executor, &c., not to be assets.
5. Writs against executors, &c., how to run.

SECTION

6. Executor, &c., when personally liable for costs.
- 7, 8. Execution in such case.
9. Costs to be allowed to them, &c.
10. *Scire facias* against executor, &c., on suggestion of waste.
11. Death of executor, &c., pending suit.
12. Proceedings in such case.
13. Death of executor, &c., after judgment.
14. Writ of error in such case.

SECTION 1. All actions which would have survived if commenced by or against the original party in his lifetime, may be commenced and prosecuted by and against his executors and administrators.

What actions against executor, &c.  
R. S. 93, § 8.  
See Ch. 127, § 1.  
Damages recoverable in tort against executor, &c.  
R. S. 93, § 9.  
1852, 312.  
4 Pick. 218.

SECT. 2. When an action of tort is commenced or prosecuted against the executor or administrator of the person originally liable, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damage actually sustained, without any vindictive or exemplary damages, or damages for any alleged outrage to the feelings of the injured party.

SECT. 3. When the executor or administrator of a trustee, carrier, depositary, or other person, who claimed only a special property in goods to hold them for the use and benefit of another, recovers such goods or damages for the taking or detention thereof in an action of replevin or tort, the goods or money recovered shall not be considered as assets in his hands, but shall after deducting the costs and expenses of the suit be paid over and delivered to the person for whose use and benefit they were so held or claimed by the deceased person.

Recovery by executor, &c., in right of another.  
R. S. 93, § 10.  
1852, 312.

SECT. 4. When judgment for a return in an action of replevin is rendered against an executor or administrator, the goods returned by him shall not be considered as assets in his hands; and if they have been included in the inventory, it shall be a sufficient discharge for the executor or administrator to show that they have been returned in pursuance of such judgment.

Goods returned on replevin by executor, &c., not to be assets.  
R. S. 93, § 11.

SECT. 5. Writs of attachment and executions against executors or administrators for debts due from the deceased testator or intestate, shall run only against the goods and estate of the deceased in their hands, and not against their bodies, goods, or estate.

Writs against executors, &c., how to run.  
R. S. 110, § 1.

SECT. 6. When a judgment for costs is rendered against an executor or administrator in an action commenced by or against him, or in an action commenced by or against the testator or intestate, wherein the executor or administrator has appeared and taken upon himself the prosecution or defence, he shall be personally liable for the costs.

Executor, &c., when personally liable for costs.  
R. S. 110, § 2.  
16 Mass. 530.

SECT. 7. When judgment is recovered against an executor or administrator for costs only, the execution shall be awarded against his body, goods, and estate, as if it were for his own debt.

Execution in such case.  
R. S. 110, § 3.

SECT. 8. When the judgment is for debt or damages, and costs, an execution for the debt or damages shall be awarded against the goods and estate of the deceased in the hands of the executor or administrator, and another execution for the costs, against the goods, estate, and body, of the executor or administrator, as if it were for his own debt.

Same subject.  
R. S. 110, § 4.

SECT. 9. Costs paid by executors or administrators, and for which they are made personally liable, shall be allowed in their administration accounts, unless the probate court decides that the suit was prosecuted or defended without reasonable cause.

Costs to be allowed to them, &c.  
R. S. 110, § 5.

SECT. 10. When an execution against an executor or administrator for a debt due from the estate of the deceased is returned unsatisfied, the creditor may upon a suggestion of waste sue out a *scire facias* against the executor or administrator. If the defendant does not appear and show sufficient cause to the contrary, he shall be deemed guilty of waste, and shall be personally liable for the amount thereof, when it can be ascertained, otherwise for the amount due on the original judgment, with interest from the time when it was rendered; and judgment and execution shall be awarded as for his own debt.

*Scire facias* against executor, &c., on suggestion of waste.  
R. S. 110, § 6.  
See Ch. 120, § 3.

SECT. 11. When an executor or administrator dies or is removed from office during the pendency of a suit in which he is a party, the suit may be prosecuted by or against the administrator *de bonis non* in like manner as if it had been originally commenced by or against such last administrator.

Death of executor, &c., pending suit.  
R. S. 110, § 7.  
4 Mass. 611, 613.



Proceedings in case of death of executor, &c., pending the suit.  
R. S. 110, § 8.

SECT. 12. The proceedings in such case, with respect to the appearance of the administrator *de bonis non*, whether voluntarily or upon a citation, and with respect to his nonsuit or default if he does not appear, shall be conducted in the manner prescribed in chapter one hundred and twenty-seven upon occasion of the death of either party during the pendency of a suit.

Death of executor, &c., after judgment.  
R. S. 110, § 9.

SECT. 13. If an executor or administrator dies or is removed after judgment is rendered either for or against him, a *scire facias* may be sued out either by or against the administrator *de bonis non*, and a new execution may be issued in like manner as it may be done by or against an original executor or administrator, in case of the death of his testator or intestate after a judgment rendered for or against him; except that a judgment against the first executor or administrator for costs for which he was personally liable, shall be enforced only against his executor or administrator, and not against the administrator *de bonis non*.

Writ of error in such case.  
R. S. 110, § 10.  
4 Mass. 611, 613.

SECT. 14. When a judgment is rendered for or against an executor or administrator, a writ of error may be brought thereon by or against an administrator *de bonis non* in like manner as it might have been brought by or against the executor or administrator who was party to the judgment.

## CHAPTER 129.

### OF PLEADINGS AND PRACTICE.

#### PLEADINGS.

##### *Forms at Law.*

#### SECTION

1. Forms of actions.

##### *Declarations, &c.*

2. Forms of declaring at law. Substantial facts only required. One count for each cause, but any number of breaches. What counts and causes of action may be joined. Common counts, how used. When account annexed may be used. Trover abolished. Written instruments, how declared on. If lost, substance to be stated. Bonds and other conditional contracts, how declared on.
3. In real actions on mortgage, &c.
4. Declarations, &c., where persons are severally liable on contracts in writing.
5. Mode of referring to statutes.
6. Plaintiff's case to be described in tort, &c.
7. No declaration in writ in actions of contract or tort unless, &c.
8. Declaration to be filed first day of court.
9. if not in writ or filed, action discontinued, unless, &c.
10. Bill of particulars, when required.

##### *Demurrers.*

11. Demurrer.
12. causes of, specified. Certificate.

##### *Answers, Replications, &c.*

13. Answer in abatement, &c.
14. When answer in abatement overruled.
15. Special pleas in bar abolished, and general issue, except, &c.
16. Joint answer.

#### SECTION

17. Substantive facts denied, &c.
18. Answers and denials, when and how made.
19. Must declare whether whole or part is denied.
20. Each substantive fact relied on to be clearly stated. When answer sets up any legal bar, &c.
21. Written instruments set out, &c.
22. Conditional obligations set out, &c.
23. No pleading after answer, but by order of court. Plaintiff may demur, and in certain cases reply.
24. Further pleading, demurrer, &c. Joinder in demurrer, &c.
25. Facts occurring since suit. Supplemental declaration, &c.
26. may be alleged alternatively.
27. Pleadings so construed as to give certainty &c.
28. Suit when at issue.

#### PRACTICE.

##### *Indorsement of Process after Entry.*

29. Indorser, when required.
30. removing, &c., another required.
31. may be required in probate cases, &c.
32. if not procured, suit dismissed.
33. may be substituted. Liability.

##### *Abatement.*

34. No writ, &c., abated for circumstantial errors.
35. If defendant pleads nonjoinder, new defendants joined.
- 36, 37. Proceedings for that purpose.
38. Judgment, execution, &c., in such case.
39. Final judgment upon issue of fact.

*Amendments.*

SECTION  
 40. Amendments, &c., upon matter in abatement.  
 41. changing parties, form, &c.  
 42. after judgment.

*Defaults.*

43. Defendant, when defaulted.  
 44. Default may be taken off at first term.  
 45. Defendant to be defaulted last day, or in ten days, unless affidavit filed of substantial defence.

*Interrogatories.*

46. In civil actions, parties may file interrogatories, &c.  
 47. Affidavit to be annexed to interrogatories.  
 48. Answers to be filed.  
 49. in writing and on oath.  
 50. Officers of corporation may be examined.  
 51. Each interrogatory to be answered.  
 52. Parts of books, &c., called for, containing matter not pertinent, may be sealed up, &c.  
 53. Party not obliged to criminate himself, &c.  
 54. Irrelevant matter to be expunged. Answer to be full, &c.  
 55. Costs, when answer irrelevant, &c.  
 56. If party disobeys order, court may enter nonsuit or default.  
 57. Court may allow interrogatories filed, during trial.

*Interlocutory Orders.*

58. Court may order statement of grounds of action, &c.  
 59. Orders, &c., preparatory to trial when made.

*Agreements of Parties.*

60. Orders may be entered by consent, &c.; agreements of attorneys to be in writing.  
 61. Parties may agree respecting continuances, filing papers, &c.

*Offer of Judgment.*

62. Defendant may offer judgment. Plaintiff may accept with costs. Time to elect.  
 63. If plaintiff does not accept, nor recover greater sum, defendant allowed costs.

*Hearing, Trial, Evidence.*

SECTION  
 64. Demurrers, how heard, determined, &c.  
 65. frivolous or immaterial may be overruled, &c.  
 66. Jury trial may be waived, and cause heard by court.  
 67. Exceptions. New trial. Review.  
 68, 69. Trials not to be delayed or postponed, &c.  
 70. Local action in wrong county, court may nonsuit.  
 71. Counts not proved, &c., may be stricken out.  
 72. Pleadings, &c., not evidence.  
 73. Offer of judgment not accepted, not evidence.  
 74. Answers to interrogatories may be read at trial by the other party, &c.  
 75. One matter in answer not evidence of another.  
 76. Justification in slander not proof of malice.  
 77. Truth of alleged libels may be given in evidence, &c.  
 78. In action on judgment by default, court may allow evidence of payment.

*Arrest of Judgment.*

79. No arrest of judgment for cause before verdict, except, &c.

*General Provisions.*

80. Suggestions entered on record.  
 81. Rules of evidence not changed, &c.  
 82. Cause of action; amendment; notice to parties, appeal, &c.  
 83. Affidavits. When corporation is a party.  
 84. Provisions, not applicable to real and mixed actions, except, &c.  
 85. Specified sections to apply to civil actions before justices and police courts, &c.  
 86. Interrogatories in actions before police courts, &c., may be filed, &c.

*Forms.*

87. Forms authorized. May be altered by S. J. C.

[\* applies to civil actions before justices of the peace and police courts. See § 85.  
 † applies to real and mixed actions. See § 84.]

PLEADINGS.

*Forms at Law.*

\*SECTION 1. There shall be only three divisions of personal actions: Forms of actions. 1852, 312, § 1.  
 First. Actions of contract, which shall include those heretofore known as actions of assumpsit, covenant, and debt, except for penalties.  
 Second. Actions of tort, which shall include those heretofore known as actions of trespass, trespass on the case, trover, and all actions for penalties.  
 Third. Actions of replevin.

*Declarations, &c.* Allen 321.

\*SECT. 2. The form of declaring in personal actions shall be according to the following particulars:— Form of declaring at law. 1852, 312, § 2.  
 First. The action shall be named in conformity with the divisions specified in section one.  
 Second. No averment need be made which the law does not require to be proved. 5 Gray, 22, 543.  
 Third. The substantive facts necessary to constitute the cause of action may be stated with substantial certainty, and without unnecessary verbiage. Substantial facts only required. 4 Gray, 446. 7 Gray, 185.

One count for each cause, but any number of breaches.

Fourth. One count only need be inserted for each cause of action, but any number of breaches may be assigned in each count, and when the nature of the case requires it breaches may be assigned in the alternative. Two causes of action, not arising on the same contract, shall not be embraced in one count, except the count on an account annexed as hereinafter provided.

What counts and causes of action may be joined.  
7 Gray, 562.

Fifth. Any number of counts for different causes of action belonging to the same division of actions may be inserted in the same declaration. Actions of contract and actions of tort shall not be joined; but when it is deemed doubtful to which of those classes a particular cause of action belongs, a count in contract may be joined with a count in tort, averring that both are for one and the same cause of action.

Common counts, how used.  
7 Gray, 184, 187.

Sixth. The common counts shall not be used unitedly, but each one of those counts may be used in the form hereinafter prescribed when the natural import of its terms correctly describes the cause of action.

When account annexed may be used.  
4 Gray, 292.  
7 Gray, 184, 187.

Seventh. A count on an account annexed, in the form hereinafter prescribed, may be used in an action of contract, when one or more items are claimed either of which would be correctly described by any one of the common counts according to the natural import of its terms.

Trover abolished.  
2 Gray, 564.

Eighth. In place of the form of declaration heretofore used in the action of trover, the form hereinafter prescribed shall be used.

Written instruments, how declared on. If lost, substance to be stated.  
1 Gray, 544.

Ninth. All written instruments except policies of insurance shall be declared on by setting out a copy or such part as is relied on, or the legal effect thereof, with proper averments to describe the cause of action. If the whole contract is not set out, a copy or the original, as the court may direct, shall be filed on motion of the adverse party. Where it may be necessary, the copy so filed shall, if the court so order, be part of the record, as if oyer had been granted of a deed declared on according to the common law. No profert or excuse therefor need be inserted in a declaration. If the instrument relied on is lost or destroyed, or is not in the power of the party who relies on it, he shall state the substance of it as nearly as he can, and the reason why a copy is not given.

Bonds and other conditional contracts, how declared on.

Tenth. When a bond, or other conditional obligation, contract, or grant, is declared on, the condition shall be deemed part of the obligation, contract, or grant, and shall be set forth; breaches relied on shall be assigned; and conditions precedent to the right of the party relying thereon shall be averred to have been performed, or his excuse for the non-performance thereof stated.

In real actions on mortgage, &c.  
1852, 312, § 2.  
Declarations, &c., where persons are severally liable on contracts in writing.  
1852, 312, § 3.  
4 Gray, 294.  
7 Gray, 284.

†SECT. 3. In real actions founded on mortgage titles, the declaration shall allege the seisin to be "in mortgage."

\*SECT. 4. Persons severally liable upon contracts in writing, including all parties to bills of exchange and promissory notes, may all or any of them be joined in the same action. The declaration may include one count only, describing the several contracts of the defendants when the same contract was made by each; or different counts, describing the different contracts of the defendants when, as in the case of maker and indorser, the same contract was not made by all. The court shall take such order for the separate trial of the issues as shall be found most convenient, and shall enter several judgments according to the several contracts of the defendants, and issue one or more executions, as the case may require.

Mode of referring to statutes.  
R. S. 100, § 20.

†\*SECT. 5. A general statute may be referred to in declarations or other pleadings by specifying the chapter containing the provision referred to, or mentioning in general terms the subject of the statute, or referring to it in such manner as shall indicate with sufficient certainty the statute intended.

Plaintiff's close

\*SECT. 6. In actions of tort for breaking and entering the plaintiff's



close, the place of the alleged trespass shall be designated in the plaintiff's declaration by name, abuttals, or other proper description.

SECT. 7. In actions of contract and actions of tort, unless an arrest of the person is made, the writ need not contain a declaration, nor any description of the cause of action in which it is intended to declare, other than the name of the form thereof.

†SECT. 8. The declaration may be filed in the clerk's office on or before the day to which the writ is returnable, unless an arrest of the person is made. If there is an attachment of property, the declaration and bill of particulars, when necessary, if not inserted in the writ, shall also be furnished to the defendant or his attorney within three days after he has demanded the same in writing of the plaintiff or his attorney.

†SECT. 9. If no declaration has been inserted in the writ or filed in the clerk's office pursuant to the preceding section, it shall be a discontinuance of the action, and the defendant or trustee may have judgment for costs: *provided*, that the court may at any time during the return term of the writ, for good cause shown and upon suitable terms, allow the plaintiff to file his declaration, and the action shall not be discontinued if the declaration is filed in accordance with the provisions of this section.

\*SECT. 10. In actions of contract, when either of the common counts is used, the plaintiff shall file a bill of particulars with his writ when the action is entered. The items in such bill shall be numbered consecutively, and it shall be deemed to be part of the record and be answered or replied to as such.

*Demurrers.*

SECT. 11. To raise an issue in law, the answer shall contain a statement that the defendant demurs to the declaration or to some one or more counts therein, as the case may be, and shall assign specially the causes of demurrer.

†SECT. 12. Demurrers may be for the following, among other causes: —

First. That counts in contract and in tort, or either with replevin, or a count in the plaintiff's own right and a count in some representative capacity, are improperly joined in the declaration.

Second. That the declaration or some count thereof, as the case may be, does not state a legal cause of action substantially in accordance with the rules contained in this chapter.

Third. That the answer does not state a legal defence to the declaration or some count thereof, as the case may be, substantially in accordance with such rules.

The particulars in which the alleged defect consists shall be specially pointed out, and the attorney, if any, shall certify upon the demurrer, that he is of opinion that there is such probable ground in law therefor as to make it a fit subject for judicial inquiry and trial, and that it is not intended merely for delay.

*Answers, Replications, &c.*

SECT. 13. Any defence to a real, personal, or mixed action, which might have been made by plea in abatement, may be made by answer containing such allegations or denials as may be necessary to constitute such defence.

SECT. 14. When an answer in abatement is overruled on demurrer, or an amendment is allowed and made by the plaintiff in consequence of such answer in abatement, the defendant shall then answer, or in a

to be described, in tort, &c. 1839, 151, § 3. 13 Mct. 109, 144. Declaration need not be in writ, unless, &c. 1852, 312, § 7.

to be filed first day of court. 1852, 312, § 8. 1854, 440, § 1. 1 Gray, 446. 7 Gray, 409.

if not in writ or filed, action discontinued, unless, &c. 1852, 312, § 9. 1854, 440, § 1. 1 Gray, 446. 5 Gray, 9.

Bill of particulars when required. 1852, 312, § 4. 3 Gray, 266.

Demurrer. 1852, 312, § 17. 7 Gray, 484. See §§ 64, 65.

causes of, specified. Certificate. 1852, 312, §§ 21, 30. 4 Gray, 446. 6 Gray, 233. 7 Gray, 484.

Answer in abatement, &c. 1852, 312, § 27. 4 Gray, 88.

when overruled on demurrer, &c. 1852, 312, § 29. 4 Gray, 88.

real or mixed action plead, to the merits, within such time as the court shall order.

Special pleas in bar abolished, and general issue, except, &c.  
1836, 273, § 1.  
1852, 312, § 12.  
19 Pick. 455.  
21 Pick. 404.  
3 Met. 235, 417.

Joint answer.  
1852, 312, § 13.

Substantive facts denied, &c.  
1852, 312, § 14.  
2 Gray, 521.  
3 Gray, 220, 262, 344.  
5 Gray, 457, 543.  
6 Gray, 494.  
7 Gray, 184, 268.

Answers, &c., when and how made.  
1852, 312, § 15.  
2 Gray, 521.  
5 Gray, 457, 541.

must declare whether whole or part is denied.  
1852, 312, § 16.  
5 Gray, 543.

to set forth each substantive fact relied on, &c.  
1852, 312, § 18.  
4 Gray, 52, 448.  
6 Gray, 494.  
7 Gray, 343.

when written instruments are relied on, &c.  
1852, 312, § 2.

when conditional obligations, &c.  
1852, 312, § 2.

No pleading after answer, but by order of court.  
Plaintiff may demur, and in certain cases reply.  
1852, 312, § 19.  
4 Gray, 117.

Further pleading, demurrer, &c.  
1852, 312, § 20.  
6 Gray, 233.

SECT. 15. Special pleas in bar as formerly used are abolished, and the general issue in all except real and mixed actions, and in place thereof the defendants shall file an answer to the declaration. In real and mixed actions the defendant may give in evidence under the general issue all matters which might formerly have been pleaded in bar.

6 Met. 68, 268. 8 Met. 287. 12 Met. 154. 7 Cush. 503. 4 Gray, 55. 6 Gray, 107.

†SECT. 16. Two or more defendants making the same defence may answer jointly. Different consistent defences may be separately stated in the same answer.

SECT. 17. The answer shall deny in clear and precise terms every substantive fact intended to be denied in each count of the declaration separately, or shall declare the defendant's ignorance of the fact, so that he can neither admit nor deny, but leaves the plaintiff to prove the same.

SECT. 18. In answering the common counts and the count on an account annexed, the defendant shall answer specifically every item contained in the bill of particulars or account annexed, but he may make one and the same allegation or denial concerning any number of items to which such allegation or denial is applicable, specifying the number of the items thus answered together when less than the whole. If the defendant denies that any item is due or payable, or that he owes the plaintiff as alleged, he shall state all the substantive grounds on which he intends to rest such denial, and shall specify whether some and what part or the whole of such item or demand is denied.

SECT. 19. In all cases in which a denial is made by answer, affidavit, or otherwise, concerning a time, sum, quantity, or place, alleged, the party denying shall declare whether such denial is applicable to every time, sum, quantity, or place, or not; and if not, what time, sum, quantity, or place, he admits.

SECT. 20. The answer shall set forth in clear and precise terms each substantive fact intended to be relied upon in avoidance of the action; and when the answer sets up the statute of limitations, the statute of frauds, or any other legal bar, the defendant shall not be deprived of the benefit of such defence by reason of his not denying the facts set forth in the declaration.

\*SECT. 21. Written instruments, when relied on in an answer or subsequent allegation, shall be set out, or copies or the originals shall be filed, in the manner prescribed in the ninth clause of section two when they are declared on.

\*SECT. 22. When a conditional obligation, contract, or grant, is relied on in an answer or subsequent allegation, the condition shall be deemed a part of the instrument, and similar averments shall be required in pleading on the same as are required by the tenth clause of section two.

SECT. 23. No further pleading shall be required after the answer, except by order of the court as hereinafter mentioned. But the plaintiff may demur to the answer; and if the answer contains any new matter in avoidance of the action, such new matter shall be deemed to be denied by the plaintiff; or the court may on motion of the defendant require the plaintiff to reply thereto, and state whether he admits or denies any, and if any what part thereof. The plaintiff may if he pleases without such order, at any time before trial, file a replication to the answer, clearly and specifically stating any facts in reply to the new matter therein.

SECT. 24. The replication may raise an issue in law, by the statement that the plaintiff demurs to the answer or to so much thereof as applies to one or more counts in the declaration, as the case may be, assigning specially the causes of such demurrer; and in like manner either party

*Allan 190*



may demur to the allegation of the other party. But no defect of form merely, either in the declaration or subsequent allegation, shall be assigned as a cause of demurrer. The opposite party shall be deemed to join in demurrer if he shall not amend, which he may do within such time, and upon such terms, as the court may allow.

Joinder in demurrer.

SECT. 25. An answer or replication may allege facts which have occurred since the institution of the suit, and the plaintiff and defendant may be allowed by the court to make a supplemental declaration, answer, or replication, alleging material facts which have occurred or come to the knowledge of the party since the former declaration, answer, or replication.

Facts occurring since suit. Supplemental declaration, &c. 1852, 312, § 24.

SECT. 26. Either party may allege any fact or title alternatively, declaring his belief of one alternative or the other and his ignorance whether it be the one or the other.

may be alleged alternatively. 1852, 312, § 25.

SECT. 27. The allegations and denials of each party shall be so construed by the court as to secure as far as possible substantial precision and certainty, and discourage vagueness and loose generalities. Any substantive fact alleged with substantial precision and certainty, and not denied in clear and precise terms, shall be deemed to be admitted. No party shall be required to state evidence or to disclose the means by which he intends to prove his case.

Pleadings so construed as to give certainty, &c. 1852, 312, § 26. 1 Gray, 450. 4 Gray, 65, 446. 5 Gray, 543. 7 Gray, 185, 268.

*Allen 370.*

SECT. 28. A suit shall be deemed at issue when the allegations are closed, or if it be a real or mixed action, when the plea is filed.

Suit, when at issue. 1852, 312, § 31.

PRACTICE.

*Indorsement of Process after Entry.*

\*SECT. 29. If a plaintiff in any writ, suit, or process at law or in equity after its commencement removes from the state, the court where the suit is pending, on motion of any other party, shall, and in all cases when it appears reasonable may, require the plaintiff to procure a sufficient indorser.

Indorser, when required. 11, S. 90, § 10. R. S. 100, § 28. 11, S. 112, § 24. 18 Pick. 226. 19 Pick. 379.

\*SECT. 30. If an indorser removes from the state or is insufficient, the court if it appears reasonable may require the plaintiff to procure a sufficient indorser.

removing, &c., another required. R. S. 90, § 12.

SECT. 31. The supreme judicial court may require an indorser or security for the payment of costs in any probate or insolvent case or proceeding in that court.

may be required in probate cases, &c. 1846, 234.

\*SECT. 32. If the plaintiff fails in any case to procure an indorser according to the order of the court, the suit shall be dismissed and the defendant recover his costs.

if not procured, suit dismissed. R. S. 90, § 13.

\*SECT. 33. The court in which any suit is pending may permit the same of an indorser to be stricken out and a new and sufficient indorser to be substituted. Every indorser shall be liable for costs from the commencement of the suit, in like manner as indorsers before the entry of an action.

may be substituted. Liability. R. S. 90, §§ 11, 12. 6 Mass. 494. 7 Mass. 25. 13 Mass. 422.

8 Met. 149. See Ch. 123, § 20.

*Abatement.*

\*SECT. 34. No writ, process, declaration, or other proceeding, in the courts or course of justice, shall be abated, arrested, quashed, or reversed, for any circumstantial errors or mistakes, when the person and case may be rightly understood by the court, nor through defect or want of form only.

No writ, &c., abated for circumstantial errors. R. S. 100, § 21. 5 Met. 211. 2 Cush. 491, 555.

4 Cush. 280. 5 Cush. 78.

\*SECT. 35. When the defendant in an action of contract answers in abatement the nonjoinder of any other person as defendant, the court may, at any time before issue joined on such answer, allow the plaintiff on such terms as they shall prescribe to amend his declaration by inserting therein the name of any other person as defendant, and declaring against him jointly with the original defendant.

If defendant pleads nonjoinder, new defendants joined. R. S. 100, § 1. 1852, 312, § 27. 7 Gray, 39.



Proceedings where new defendants are joined.  
R. S. 100, § 2.

\*†SECT. 36. The plaintiff may thereupon take out a new writ in such form as the court prescribes, which shall be in the nature of an original writ of *capias* and attachment, or of summons, and shall require the new defendant to appear and answer as a defendant in the original action. Upon such writ the new defendant's body may be arrested, or his goods or estate may be attached, as upon an original writ; and the writ shall be returnable at such time as the court shall order, and be served fourteen days at least before the return day.

Same subject.  
R. S. 100, §§ 3, 4.

\*†SECT. 37. Upon the return of such new writ, every defendant named therein upon whom service has been made shall be bound to appear and answer with the other defendants, in the same manner as if he had been originally made a party in the first writ. If service cannot be made on a defendant, the action may proceed against the other defendants, in the manner provided in chapter one hundred and twenty-six.

Judgment, execution, &c., in such case.  
R. S. 100, § 5.

\*†SECT. 38. Judgment shall be rendered and execution shall issue for either party, in the same manner as if the original writ had been issued against all the defendants; and the plaintiff shall have the same benefit of any attachment or bail upon each of said writs, as if the same had been made or taken in the usual manner upon the original writ.

Final judgment upon issue of fact.  
1852, 312, § 23.  
24 Pick. 51.  
3 Met. 420.

†SECT. 39. If an issue of fact upon an answer in abatement is found against the defendant, a final judgment shall be rendered against him in the manner heretofore required by law in case of a plea in abatement.

### Amendments.

Amendments, &c., upon matter in abatement.  
1852, 312, § 23.

†SECT. 40. No action shall be defeated by plea or answer in abatement, if the defect found is capable of amendment, and is amended on terms prescribed by the court. The defendant may have leave to amend an answer in abatement, or to answer over by special order of the court, for good cause shown, and not otherwise.

Changing parties, form, &c.  
R. S. 93, § 24.  
R. S. 100, §§ 6, 7, 22, 1836, 273, § 3.  
1839, 151, §§ 1, 2.  
1852, 312, § 32.  
18 Pick. 414.  
1 Met. 553.  
2 Met. 505.  
8 Met. 8.  
12 Met. 266.  
13 Met. 215, 476.  
2 Cush. 1, 486, 492, 555.

\*†SECT. 41. At any time before final judgment in a civil suit, amendments may be allowed, on such terms as are just and reasonable, introducing any party necessary to be joined as plaintiff or defendant, discontinuing as to any joint plaintiff or defendant, changing the form of the action, and in any other matter either of form or substance in any process, pleading, or proceeding, which may enable the plaintiff to sustain the action for the cause for which it was intended to be brought, or the defendant to make a legal defence.

after judgment.  
R. S. 100, § 23.  
10 Mass. 251.  
3 Cush. 11, 78.  
5 Cush. 78, 446.

\*†SECT. 42. After judgment in any civil action, defects or imperfections in matter of form found in the record or proceedings may be rectified and amended by the court in which the judgment is rendered, or by the court to which it is removed by writ of error, if substantial justice requires it, and if the amendment is in affirmance of the judgment.

### Defaults.

Defendant, when defaulted.  
R. S. 92, § 1.

\*†SECT. 43. If a defendant being duly served with process fails to appear, his default shall be recorded, the charge in the declaration shall be taken to be true, and judgment rendered accordingly.

Default may be taken off at first term.  
R. S. 92, § 2.

\*†SECT. 44. If after such default at the first term the defendant appears before the jury is dismissed, the court may take off the default and allow the appearance to be entered upon the defendant's paying the plaintiff's costs up to that time, or such part thereof as the court shall think reasonable.

Defendant to be defaulted last day, or in ten days, unless af-

†SECT. 45. In all actions at law in the supreme judicial court, or superior court, the court shall at any time after ten days from the return day of the writ, or as of course on the last day of the return term, enter

Allen 215, 302, 40

a default as against any defendant on whom legal service has been made, unless the defendant or some one in his behalf has filed within said ten days, or on or before the last day of said term when the same does not exceed ten days, an affidavit that he verily believes that the defendant has a substantial defence to the action on its merits, and intends to bring the same to trial: *provided*, that upon good cause shown the time for filing such affidavit may be extended for such reasonable time as the court may order.

fidavit filed of substantial defence.  
1852, 312, § 10.  
1859, 196.  
7 Gray, 40.

*Interrogatories.*

†\*SECT. 46. In civil actions the plaintiff may at any time after the entry of the action, and the defendant at any time after answer, or if it be a real or mixed action after plea, and before the case is opened to the jury, file in the clerk's office interrogatories for the discovery of facts and documents material to the support or defence of the suit, to be answered on oath by the adverse party.

In civil actions parties may file interrogatories, &c.  
1852, 312, § 61.  
11 Cush. 26, 74.  
2 Gray, 558.  
7 Gray, 417.  
See §§ 74, 75, 86.

†\*SECT. 47. To such interrogatories there shall be annexed an affidavit of the interrogating party or his attorney, to the effect that he has reason to believe that the party interrogating will derive some material benefit in the action from the discovery which he seeks, if the same be fairly made, and that the discovery is not sought for the purpose of delay.

Affidavit to be annexed to interrogatories.  
1852, 312, § 62.  
2 Gray, 558.

†\*SECT. 48. Such interrogatories shall be answered and the answers filed in the clerk's office within ten days after the same are notified to the party interrogated or his attorney, unless upon cause shown either before or after the lapse of ten days further time is allowed by the court.

Answers to be filed.  
1852, 312, § 63.  
11 Cush. 158, 537.

†\*SECT. 49. The answers shall be in writing, signed by the party and upon his oath.

in writing, and on oath.  
1852, 312, § 65.

†\*SECT. 50. If the party to a suit is a corporation, the opposite party may examine the president, treasurer, clerk, or any director or other officer thereof, in the same manner as if he were a party to the suit.

Officers of corporation may be examined.  
1852, 312, § 66.

†\*SECT. 51. Each interrogatory shall be answered separately and fully. The party interrogated may introduce into his answer any matter relevant to the issue to which the interrogatory relates.

Each interrogatory to be answered.  
1852, 312, § 67.  
3 Gray, 220.

†\*SECT. 52. When any document, book, voucher, or other writing, called for by an interrogatory, contains matters not pertinent to the subject matter of the action, the answer may so state, and that such part has been sealed up or otherwise protected from examination; and thereupon such part shall not be inspected by the party interrogating; but such party may apply to the court and obtain an order to have liberty to inspect the part so protected from examination, or so much thereof as the court shall find on hearing the parties, or if necessary by inspecting the part so protected, was improperly withheld and concealed.

Parts of books, &c., called for, containing matter not pertinent, may be sealed up, &c.  
1852, 312, § 68.

†\*SECT. 53. The party interrogated shall not be obliged to answer a question or produce a document the answering or producing of which would tend to criminate himself, or disclose his title to any property the title whereof is not material to the trial of the action in the course of which he is interrogated; or to disclose the names of the witnesses by whom or the manner in which he proposes to prove his own case.

Party not obliged to criminate himself, &c.  
1852, 312, § 69.  
2 Gray, 558.

†\*SECT. 54. If an answer contains irrelevant matter or is not full and clear, or if an interrogatory is not answered, and the party interrogated refuses to expunge or amend, or to answer a particular interrogatory, the court or any justice thereof may on motion order such irrelevant matter to be expunged, or such imperfect answer to be made full and clear, or such interrogatory to be answered, within such time as may seem reasonable.

Irrelevant matter to be expunged.  
Answer to be full, &c.  
1852, 312, § 70.

†\*SECT. 55. When an answer is adjudged irrelevant or insufficient, or when a party is ordered to answer an interrogatory, such order may be

Costs when answer irrelevant, &c.



1852, 312, § 71.

Nonsuit, &c.,  
if party disobeys order.  
1852, 312, § 72.  
3 Gray, 115.  
7 Gray, 417.

Court may allow interrogatories filed, during trial.  
1852, 312, § 74.

made respecting costs, either in the action or otherwise, as the court may direct by general rules or by a special order in each case.

\*†SECT. 56. If a party neglects or refuses to expunge, amend, or answer, according to the requisition of this chapter, the court may enter a nonsuit or default as the case may require, and proceed thereon according to law.

\*†SECT. 57. During the trial of any action the court may allow interrogatories to be filed, to be answered forthwith, or with as little delay as practicable, and may suspend the trial for the purpose of having the same answered; but such interrogatories must be accompanied by an affidavit stating the reasons why they were not filed earlier; and unless the court upon the whole matter finds that due diligence has been used, the interrogatories shall not be filed.

### *Interlocutory Orders.*

Court may order statement of grounds of action, &c.  
1852, 312, § 4.  
3 Gray, 266.

Orders, &c., preparatory to trial, when made.  
1852, 312, § 35.

\*SECT. 58. The court may in all cases order either party to file a statement of such particulars as may be necessary to give the other party, and the court, reasonable knowledge of the nature and grounds of the action or defence.

†SECT. 59. Orders allowing amendments before trial, or a supplemental answer or replication, or enlarging time, and any other interlocutory order necessary to prepare the case for trial, may be made by the court while in session, or any justice thereof, in any county, either in term time or vacation; but the several courts shall prescribe such fixed rules respecting notice, the times and places for motions at chambers, and other matters, as they shall from time to time deem necessary.

### *Agreements of Parties.*

Orders may be entered by consent, &c.  
1852, 312, § 36.

Parties may agree respecting continuances, filing papers, &c.  
1852, 312, § 88.

†SECT. 60. Any of the orders mentioned in the preceding section may be entered by consent in writing signed by the parties or their attorneys. All agreements of attorneys touching any suit or proceeding shall be in writing; otherwise they shall be of no validity.

†SECT. 61. If the parties agree to continue a case without cost until the next term it shall be continued accordingly; but the court may by a general or special order regulate the place on the docket in which the case shall stand at the next term. Parties may make agreements respecting amendments and the time of filing papers, which agreements shall be equivalent to an order of the court to the same effect.

### *Offer of Judgment.*

Defendant may offer judgment. Plaintiff may accept, with costs.  
Time to elect.  
1852, 140, § 1.  
See § 73.

\*SECT. 62. When a defendant in an action at law or suit in equity, wherein damages only are sought to be recovered, offers in court and consents in writing to be defaulted, and that judgment shall be rendered against him, as damages for a sum therein specified, the same shall be entered of record together with the time when it was tendered; and the plaintiff may at any time within ten days after he has received notice of such offer and consent accept the offer, and the court shall render judgment accordingly, with costs to the date of the notice. If, after such notice, the court shall for good cause grant the plaintiff a further time to elect, he may signify his acceptance within the time allowed, and judgment shall be rendered as if the acceptance had been within ten days.

If plaintiff does not accept, nor recover greater sum, defendant allowed costs.  
1852, 140, § 2.  
See § 73.

\*SECT. 63. If the plaintiff does not elect to accept such offer, and shall not recover a greater sum than the sum so offered, not including interest on the sum recovered in damages from the date of the offer, the defendant shall have judgment for his costs after said date, for



which execution shall issue, and the plaintiff, if he recovers damages, shall be allowed his costs only to the date of the offer.

*Hearing, Trial, Evidence.*

†SECT. 64. Every demurrer may in the first instance be heard by a single justice, and if taken in term time during the same term if practicable; and his decision as to the misjoinder of counts shall be final, an amendment being allowed as herein provided. But if the cause of demurrer is that the facts do not in point of law support or answer the action, and the party against whom the decision is made does not pray for leave to amend, such decision shall not be final, but the demurrer may be further heard upon appeal or otherwise, as is provided in respect to such questions of law. When a demurrer is sustained, overruled, or withdrawn, the court shall make such order as may be fit, respecting the filing of an answer or replication, or a trial of the facts.

Demurrers, how heard, &c. 1852, 312, § 23. 4 Gray, 62. 7 Gray, 427.

†SECT. 65. If a demurrer appears to the judge who first hears the same to be frivolous, immaterial, or intended for delay, he may besides overruling it order the party to plead, answer, or reply, notwithstanding such party claims the right to be further heard by appeal or otherwise on his demurrer; and thereupon the case shall proceed to a final judgment as if no demurrer had been filed, and execution may be awarded or stayed on such terms as the court may deem reasonable, as in cases of exceptions adjudged frivolous.

frivolous or immaterial may be overruled, &c. 1852, 312, § 23. 4 Gray, 62.

†SECT. 66. In all civil actions trial by jury may be waived by the consent in writing of the several parties or their counsel filed with the clerk at any time before the trial, and the cause shall thereupon be heard and determined by the court, and judgment entered as in case of verdict by a jury. *Allen 389.*

Jury trial may be waived, and cause heard by court. 1857, 267, § 1.

†SECT. 67. Either party may file exceptions to the decisions and rulings of the court upon matters of law arising upon such trial, move for a new trial for mistake of law or for newly discovered evidence, and be entitled to review, in the same manner and with the same effect as upon trial by jury.

Exceptions. New trial. Review. 1857, 267, § 2.

†SECT. 68. A trial shall not be delayed for want of a reply to the defendant's answer, unless by special order of the court; nor shall an agreement of parties respecting filing amendments or papers operate to postpone the trial of an action beyond the time at which by the rules of the court it would be tried.

Trials not to be delayed or postponed, &c. 1852, 312, §§ 19, 88.

\*†SECT. 69. A trial shall not be delayed for the reason that interrogatories have been filed and the time allowed for answering the same has not elapsed, but the court may allow an examination during the trial as is herein before provided.

Same subject. 1852, 312, § 64.

†SECT. 70. When it appears on a trial that a local action has been brought in an erroneous venue, the court may of its own motion order a nonsuit to be entered, unless good cause shall be shown why the trial should be allowed to proceed.

Local action in wrong county, court may nonsuit. 1852, 312, § 80. See Ch. 133, § 14.

SECT. 71. If the plaintiff fails to give evidence at the trial in support of any count in the declaration not wholly or partly confessed by the answer, it shall forthwith be stricken out. And the court may, either of their own motion or upon motion of a party, require unnecessary counts and statements to be stricken out of a declaration or any subsequent proceeding, and may impose reasonable terms.

Counts not proved, &c., may be stricken out. 1852, 312, § 5.

\*†SECT. 72. Neither the declaration, answer, nor any subsequent allegation, shall be deemed evidence on the trial, but allegations only whereby the party making them is bound.

Pleadings not evidence. 1852, 312, § 75.

\*†SECT. 73. No offer or consent, made in pursuance of sections sixty-two and sixty-three, which is not accepted, shall be evidence against the party making the same, either in any subsequent proceeding in the

Offer of judgment not accepted, not evidence.

1852, 140, § 3.

action or suit in which such offer is made, or in any other action or suit.

Answers to interrogatories may be read at trial, &c.  
1852, 312, § 73.  
11 Cush. 26, 74.  
3 Gray, 115.

\*†SECT. 74. The answer of each party to interrogatories filed may be read at the trial by the other party as evidence; the party interrogated may require that the whole of the answers upon any one subject matter inquired of shall be read, if a part of them is read; but if no part is read, the party interrogated shall in no way avail himself of his examination, or of the fact that he has been examined.

One matter in answer not evidence of another.  
R. S. 100, § 18.  
1852, 312, § 75.  
5 S. & R. 411.

\*†SECT. 75. When a defendant answers two or more matters in his defence, no averment, confession, or acknowledgment contained in one of them shall be used or taken as evidence against him on the trial of any issue joined on any other of them.  
2 N. H. R. 89. 13 Met. 253. 7 Cush. 585.

Justification in slander not proof of malice.  
R. S. 100, § 19.  
15 Mass. 48.  
1 Pick. 1.

\*SECT. 76. If the defendant in an action for slander or publishing a libel, justifies that the words spoken or published were true, such allegation, though not maintained by the evidence, shall not be of itself proof of the malice alleged in the declaration.

Truth of alleged libels may be given in evidence, &c.  
1855, 396.

\*†SECT. 77. In every prosecution and in every civil action for writing or for publishing a libel, the defendant may upon the trial give in evidence the truth of the matter contained in the publication charged as libellous; and such evidence shall be deemed a sufficient justification, unless malicious intention shall be proved.

In action on judgment by default, court may allow evidence of payment, &c.  
1859, 185.

SECT. 78. In any action upon a judgment obtained by default, and without the knowledge of the defendant, the court may in its discretion and upon such terms as it deems reasonable, allow the defendant to show in defence any payment, satisfaction, or extinguishment of the claim, prior to the obtaining of such judgment, or any matter of fraud, which in either case he might have shown upon a writ of review in the original suit: *provided*, such action is brought within six years from the rendition of such judgment.

### *Arrest of Judgment.*

No arrest of judgment for cause before verdict, except, &c.  
1852, 312, § 22.  
1 Gray, 172.  
4 Gray, 204.  
7 Gray, 543.

\*†SECT. 79. A judgment shall not be arrested for any cause existing before the verdict, unless the same affects the jurisdiction of the court. And when the defendant has appeared and answered to the merits of the action, no defect in the writ or other process by which he has been brought before the court, or in the service thereof, shall be deemed to affect the jurisdiction of the court.

### *General Provisions.*

Suggestions entered on record.  
R. S. 95, § 24.

\*†SECT. 80. When a change happens in a suit after its commencement, the court may allow such suggestions to be entered on the record as circumstances may require.

Rules of evidence not changed, &c.  
1852, 312, § 6.  
2 Gray, 565.

\*†SECT. 81. The provisions of this chapter shall not be deemed to change any rule of evidence, the measure of damages, the jurisdiction of any court, or the locality of any action, except so far as the same is herein specially provided for.

Cause of action, amendment, notice to parties, appeal, &c.  
1852, 312, § 33.

\*†SECT. 82. The cause of action shall be deemed to be the same for which the action was brought, when it shall be made to appear to the court that it is the cause of action relied on by the plaintiff when the action was commenced, however the same may be misdescribed; and the adjudication of the court allowing an amendment shall be conclusive evidence of the identity of the cause of action. But no subsequent attaching creditor, or purchaser of property attached in the suit, or bail, or any person other than the parties to the record, shall be bound by such adjudication, unless he has had due notice of the application for leave to amend and opportunity to be heard thereon,



according to an order of notice to that effect to be issued by the court upon application of the plaintiff, and such third parties shall have the right to except or appeal.

\*†SECT. 83. When a party to any suit or proceeding under this chapter is a corporation, all precepts, answers, replications, or other papers, requiring the signature or oath of the party, may be signed or sworn to in behalf of the corporation by some officer or agent thereunto specially authorized.

Affidavits.  
When corporation is a party.  
1852, 312, § 89.

SECT. 84. None of the foregoing provisions, except those contained in sections three, five, eight, nine, twelve, sixteen, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-nine, sixty, sixty-one, sixty-four, sixty-five, sixty-six, sixty-seven, so much of sixty-eight as relates to agreement of parties, sections sixty-nine, seventy, seventy-two, seventy-three, seventy-four, seventy-five, seventy-seven, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, and eighty-seven shall be deemed applicable to real or mixed actions, unless specially named.

Provisions not applicable to real and mixed actions, except, &c.  
1852, 312, § 51.  
See §§ noted thus †.

SECT. 85. Sections one, two, four, five, six, ten, twenty-one, twenty-two, twenty-nine, thirty, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, forty-one, forty-two, forty-three, forty-four, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, sixty-two, sixty-three, sixty-nine, seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-six, and eighty-seven, only, of this chapter shall apply to civil actions before police courts and justices of the peace.

Specified sections to apply to civil actions before justices and police courts.  
&c.  
1852, 312, § 87.  
See §§ noted thus \*.

\*SECT. 86. In actions before such police courts or justices of the peace, the interrogatories and answers provided for in sections forty-six, forty-eight, and sixty-nine, may be filed before said courts or justices respectively. They may be filed by either party, at any time after the commencement of the action, and the answers shall be filed within such time as such courts or justices of the peace shall respectively order.

Interrogatories in actions before police courts, &c., may be filed, &c.  
1852, 312, § 90.

[Forms.]

\*†SECT. 87. The forms contained in the schedule annexed to this chapter may be used in the several courts, subject to be changed and modified from time to time by the supreme judicial court, by general rules made for the purpose.

Forms authorized. May be altered by S. J. C.  
1852, 312, § 84.

SCHEDULE OF FORMS.

*Forms of Declarations in Actions of Contract.*

*Commencement.* To answer to A. B. of ———, in an action of contract. If the plaintiff is a minor and sues by *prochein ami*, as administrator, or in any special character, it may be stated according to the established form. As it is not necessary to insert the declaration in the writ, it should be entitled, when filed separately, in the following form: —

Forms of declarations.

A. B.	}	Middlesex, Sup. Ct.
vs.		Plaintiff's declaration.
C. D.		

*Count for money had and received.* — And the plaintiff says the defendant owes him one hundred dollars for money received by the defendant to the plaintiff's use; —

*Money lent.* — And the plaintiff says the defendant owes him one hundred dollars for money lent by the plaintiff to the defendant; —

*Goods sold.* — Also that the defendant owes him ——— dollars for goods sold by the plaintiff to the defendant; —

*Work.* — Also that the defendant owes him ——— dollars for work done by the plaintiff for the defendant; —



Forms of  
declarations.

*Work and materials.* — Also that the defendant owes him — dollars for work done and materials found by the plaintiff for the defendant ; —

*Board.* — Also that the defendant owes him — dollars for board and lodging furnished by the plaintiff for the defendant ; —

*Freight.* — For the carriage of certain goods by the plaintiff for the defendant ; —

*Warehouse room.* — For warehouse room furnished by the plaintiff for the storage of certain goods of the defendant ; —

*Horse and carriage hire.* — For the use of a certain horse and carriage hired of the plaintiff by the defendant ; —

*Use and occupation.* — For the use and occupation of a certain tenement hired of the plaintiff by the defendant ; —

*Insinul computassent.* — For the balance found due to the plaintiff by the parties on accounting together ; —

*Account annexed.* — And the plaintiff says the defendant owes him fifty dollars, according to the account hereto annexed.

*Payee of Note against Maker.*

And the plaintiff says the defendant made a promissory note payable to the plaintiff or order, a copy whereof is hereto annexed. And the defendant owes the plaintiff the amount of said note and interest thereon.

*On Note payable to Bearer.*

And the plaintiff says the defendant made a promissory note, a copy of which is hereto annexed, payable to one G. H. or bearer. And the plaintiff is the bearer of said note, and the defendant owes him the amount of said note and interest thereon.

(If payments are indorsed on the note, the declaration should be varied as follows : “ A copy whereof, with the indorsements thereon, is hereto annexed, and the defendant owes the plaintiff the balance of said note and interest thereon.”)

If payments have been made which are not indorsed on the note, the allegation should be varied accordingly.)

*By Indorsee against Indorser.*

And the plaintiff says that one C. D. made a promissory note, a copy of which with the indorsements thereon is hereto annexed, payable to said E. F., or order ; and said E. F. indorsed the same to the plaintiff ; and payment of said note was duly demanded of said C. D., who neglected to pay the same, and due notice of its non-payment was given to said E. F. ; and said E. F. owes the plaintiff the amount of said note and interest thereon.

*On a Bond with Condition to pay certain Debts of the Plaintiff, and to provide for his Support.*

And the plaintiff says the defendant executed to him a bond, a copy whereof is hereto annexed :

And the plaintiff says he owed to one O. P. the sum of one hundred dollars on a promissory note (describing it) which the defendant neglects to pay :

Also that he owed to one R. S. one hundred dollars, according to the account hereto annexed, which the defendant neglects to pay :

Also that the defendant neglects to provide clothing for the plaintiff :

And the plaintiff has requested the defendant to pay said debts, and provide for his support as mentioned in said bond —

(To be inserted, if proof of the request is necessary.)

*By Grantee against Grantor in a common Deed of Warranty, for Breaches of Covenant.*

And the plaintiff says the defendant delivered to him a deed, a copy whereof is hereto annexed :

And the defendant was not seised in fee of a part of the land described as follows, (describing it,) but the same was held adversely by one L. M. ; and the residue of said land was not free from encumbrances, but was subject to a mortgage to one S. T., to secure the payment of six hundred dollars :

And the defendant has not warranted and defended the premises against the rightful claims of all persons, but one W. S. had a right of dower therein, and has compelled the plaintiff to assign the same to her.

*On an Award.*

And the plaintiff says the parties by their agreement in writing, a copy whereof is hereto annexed, referred the matters therein mentioned to arbitrators ; and the arbitrators have made an award thereon in writing, a copy whereof is hereto annexed.

(Aver performance of condition by plaintiff, when necessary to be proved, and the non-performance by defendant, which is relied on.)

(If it is for the mere payment of money aver as follows : —)  
And the defendant owes the plaintiff the amount of said award.

Forms of  
declarations.

*On a Promise to pay the Debt of another.*

And the plaintiff says that one E. F. owed him the sum of — for —, and the plaintiff was about to sue the said E. F. to recover the same :

And in consideration that the plaintiff would forbear to sue said E. F., the defendant made an agreement to pay the same to the plaintiff, a copy whereof is hereto annexed ; and the plaintiff did forbear to sue said E. F., and the defendant owes him said sum.

*On an Agreement to convey Land on a certain Day, Plaintiff to pay One Hundred Dollars Cash, and give a Note for Four Hundred Dollars, secured by a Mortgage of the Land.*

And the plaintiff says the defendant made an agreement with the plaintiff, in writing, a copy whereof is hereto annexed :

And on the — day of —, the plaintiff tendered to the defendant one hundred dollars, and also a note for four hundred dollars, (describing it,) and a mortgage of said land, to secure the payment of said note, and demanded of the defendant a conveyance of said land, (following the terms of the agreement.)

*For Breach of Promise of Marriage.*

And the plaintiff says that she and the defendant mutually promised to marry each other.

And she has always been ready to marry the defendant, but the defendant refuses to perform his promise.

*Non-Delivery of Goods sold.*

And the plaintiff says he purchased of the defendant the following goods, viz. : — for the sum of one hundred dollars, to be paid therefor on delivery thereof ; and the defendant promised to deliver the same on the — day of —, at the defendant's store in — :

And on said day the plaintiff demanded said goods at said store, and tendered to the defendant said sum of one hundred dollars in payment of the same :

And the defendant refused to deliver the same to the plaintiff.

*On Policies of Insurance.*

1. On a ship for a total loss.

And the plaintiff says the defendants made to him a policy of insurance, a copy of which is hereunto annexed, for the sum of ten thousand dollars, on the ship John, against the perils of the seas, and other perils therein mentioned, in a voyage from Boston to Cadiz, in Spain, and at and from Cadiz to her port of discharge in the United States ; and while proceeding on said voyage, the ship was wrecked and totally lost by the perils of the seas ; and the defendants had notice of said loss on the — day of —, and were bound to pay the amount of said loss to the plaintiff within sixty days after said notice ; and the defendants owe the plaintiff therefor said sum of ten thousand dollars.

2. For a partial loss and contribution to a general average.

(State, as in the last count to the description of the voyage inclusive.)

And in said policy the defendants agreed that in case of any loss or misfortune to said ship, it should be lawful for the plaintiff and his agents to labor for, and in the defence and recovery of, said ship, and that the defendants would contribute to the charges thereof in proportion as the sum assured by them should be to the whole sum at risk :

And while proceeding on said voyage said ship was by the perils of the seas dismantled, and otherwise damaged in her hull, rigging, and appurtenances, and it was necessary, for the preservation of said ship and her cargo, to throw over a part of her cargo, and the same was thrown over for that purpose, and the plaintiff was obliged to expend the sum of two thousand dollars for repairing said ship at Cadiz, and the sum of five hundred dollars as a contribution for the loss occasioned by throwing over a part of said cargo ; and the ship suffered much other damage that was not repaired at Cadiz ; — and the defendants had notice of said loss and charges, on the — day of —, and were bound by the terms of said policy to pay the same within sixty days after such notice, and the defendants owe the plaintiff therefor the sum of — dollars.

For a total loss of cargo by fire :

And the plaintiff says the defendants made to him a policy of insurance for the sum of ten thousand dollars, on the cargo of the brigantine William, against the perils of fire and other perils therein mentioned, at and from Boston, and in a voyage from thence to Hamburg, or any other port or ports in the north of Europe ; and while said brigantine was proceeding on said voyage, the cargo was totally destroyed by fire ;

Forms of  
declarations.

and the defendants had notice of said loss on the \_\_\_\_\_ day of \_\_\_\_\_, and were bound by the terms of said policy to pay the plaintiff the amount of said loss; and the defendants owe the plaintiff therefor the sum of ten thousand dollars.

*Forms of Declarations in Actions of Tort.*

*Beginning.* — To answer A. B., of \_\_\_\_\_, in an action of tort.

*Trover.* — And the plaintiff says the defendant has converted to his own use one horse, the property of the plaintiff, (or the goods mentioned in the schedule hereto annexed.)

(The *ad damnum* is a sufficient allegation of damage in all cases in which special damages are not claimed.)

*Deceit.* — And the plaintiff says the defendant sold to him ten bags of coffee, and to induce the plaintiff to buy the same the defendant falsely represented to him that said coffee was the property of the defendant; and the plaintiff believing that said representation was true, was thereby induced to purchase and did purchase said coffee, and paid therefor to the defendant the sum of one hundred dollars; and said coffee was not the property of the defendant, which the defendant then knew, but was the property of one A. S., who has taken the same from the plaintiff.

And the plaintiff says the defendant sold him a horse, for which the plaintiff paid him one hundred dollars. And to induce the plaintiff to buy said horse the defendant falsely represented to the plaintiff that said horse was sound, so far as the defendant knew; and the plaintiff, believing that said representation was true, was thereby induced to buy, and did buy, said horse; and said horse was not sound, but had a certain disease called \_\_\_\_\_, which the defendant then knew.

And the plaintiff says the defendant, to induce the plaintiff to sell property on credit to one S. C., falsely represented to the plaintiff in writing, that said S. C. was a man possessed of a large property and able to pay his debts, (a copy of which writing is hereto annexed.) And thereupon the plaintiff, believing said representation to be true, was induced to sell, and did sell, to said S. C., the goods mentioned in the account hereto annexed, and gave the said S. C. credit for the price of said goods, being \_\_\_\_\_ dollars, for the term of six months from the \_\_\_\_\_ day of \_\_\_\_\_. And said S. C. was not a man of property, nor able to pay his debts, but was insolvent, which the defendant then knew. And the plaintiff has not been paid for said goods, and is unable to obtain payment therefor of said S. C.

*Negligence of Railroad Corporations.* — And the plaintiff says the defendants are a corporation owning a railroad between A. and B.; that plaintiff was a passenger on said railroad, and, by reason of the insufficiency of an axle of the car in which he was riding, the plaintiff was hurt; that defendants did not use due care in reference to said axle, but plaintiff did use due care.

(This form may be varied to adapt it to many cases, simply by changing the allegation as to the cause of the accident. It is not intended to restrict a party to the statement of one cause, if there were several concurrent causes, and if the plaintiff is in doubt which of several different causes occasioned the accident, he may, under section twenty-six, so declare.)

*Negligence of Town.* — And the plaintiff says there is in the town of \_\_\_\_\_ a public highway leading from \_\_\_\_\_ to \_\_\_\_\_, which said defendants are bound to keep in repair; — that the same was negligently suffered by defendants to be out of repair, whereby the plaintiff, travelling thereon and using due care, was hurt.

*Obstructing Way.* — And the plaintiff says he owned a tract of land, (describing it,) and there was a way leading to the same from, (here mention the other terminus,) which the plaintiff had a right to use as a foot-way and carriage-way; and the defendant erected a fence across said way and placed stones in the same, so that the plaintiff could not use the same.

*Immoderate Riding.* — And the plaintiff says the defendant hired of him a horse to ride from Boston to Cambridge, and from thence back to Boston, in a proper manner; and the defendant rode said horse so immoderately that he became sick and lame, and was greatly injured in value.

*Slander.* — And the plaintiff says that the defendant publicly, falsely, and maliciously, accused the plaintiff of the crime of perjury, by words spoken of the plaintiff substantially as follows. (Here set forth the words — no innuendoes are necessary.)

(If the natural import of the words is not intelligible without further explanation, or reference to facts understood but not mentioned, or parts of the conversation not stated, in either of those cases, after setting forth the words, the declaration should contain a concise and clear statement of such things as are necessary to make the words relied on intelligible to the court and jury in the same sense in which they were spoken. This rule is applicable to actions for written and printed, as well as oral, slander.)

*Libel.* — And the plaintiff says the defendant caused to be published in a newspaper (describing it) a false and malicious libel concerning the plaintiff, a copy whereof is hereto annexed.

(Or if it be a picture, it may be described.)

5 Gray, 23.  
6 Gray, 495.  
8 Gray, 161.



*Trespass to Person.* — And the plaintiff says the defendant made an assault upon him, and struck him on his head, and kept him imprisoned for the space of one day.

Forms of  
declarations.

*Trespass to Land.* — And the plaintiff says the defendant forcibly entered the plaintiff's close, (describing it,) and ploughed up the soil, &c., and took and carried away fifty bushels of the plaintiff's corn there being, and converted the same to his own use.

*Penalty.* — And the plaintiffs say they had a turnpike-road, (describing it,) and the defendant passed on said road with a wagon, on which he carried a load of more than forty-five hundred pounds, and the feloes of said wagon were less than three inches and a half wide, whereby the defendant became liable to pay the plaintiffs three times the legal toll therefor, and the legal toll therefor is the sum of \_\_\_\_\_.

And the plaintiff says the defendants had a turnpike-road, (describing it,) and the plaintiff was passing over the same and through a turnpike-gate thereon, (describing it,) in a wagon drawn by one horse; and the defendants' toll-gatherer then demanded and received of the plaintiff fifty cents for toll, for passing through said gate with said horse and wagon, the legal toll for passing as aforesaid being only ten cents, whereby the defendants have forfeited to the plaintiff a sum not exceeding one hundred dollars.

And the plaintiffs say they had an aqueduct, (describing it,) and the defendant maliciously injured said aqueduct by cutting off one of the pipes thereof, whereby the defendant became liable to pay the plaintiffs treble the amount of the damage thereby sustained by the plaintiffs; and the amount of said damage was ten dollars.

And the plaintiffs say that the twentieth day of October last was the day of their cattle show and exhibition; and that by their officers they defined and fixed bounds of sufficient extent for the erection of cattle-pens and yards, and for convenient passage-ways to and about the same, within which bounds no persons were permitted to enter and pass unless in conformity with the regulations of said officers: Of all which the defendant had notice; and after said notice the defendant did enter and pass within said bounds, contrary to said regulations, whereby he has forfeited to the plaintiffs a sum not exceeding five dollars.

*Answers in Abatement.*

Forms of  
answers.

A. B. }  
vs. Middlesex, Sup. Ct.  
C. D. } Defendant's Answer.

*Coverture of Plaintiff.* — And the defendant comes and says that when the plaintiff's writ was sued out, the plaintiff was a married woman, and that E. F., her husband, was then alive, and therefore he ought not to be held to answer to the plaintiff's writ.

*Nonjoinder.* — And the defendant comes and says that if he is indebted to the plaintiffs for the goods mentioned in their bill of particulars, he is indebted to them jointly with one G. H., who is still alive, and ought to be sued with him in the writ, and therefore he ought not to be held to answer to the plaintiff's writ.

*Misnomer.* — And the defendant comes and says the plaintiff's name is John Stiles, and not James Stiles, and therefore he ought not to be held to answer to the plaintiff's writ.

*Coverture of Defendant.* — And the defendant comes and says that when the plaintiff's writ was sued out, she was and still is a married woman, and that J. H., her husband, was then alive, and therefore she ought not to be held to answer to the plaintiff's writ.

*Answers in Actions of Contract.*

A. B. }  
vs. Middlesex, Sup. Ct.  
C. D. } Defendant's Answer.

*Money had and received.* — And the defendant comes and upon his personal knowledge denies that he received the money mentioned in the plaintiff's bill of particulars, or any part thereof:

(Or, if the case be so) admits that he received the money mentioned in the plaintiff's declaration, but denies that he received it to the plaintiff's use.

And the defendant comes and says, upon his personal knowledge, that he received the money mentioned in the plaintiff's bill of particulars, but upon his information and belief he denies that he received the same or any part thereof to the plaintiff's use.

And the defendant comes and upon his personal knowledge denies that he has received to the plaintiff's use the money mentioned in the plaintiff's bill of particulars, except the sum of fifty dollars.

*Statute of Limitations.* — And the defendant comes and answers that the cause of action mentioned in the plaintiff's writ did not accrue within six years before the suing out of the plaintiff's writ.

*Payment.* — And the defendant comes and answers that he has paid the plaintiff the sum of \_\_\_\_\_ dollars, which was the full amount of the account stated in the plaintiff's bill of particulars.

If there are several items, add — And he annexes hereto a bill of particulars of said payment.

*Account annexed. Goods sold and delivered.* — And the defendant comes and answers

Forms of  
answers.

as follows, viz. : as to the first ten items of the plaintiff's bill of particulars, upon his personal knowledge he denies that the plaintiff sold and delivered the same to the defendant.

As to the eleventh item, upon his personal knowledge he denies that the price was to be more than ten dollars.

*Work.* — As to the twelfth item, he is ignorant personally, and by information and belief, whether the plaintiff performed the day's labor there charged or not, and also of the price thereof, if any, so that he can neither admit nor deny the plaintiff's allegation, but leaves the plaintiff to prove the same.

*Answers to a Promissory Note.*

*Promissory Note.* — And the defendant comes and answers as follows : —

He denies that he made the promissory note mentioned in the plaintiff's first count :

*Minority.* — And as to the note mentioned in the plaintiff's second count, he says that at the time of making the same he was a minor under the age of twenty-one years.

*Duress.* — And as to the contract mentioned in the plaintiff's third count, he says that at the time of its execution he was kept in imprisonment by the plaintiff, and executed the contract through the force of that imprisonment.

*Part Payment.* — And the defendant comes and says that he has paid the note mentioned in the plaintiff's writ, except the sum of fifty dollars, and

*Tender.*] before the plaintiff sued out his writ he tendered to the plaintiff said sum of fifty dollars, and now brings the same into court for the plaintiff.

*Accord.* — And the defendant comes and says he delivered to the plaintiff one wagon, which the plaintiff received in full satisfaction of the note mentioned in the plaintiff's writ.

*Res Judicata.* — And the defendant comes and says that at the supreme judicial court, held, &c., the plaintiff recovered judgment against the defendant for \_\_\_\_\_ dollars and \_\_\_\_\_ cents damages, and \_\_\_\_\_ for costs ; and that said judgment was rendered upon the same cause of action mentioned in the plaintiff's first count.

*Release.* — And the defendant comes and says the plaintiff executed to him a release, a copy whereof is hereto annexed, whereby he discharged the defendant from the cause of action mentioned in the second count.

*To a Policy of Insurance.*

*Insurance.* — And the defendants come and say that they deny, upon information and belief, that said loss was actually total, and they deny that any abandonment was made.

And the defendants come and say they deny, upon information and belief, that said vessel was seaworthy for the voyage in said policy mentioned, at the inception of said voyage.

And the defendants come, &c., (as above,) but deny, upon information and belief, that said vessel was lost while proceeding on the voyage in said policy described.

*Forms of Answers in Actions of Tort.*

*Trover.* — And the defendant comes and upon his personal knowledge denies that the horse mentioned in the plaintiff's writ was the property of the plaintiff, and also denies that he converted the same to his own use.

And the defendant comes and says that upon his personal knowledge he is ignorant, but upon his information and belief he denies, that the horse mentioned in the plaintiff's writ was the property of the plaintiff.

And the defendant comes and upon his knowledge and belief admits that said horse is the general property of the plaintiff, but avers that the defendant has a special property therein by reason of his having attached the same as the plaintiff's property, by virtue of a writ, (here describe it,) which writ was delivered to the defendant, who then was a deputy-sheriff in the said county of \_\_\_\_\_, for service, and the action is now pending : And so the defendant denies upon his personal knowledge that he has converted said horse to his own use.

*Deceit.* — And the defendant comes and upon his personal knowledge denies that he made said representation knowing that the same was not true.

And the defendant comes and says he has not personal knowledge, but upon his information and belief he denies that said horse was unsound, as stated in the plaintiff's declaration.

And the defendant comes and upon his personal knowledge denies that he made the representation mentioned in the plaintiff's declaration. And he says said coffee was the defendant's property, and he had a right to sell the same.

*Obstructing Way.* — And the defendant comes and says he has not personal knowledge, but, upon his information and belief he denies that the plaintiff has a right of way as set forth in his declaration.

And upon his personal knowledge he denies that he obstructed said way as set forth in said declaration.

*Slander.* — And the defendant comes and upon his personal knowledge denies that

he accused the plaintiff of the crime of perjury as set forth in the plaintiff's first count. Forms of answers.

And as to the second count, he says the plaintiff did feloniously steal, take, and carry away, ten dollars, the property of one S. T., in the possession of said S. T. being found, and converted the same to his own use, and so the plaintiff was guilty of the crime of theft, and the defendant's accusation was true.

*Assault and Battery.* — And the defendant comes and says the plaintiff first assaulted him, and he only defended himself.

And the defendant comes and says the plaintiff was his apprentice, and deserted and ran away from him, and he retook the plaintiff and forcibly brought him back, using no more force than was necessary.

And as to the allegation that the defendant hurt and wounded the plaintiff, the defendant upon his personal knowledge denies the same.

*Trespass quare Clausum.* — And the defendant comes and says that a part of the close mentioned in the plaintiff's writ was the soil and freehold of the defendant, the same being described as follows, &c. :

Upon his own knowledge he denies that he broke or entered any part of said close, except the part above described.

*Replications.*

Replications.

A. B. }  
vs. } Middlesex, Sup. Ct., October 3, 1859.  
C. D. }

*Limitations.* — And the plaintiff replies as follows, viz. : He says that within six years before the suing out of his writ the defendant executed a writing, a copy whereof is hereto annexed, by which he acknowledged said debt, and agreed to pay the same.

He further says the defendant has been absent from this commonwealth for the space of three years last past.

*Minority.* — And the plaintiff replies that he is ignorant of the fact, so that he can neither admit nor deny that the defendant was a minor, as stated in his answer, but leaves the defendant to prove the same.

He further says the articles mentioned in his bill of particulars were necessities for the defendant, and suitable to his estate and degree.

## CHAPTER 130.

### OF SET-OFF AND TENDER.

SECTION	SET-OFF.	SECTION
1. Mutual demands, &c.		16. Declaration in set-off.
2, 3, 4. Description of demands to be set off.		17. Subsequent allegations and pleadings.
5. Set-off of demands assigned.		18. Limitations in bar.
6. of bonds, &c.		19. Judgment when demand in set-off is equal, &c.
7. in what actions allowed.		20. when balance is due to defendant.
8. Where there are several plaintiffs or defendants.		21. Plaintiff not to discontinue.
9. Dormant partner.		22. Set-off in suits before a justice of the peace, &c.
10. Assignment of demand.		TENDER.
11. Actions by one in trust.		23. Payment or tender after day, &c.
12. by executors or administrators.		24. Tender after action brought.
13. Form of judgment in such cases.		25. how to be made, and defence.
14. Actions against executors, &c.		26. Proceedings when tender is accepted.
15. Demand due in same right.		

SET-OFF.

**SECTION 1.** When there are mutual debts or demands between the plaintiff and defendant in an action, one demand may be set off against the other, as provided in this chapter. 9 Met. 39, 367. 11 Met. 136. 13 Met. 132, 134. Mutual demands, &c.  
R. S. 96, § 1.  
6 Met. 7.

**SECT. 2.** No demand shall be set off unless it is founded upon a judgment or upon a contract, but the contract may be either express or implied, and with or without a seal. Description of demands to be set off.  
R. S. 96, § 2.  
9 Met. 367.

**SECT. 3.** No demand shall be set off unless it is for the price of real or personal estate sold, or for money paid, money had and received, or Same subject.  
R. S. 96, § 3.  
17 Mass. 66.



4 Pick. 63.  
5 Pick. 312.  
3 Met. 520.  
4 Met. 430.

Same subject,  
R. S. 96, § 4.  
9 Met. 39, 367,  
509.  
13 Met. 132.  
7 Gray, 170.

Set-off of dem-  
ands assigned.  
R. S. 96, § 5.  
11 Met. 136.  
3 Gray, 504.

of bonds, &c.  
R. S. 96, § 6.  
4 Met. 430.

in what ac-  
tions allowed.  
R. S. 96, § 7.  
4 Met. 430.

if several  
plaintiffs or de-  
fendants.  
R. S. 96, § 8.  
11 Mass. 140.  
1 Met. 80.

dormant part-  
ner.  
R. S. 96, § 9.  
6 Pick. 352.

assignment of  
demand.  
R. S. 96, § 10.  
12 Mass. 193,  
195.  
14 Mass. 291.

Actions by one  
in trust.  
R. S. 96, § 11.  
8 Pick. 342.  
11 Met. 136.  
7 Cush. 217.

by executors  
or adminis-  
trators.  
R. S. 96, § 12.  
2 Mass. 493.  
3 Pick. 452.  
4 Pick. 212.

Form of judg-  
ment in such  
cases.  
R. S. 96, § 13.

Actions against  
executors, &c.  
R. S. 96, § 14.

Demand due in  
same right.  
R. S. 96, § 15.  
6 Met. 537.  
7 Gray, 170.

Declaration in  
set-off.  
R. S. 96, §§ 16, 17.  
1852, 312, § 37.  
3 Met. 411.  
7 Gray, 194.  
Subsequent al-  
legations and  
pleadings.

for services done, or unless it is for a sum that is liquidated, or one that may be ascertained by calculation.

6 Met. 7.

SECT. 4. No demand shall be set off unless it existed at the time of the commencement of the suit, and then belonged to the defendant, nor unless it is due to him in his own right, except as is hereinafter provided.

SECT. 5. Any demand assigned to the defendant with notice to the plaintiff of the assignment before the commencement of the action, may be set off in like manner as if it had been originally payable to the defendant.

SECT. 6. If the demand set off is founded on a bond or other contract having a penalty, no more shall be set off than the sum equitably due.

SECT. 7. The set-off shall be allowed in all actions founded upon demands which could themselves be the subject of set-off according to law, and in no others.

SECT. 8. If there are several plaintiffs, the demand set off shall be due from all of them jointly; and if there are several defendants, the demand set off shall be due to all of them jointly, except as is provided in the following section.

SECT. 9. When the person with whom any contract is made has a dormant partner, and a suit is brought on such contract by or against the partners jointly, any demand due to or from the person with whom the contract was made, may be set off in like manner as if such dormant partner had not been joined in the suit.

SECT. 10. If the demand on which the action is brought has been assigned, and the defendant had notice of the assignment, he shall not set off any demand that he acquires against the original creditor after such notice.

SECT. 11. When an action is brought by one person in trust or for the use or benefit of another, the defendant may set off any demand against the person for whose use or benefit the action is brought, in like manner as if that person were the plaintiff in the suit.

SECT. 12. In actions by executors and administrators, demands against their testators or intestates which belonged to the defendant at the time of their death, may be set off in the same manner as if the action had been brought by the deceased.

9 Pick. 37. 4 Gray, 256. 7 Gray, 170.

SECT. 13. When upon such a set-off against an executor or administrator, a balance is found due to the defendant, the judgment therefor against the plaintiff shall be in the same form and have the same effect as if the suit had been originally commenced by the defendant.

SECT. 14. In actions against executors and administrators and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates or those whom they represent, in the same manner as the persons represented would have been entitled to set off the same in an action against themselves.

SECT. 15. In suits brought by or against executors, administrators, or trustees, in their representative character, no demand shall be set off that is due to or from such executors, administrators, or trustees, in their own right.

SECT. 16. When the defendant relies on a claim by way of set-off, he shall file with his answer a declaration, entitling it a declaration in set-off, and adapted to the claim in like manner as though an action were brought upon it.

SECT. 17. The subsequent allegations and pleadings respecting the defendant's demand shall be governed by the same rules as if an action

had been brought thereon; and the plaintiff shall be entitled to every ground of defence against it of which he might have availed himself by an answer or otherwise in an action brought against him.

R. S. 96, § 19.  
1852, 312, § 37.  
2 Gray, 260.  
7 Gray, 194.

SECT. 18. If any law for the limitation of actions is alleged by way of defence to the defendant's demand, the limitation shall be applied in the same manner as it would have been to an action brought on the same demand if it had been commenced at the time when the plaintiff's action was commenced.

Limitations in bar.  
R. S. 96, § 20.  
4 Gray, 393.

SECT. 19. If an amount is proved to be due on the set-off equal to the amount due to the plaintiff, the court may award costs to either party or dismiss the action without costs; and if the amount so proved is less than the sum due to the plaintiff, he shall have judgment for the balance.

Judgment, when demand in set-off is equal, &c.  
R. S. 96, § 21.  
4 Gray, 511.

SECT. 20. If it appears that there is a balance due from the plaintiff to the defendant, judgment shall be rendered for the defendant for the amount thereof with his costs; but no such judgment shall be rendered against the plaintiff when the demand for which the action is brought was assigned before the commencement of the suit, nor for any balance due from any other person than the plaintiff.

when balance is due to defendant.  
R. S. 96, § 22.  
4 Gray, 511.

SECT. 21. After a declaration in set-off is filed, the plaintiff shall not be allowed to discontinue his action, unless by consent of the defendant.

Plaintiff not to discontinue.  
R. S. 96, § 24.  
10 Cush. 313.

SECT. 22. In actions before a justice of the peace, or police court, the defendant shall file his declaration in set-off at the time when the action is entered, or within such further time as the justice or court for special reasons may allow. All the other proceedings shall be the same as are before prescribed with respect to actions in other courts: *provided*, that judgment for the defendant shall not be entered for more than one hundred dollars, or for more than three hundred dollars in the police court of Boston, exclusive of costs.

Set-off in suits before a justice of the peace, &c.  
R. S. 96, § 23.  
1859, 190.

#### TENDER.

SECT. 23. The payment or tender of payment of the whole sum due on any contract for the payment of money, although made after the money has become due and payable, may be alleged in an answer to an action subsequently brought, in like manner and with the like effect as if such payment or tender had been made at the time prescribed in the contract.

Payment or tender after day, &c.  
R. S. 100, § 14.

SECT. 24. A tender may also be made after an action is brought on such contract, of the whole sum due thereon with the legal costs of suit incurred up to that time: *provided*, it is made four days at least before the return day of the original writ.

Tender after action brought.  
R. S. 100, § 15.

SECT. 25. The tender last mentioned may be made either to the plaintiff or to his attorney in the suit, and if not accepted the defendant may avail himself of it in defence in like manner as if it had been made before the commencement of the action, bringing into court the amount so tendered for costs, as well as for the debt or damages.

how to be made, and defence.  
R. S. 100, § 16.

SECT. 26. If such tender is accepted, the plaintiff or his attorney shall, at the request of the defendant, sign a certificate or notice thereof to the officer who has the writ, and deliver it to the defendant; and if any further costs are incurred for any service made by the officer after the tender and before he receives notice thereof, the defendant shall pay the same to the officer, or the tender shall be invalid.

Proceedings when tender is accepted.  
R. S. 100, § 17.

CHAPTER 131.

OF WITNESSES AND EVIDENCE.

- SECTION**
- WITNESSES.**
1. Witnesses, by whom summonses for may be issued.
  2. summonses for, by whom served.
  3. fees to be tendered to.
  4. liability of, for not attending.
  5. further liability of.
  6. may be brought in on warrant.
  7. oaths to, by arbitrators, &c.
  - 8, 9. Mode of administering oaths.
  - 10, 11. Who may affirm.
  12. Persons other than Christians, how sworn.
  13. Witnesses not excluded by crime, &c.
  14. Parties in civil suits may testify, except, &c.
  15. Witnesses to wills.
  16. When wife may testify.

- DEPOSITIONS.**
- 17, 18. Depositions, when taken, &c.
  19. Notice to be given to adverse party.
  20. on whom to be served.
  - 21, 22. how to be served.
  - 23, 24. Deponent, how sworn and examined.
  25. Deposition, by whom to be written.
  26. Certificate to be annexed.
  27. Deposition to be transmitted to court, &c.
  28. not to be used if deponent can attend.
  29. Objections to deponent or his testimony, how and when made.
  30. Deposition, when may be used in another suit.
  31. Courts may make rules concerning depositions.
  32. Deponent may be compelled to testify.
  33. living out of state, but at the time herein, may be compelled to give depositions, &c.
  34. Depositions, how taken out of state.
  35. to be taken on written interrogatories.
  36. Rules concerning foreign depositions.
  37. Discretionary power as to depositions and affidavits otherwise taken.
  38. Depositions may be taken for courts in other governments.

- DEPOSITION TO PERPETUATE TESTIMONY.**
- SECTION**
39. Depositions to perpetuate evidence, how taken.
  40. Notice to be given to all persons interested.
  41. Depositions to perpetuate testimony not to be taken when objections are made, except, &c.
  42. mode of taking. Certificate to be annexed.
  43. to be recorded in registry of deeds.
  44. in what cases used.
  45. Deponent may be summoned and compelled to testify.
  46. Such depositions may be taken out of state.
  47. Statement to be filed by party applying.
  48. Notice to be given to adverse party.
  49. Commission may be issued.
  50. Deposition, how taken and returned.
  51. Statement may be filed and notice given in vacation.
  52. S. J. C. may make rules concerning such depositions.
  53. Such depositions when to be used.
  54. Depositions to perpetuate testimony against all persons.
  - 55, 56. Proceedings therefor.
  57. Such depositions to be recorded in registry of deeds.
  58. in what cases they may be used.

- DEPOSITIONS OF PARTIES.**
59. Depositions of parties, &c.
- EVIDENCE IN PROCEEDINGS IN EQUITY.**
60. Evidence in proceedings in equity.
- PROOF OF STATUTES AND LAWS.**
61. Records of courts of other states, how authenticated.
  62. Acts and resolves published by law to be evidence.
  63. Statute laws of other states, when to be evidence.
  64. Unwritten laws of other states, how proved.
  65. Laws of foreign countries, how proved.

WITNESSES.

Witnesses, by whom summonses for may be issued. 1784, 28. R. S. 85, § 38. R. S. 94, § 1. R. S. 96, § 28.

summonses for, by whom served. R. S. 94, § 2.

fees to be tendered to. R. S. 94, § 3. 4 Cush. 249.

liability of,

**SECTION 1.** Every clerk of a court of record, and every justice of the peace, may issue summonses for witnesses in all civil cases pending before any court, magistrates, auditors, referees, arbitrators, or other persons authorized to examine witnesses; and the summons shall be in the form heretofore adopted and commonly used, but may be altered from time to time like other writs.

**SECT. 2.** Such summons may be served by any officer qualified to serve a civil process or by a disinterested person, by exhibiting and reading it to the witness, or by giving him a copy thereof, or leaving such copy at the place of his abode.

**SECT. 3.** No person shall be obliged to attend as a witness, unless the fees allowed by law for one day's attendance, and for travelling to and returning from the place where he is required to attend, are paid or tendered to him.

**SECT. 4.** If a person duly summoned and obliged to attend as a wit-



ness, fails so to do without a reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in an action of tort.

SECT. 5. Such failure to attend as a witness before any court, justice of the peace, master in chancery, or the county commissioners, or before an auditor appointed by the supreme judicial or superior court, shall also be considered a contempt of the court, and may be punished by a fine not exceeding twenty dollars.

SECT. 6. The court, justice, master in chancery, county commissioners, or auditor, in such case, may issue a warrant to bring such witness before them to answer for the contempt, and also to testify as a witness in the cause in which he was summoned.

SECT. 7. Arbitrators, referees, and auditors, appointed according to law, may administer oaths or affirmations to all persons offered as witnesses before them.

SECT. 8. The usual mode of administering oaths now practised in this state, with the ceremony of holding up the hand, shall be observed in all cases in which an oath may be administered by law, except as is hereinafter provided.

SECT. 9. When the court or magistrate before whom a person is to be sworn, is satisfied that such person has any peculiar mode of swearing which is in his opinion more solemn or obligatory than holding up the hand, they may adopt that mode of administering the oath.

SECT. 10. Every Quaker when called on to take an oath shall be permitted, instead of swearing, solemnly and sincerely to affirm under the pains and penalties of perjury.

SECT. 11. Every person who declares that he has conscientious scruples against taking any oath, shall, when called upon for that purpose, be permitted to affirm in the manner prescribed for Quakers, if the court or magistrate on inquiry is satisfied of the truth of such declaration.

SECT. 12. Every person believing in any other than the Christian religion, may be sworn according to the peculiar ceremonies of his religion, if there are any such. Every person not a believer in any religion shall be required to testify truly under the pains and penalties of perjury; and the evidence of such person's disbelief in the existence of God may be received to affect his credibility as a witness.

SECT. 13. No person shall be excluded by reason of crime or interest from giving evidence as a witness either in person or by deposition in any proceeding civil or criminal in court or before a person having authority to receive evidence. But the conviction of any crime may be shown to affect the credibility of a witness.

SECT. 14. Parties in civil actions and proceedings, including probate and insolvency proceedings, suits in equity, and divorce suits, (except those in which a divorce is sought on the ground of alleged adultery of either party,) shall be admitted as competent witnesses for themselves or any other party; and in any such case in which the wife is a party or one of the parties, she and her husband shall be competent witnesses for and against each other, but they shall not be allowed to testify as to private conversations with each other: *provided*, that where one of the original parties to the contract or cause of action in issue and on trial is dead, or is shown to the court to be insane, the other party shall not be admitted to testify in his own favor; and where an executor or administrator is a party, the other party shall not be admitted to testify in his own favor, unless the contract in issue was originally made with a person who is living and competent to testify, except as to such acts and contracts as have been done or made since the probate of the will, or the appointment of the administrator.

for not attending.  
R. S. 94, § 4.  
4 Cush. 249.

Witnesses, further liability of.  
R. S. 94, § 5.  
1838, 42.  
1856, 284, § 9.  
1858, 93, §§ 2, 3.

may be brought in on warrant.  
R. S. 94, § 6.  
1838, 42.  
1856, 284, § 9.  
oaths to, by arbitrators, &c.  
1852, 51.

Mode of administering oaths.  
R. S. 94, § 7.

Same subject.  
R. S. 94, § 8.  
6 Mass. 262.  
16 Pick. 153.

Who may affirm.  
R. S. 94, § 9.

Same subject.  
R. S. 94, § 10.  
2 Gallis, 364.  
3 Met. 254.

Persons other than Christians, how sworn, &c.  
R. S. 94, § 11.

Witnesses not excluded by crime, &c.  
1853, 312, § 60.  
17 Mass. 537, 549.  
9 Pick. 512.  
5 Met. 335.

Parties in civil suits may testify, except, &c.  
1851, 255, § 3.  
1857, 305, § 1.  
1859, 230, § 2.  
5 Gray, 440.  
7 Gray, 82.

*15 Gray 94*  
*12 Allen 231*

Witnesses to wills, 1852, 312, § 60. 1857, 305, § 3. When wife may testify, 1859, 230, § 1.

SECT. 15. The provisions of the two preceding sections shall not apply to the attesting witnesses to a will or codicil.

SECT. 16. In actions brought against the husband wherein the cause of action grows out of a wrong or injury done by him to the wife, or his neglect to furnish her with the proper means of support, the wife shall be a competent witness.

## DEPOSITIONS.

Depositions, when taken, &c. R. S. 94, § 13.

SECT. 17. Depositions may be taken as provided in this chapter, to be used before magistrates or other persons authorized to examine witnesses in any other than criminal cases.

Same subject. R. S. 94, § 14.

SECT. 18. When a witness whose testimony is wanted in a civil cause or proceeding pending in this state, lives more than thirty miles from the place of trial, or is about to go out of the state and not to return in time for the trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial, his deposition may be taken as hereinafter provided.

Notice to be given to adverse party. R. S. 94, § 15.

SECT. 19. At any time after the cause is commenced by the service of process, or after it is submitted to arbitrators or referees, either party may apply to a justice of the peace, who shall issue a notice to the adverse party to appear before said justice or any other justice of the peace, at the time and place appointed for taking the deposition, and to put such interrogatories as he thinks fit.

on whom to be served. R. S. 94, §§ 16, 17. 7 Pick. 137.

SECT. 20. The notice may be served on the adverse party or his agent or attorney; and when there are several plaintiffs, defendants, or parties, on either side, a notice served on either of them shall be sufficient.

how to be served. R. S. 94, § 18. 7 Met. 289. 11 Met. 78.

SECT. 21. The notice shall be served by delivering an attested copy thereof to the person to be notified, or by leaving such copy at his place of abode, not less than twenty-four hours before the time appointed for taking the deposition, and also allowing time for his travel to the place appointed, not less than at the rate of one day, Sundays excluded, for every twenty miles' travel.

same subject. R. S. 94, § 19.

SECT. 22. Instead of the written notice before prescribed, the notice may be given verbally by the justice taking the deposition, or it may be wholly omitted if the adverse party or his attorney in writing waives the right to it.

Deponent, how sworn and examined. R. S. 94, § 20.

SECT. 23. The deponent shall be sworn or affirmed to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken. He shall then be examined by the justice and the parties if they think fit, and his testimony shall be taken in writing.

Same subject. R. S. 94, § 21.

SECT. 24. The party producing the deponent shall be allowed first to examine him, either upon verbal or written interrogatories, on all the points which he deems material; the adverse party may then examine him in like manner; after which either party may propose such further interrogatories as the case may require.

Deposition, by whom to be written. R. S. 94, § 22.

SECT. 25. The deposition shall be written by the justice, or by the deponent, or by some disinterested person in the presence and under the direction of the justice, and it shall be carefully read to or by the deponent, and shall then be subscribed by him.

Certificate to be annexed. R. S. 94, § 23. 3 Pick. 79, 80.

SECT. 26. The justice shall annex to the deposition a certificate of the time and manner of taking it, the person at whose request, the cause or suit for which, it was taken, and the reason for taking it, and stating also whether the adverse party attended, and if not, stating the notice, if any, that was given to him.

Deposition to be transmitted to court, &c. R. S. 94, § 24.

SECT. 27. The deposition shall be delivered by the justice to the court, arbitrators, referees, or other persons, before whom the cause is pending, or shall be enclosed and sealed by him, and directed to them, and shall remain sealed until opened by them.



SECT. 28. No such deposition shall be used if it appears that the reason for taking it no longer exists; except that if the party producing it in such case shows any sufficient cause then existing for using the deposition, it may be admitted.

Deposition, when not to be used.  
R. S. 94, § 25.

SECT. 29. Every objection to the competency or credibility of the deponent, and to the propriety of any questions put to him, or of any answers made by him, may be made when the deposition is produced in the same manner as if the witness were personally examined on the trial: *provided*, that when a deposition is taken upon written interrogatories, all objections to any interrogatory shall be made before it is answered, and if the interrogatory is not withdrawn the objection shall be noted thereon, otherwise the objection shall not be afterwards allowed.

Objections to deponent or his testimony, how and when made.  
R. S. 94, § 26.  
1 Pick. 313.  
2 Pick. 165.  
8 Pick. 51.  
6 Met. 270.  
7 Gray. 41

SECT. 30. When the plaintiff in a suit discontinues it or becomes nonsuit, and another suit is afterwards commenced for the same cause between the same parties or their respective representatives, all depositions lawfully taken for the first suit, may be used in the second in the same manner and subject to the same conditions and objections as if originally taken for the second suit, if the deposition was duly filed in the court where the first suit is pending, and has remained in the custody of the court from the termination of the first suit until the commencement of the second.

Deposition, when may be used in another suit.  
R. S. 94, § 27.  
22 Pick. 309.

SECT. 31. The courts may from time to time make proper and convenient rules as to the time and manner of opening, filing, and safe keeping of depositions, and other regulations concerning the taking and using thereof, which are not inconsistent with the provisions of law.

Courts may make rules concerning depositions.  
R. S. 94, § 28.

SECT. 32. A witness may be summoned and compelled to give his deposition at any place within twenty miles of his place of abode, in like manner and under the same penalties as he may be summoned and compelled to attend as a witness before a court.

Deponent may be compelled to testify.  
R. S. 94, § 29.

SECT. 33. A witness not having his place of abode in this state, but being at the time herein, may be summoned and compelled to give his deposition at any place within ten miles of the place at which the summons is served upon him, in like manner and under the same penalties as he may be summoned and compelled to attend as a witness before a court.

Witness living out of state, but at the time herein, to give deposition, &c.  
1837, 236.

SECT. 34. The deposition of a witness without this state may be taken under a commission issued to one or more competent persons in any other state or country, by the court in which the cause is pending; or it may be taken before a commissioner appointed by the governor for that purpose in any part of the United States or in any foreign country; and in either case the deposition may be used in the same manner and subject to the same conditions and objections as if it had been taken in this state.

Depositions, how taken out of state.  
R. S. 94, § 30.  
1856, 253.  
6 Met. 270.  
7 Gray, 419.  
Appointment of commissioner.  
See Ch. 14, §§ 41-47.

SECT. 35. Every deposition taken before commissioners shall be taken upon written interrogatories, to be exhibited to the adverse party or his attorney, and cross-interrogatories to be filed by him if he thinks fit.

to be taken on written interrogatories.  
R. S. 94, § 31.

SECT. 36. The courts may make rules not inconsistent with the provisions of law as to the issuing of commissions, either in vacation or term time, the filing of interrogatories and all other matters relating to depositions taken out of the state.

Rules concerning foreign depositions.  
R. S. 94, § 32.

SECT. 37. Depositions and affidavits taken out of the state in any other manner than is prescribed in the three preceding sections, if taken before a notary public or other person authorized by the laws of any other state or country to take depositions, may be admitted or rejected at the discretion of the court: *provided*, that no such deposition or affidavit shall be admitted unless it appears that the adverse party had sufficient notice of the taking thereof, and opportunity to cross-examine

Discretionary power as to depositions and affidavits otherwise taken.  
R. S. 94, § 33.  
1 Cush. 419.



the witness, or that from the circumstances of the case it was impossible to give him such notice.

Depositions may be taken for courts in other governments. R. S. 94, § 53.

SECT. 38. A witness may be summoned and compelled in like manner and under the same penalties as are prescribed in this chapter, to give his deposition in a cause pending in a court in any other state or government; which deposition may be taken before a justice of the peace in this state, or before commissioners appointed under the authority of the state or government in which the suit is pending; and if the deposition is taken before such commissioners, the witness may be summoned and compelled to appear before them by process from a justice of the peace in this state.

DEPOSITION TO PERPETUATE TESTIMONY.

Depositions to perpetuate evidence, how taken. R. S. 94, § 34. 1858, 93. 5 Met. 173.

SECT. 39. When a person is desirous to perpetuate the testimony of a witness, he shall make a statement in writing setting forth briefly and substantially his title, claim, or interest, in or to the subject concerning which he desires to perpetuate the evidence, and the names of all other persons interested or supposed to be interested therein, and also the name of the witness proposed to be examined; and shall deliver said statement to two justices of the peace, one of whom shall be either a judge or register of probate and insolvency, a clerk of the supreme judicial court, a master in chancery, or a counsellor at law, requesting them to take the deposition of said witness.

Notice to be given to all persons interested. R. S. 94, § 35. 1839, 140, § 2.

SECT. 40. The justices shall thereupon cause notice to be given of the time and place appointed for taking the deposition, to all persons mentioned in said statement as interested in the case. The notice shall be given in the manner prescribed in this chapter respecting notice upon taking a deposition in this state to be used in a cause here pending; and when in the opinion of the justices no sufficient provision is made by law for giving notice to parties adversely interested, they shall cause such reasonable notice to be given as they deem proper.

*See 18*

Depositions to perpetuate testimony not to be taken when objections are made, except, &c. 1839, 140, § 1.

SECT. 41. If at the time and place appointed for taking the deposition the witness or any person interested appears and objects, the justices shall not proceed to take the same unless on hearing the parties it is made satisfactorily to appear that such testimony may be material to the petitioner, and is not sought for the purpose of discovery, or of using the same in any suit then pending, or thereafter to be brought against said witness; and that the petitioner is in danger of losing the same before it can be taken in any suit wherein his right, title, interest, or claim, can be tried. In all cases the petitioner, his agent, or attorney, shall at the request of such witness, or any person interested in the deposition, be examined on oath in relation to the reasons for taking the same.

mode of taking. Certificate to be annexed. R. S. 94, § 36. 3 Tick. 80. 5 Met. 173.

SECT. 42. The deponent shall be sworn and examined, and his deposition shall be written, read, and subscribed, in the same manner as is prescribed respecting other depositions before mentioned; and the justices shall annex thereto a certificate under their hands of the time and manner of taking it, and that it was taken in perpetual remembrance of the thing; and they shall also insert in the certificate the names of the person at whose request it was taken, and of all those who were notified to attend, and of all who did attend the taking thereof.

to be recorded in registry of deeds. R. S. 94, § 37.

SECT. 43. The deposition with the certificate, and also the written statement of the party at whose request it was taken, shall within ninety days after the taking thereof be recorded in the registry of deeds in the county or district where the land lies, if the deposition relates to real estate, otherwise in the county or district where the parties or some of them reside.

in what cases, used.

SECT. 44. If a suit, either at the time of taking such deposition or at any time afterwards, is pending between the person at whose request it

was taken, and the persons named in said written statement, or any of them who were notified as aforesaid, or any persons claiming under either of said parties, concerning the title, claim, or interest, set forth in the statement, the deposition so taken, or a certified copy of it from the registry of deeds, may be used in such suit in the same manner and subject to the same conditions and objections as if it had been originally taken therefor.

R. S. 94, § 38.  
3 Pick. 74.

SECT. 45. Any witness may be summoned and compelled to give his deposition in perpetual remembrance of the thing as before prescribed, in like manner and under the same penalties as are provided in this chapter respecting other depositions taken in this state.

Deponent may be summoned and compelled to testify.  
R. S. 94, § 39.

SECT. 46. Depositions to perpetuate the testimony of witnesses living without the state, may be taken in any other state, or in any foreign country, upon a commission to be issued by the supreme judicial or superior court, in the manner hereinafter provided.

Depositions may be taken out of state.  
R. S. 94, § 40.  
3 Pick. 14.

SECT. 47. The person who proposes to take the deposition shall apply to either of said courts, and file therein a statement like that before prescribed to be delivered to the justices of the peace upon taking such a deposition within this state; and if the subject of the proposed deposition relates to real estate within this state, the statement shall be filed in the county where the land or any part thereof lies, otherwise in the county where the parties or some of them reside.

Statement to be filed by party applying.  
R. S. 94, § 41.

SECT. 48. The court shall order notice of such application and statement to be served on all the persons mentioned therein as adversely interested in the case, and living within the state, which notice shall be served fourteen days at least before the time therein appointed for hearing the parties.

Notice to be given to adverse party.  
R. S. 94, § 42.

SECT. 49. If, upon hearing the parties who appear, the court is satisfied that there is sufficient cause for taking the deposition, it shall issue a commission therefor in like manner as for taking a deposition to be used in any cause pending in the same court.

Commission may be issued.  
R. S. 94, § 43.

SECT. 50. The deposition shall be taken upon written interrogatories filed by the applicant, and cross-interrogatories filed by any party adversely interested, if he thinks fit, and it shall be taken and returned substantially in the same manner as if taken to be used in a cause pending in the same court.

Deposition, how taken and returned.  
R. S. 94, § 44.

SECT. 51. The person who proposes to take the deposition may, at his election, file his statement in the clerk's office in vacation, and may cause notice thereof to be given to the persons therein named as adversely interested, by serving them with an attested copy of the statement, fourteen days at least before the next term of the court; and the court may thereupon proceed to hear the parties and to issue the commission as before provided.

Statement may be filed and notice given in vacation.  
R. S. 94, § 45.

SECT. 52. The supreme judicial court may from time to time make rules not inconsistent with the provisions of law as to taking depositions to perpetuate the testimony of witnesses without the state, whether taken under a commission from the supreme judicial or superior court, and as to the filing or recording of such depositions.

S. J. C. may make rules concerning such depositions.  
R. S. 94, § 46.  
1859, 196.

SECT. 53. All depositions to perpetuate the testimony of witnesses, taken at any place without this state according to the provisions of this chapter, may be used in like manner as if taken within the state.

Such depositions when to be used.  
R. S. 94, § 47.

SECT. 54. Depositions to perpetuate the testimony of witnesses within or without the state, so that the same may be evidence against all persons, may be taken upon a commission to be issued after public notice by the supreme judicial or superior court.

Depositions to perpetuate testimony against all persons.  
R. S. 94, § 48.

SECT. 55. The person who desires to have such deposition taken may apply to either of said courts in the manner before prescribed in the case of taking a deposition to perpetuate the testimony of a witness living without the state, and all the proceedings thereon shall be the same as are prescribed in the case last mentioned.

Proceedings therefor.  
R. S. 94, § 49.



Depositions to perpetuate testimony against all persons. Proceedings therefor.  
R. S. 94, § 50.

SECT. 56. The court shall, in addition to the proceedings before prescribed, inquire upon the oath of the applicant or otherwise, at its discretion, as to all persons known or supposed to be interested in the case, and shall in the commission direct the commissioner or commissioners to publish in such newspaper or newspapers within or without the state, or both, or in such other manner as the court considers most effectual, such notice of the time and place of taking such deposition, and of the subject matter thereof, as the court thinks proper; which notice shall be addressed specially by name to all persons who are known or supposed to be interested in the case, and generally to all others, that they may attend and propose cross-interrogatories to the witness. The court may also require personal notice of the time and place of taking, and of the subject matter of, such deposition, to be given to such persons and in such manner as under all the circumstances seems proper.

Such depositions to be recorded in registry of deeds.  
R. S. 94, § 51.

SECT. 57. Such deposition having been taken and returned to the court by whose order the commission issued, and being found to have been taken according to law and the directions contained in the commission, the court shall order it to be recorded within thirty days in the registry of deeds, in the manner prescribed in section forty-three.

in what cases they may be used.  
R. S. 94, § 52.

SECT. 58. A deposition taken and recorded under the provisions of the four preceding sections, or a certified copy thereof from the registry, may be used by the person at whose request it was taken, or by any person claiming under him, against any person whatever, in any suit or process, wherein is brought in question the title, claim, or interest, set forth in the statement upon which the commission was founded, in the same manner, and subject to the same conditions and objections, as if it had been originally taken for said suit or process.

#### DEPOSITIONS OF PARTIES.

Depositions of parties, &c.  
1857, 305, § 2.  
5 Gray, 440.

SECT. 59. The testimony of persons made competent witnesses by section fourteen, may be taken or given by depositions, for the causes and in the manner provided for other witnesses, and the expenses of such depositions shall be taxed in the bill of costs as in other cases.

#### EVIDENCE IN PROCEEDINGS IN EQUITY.

Evidence in proceedings in equity.  
1852, 312, § 85.

SECT. 60. In proceedings in equity the evidence shall be taken in the same manner as in suits at law, unless the court for special reasons otherwise directs; but this shall not prevent the use of affidavits where they have heretofore been allowed.

#### PROOF OF STATUTES AND LAWS.

Records of courts of other states, how authenticated.  
R. S. 94, § 57.  
9 Cranch, 122.  
5 Met. 436.  
See U. S. const. art. 4, § 1.

SECT. 61. The records and judicial proceedings of any court of another state or of the United States shall be admissible in evidence in all cases in this state, when authenticated by the attestation of the clerk, prothonotary, or other officer having charge of the records of such court, with the seal of such court annexed.

Acts and resolves published by law to be evidence.  
R. S. 94, § 58.  
13 Gray, 150.

SECT. 62. The printed copies of all statutes, acts, and resolves, of the commonwealth, whether of a public or private nature, published under the authority of the government, shall be admitted as sufficient evidence thereof in all courts of law, and on all occasions whatsoever.

Statute laws of other states, when to be evidence.  
R. S. 94, § 59.  
3 Pick. 293.

SECT. 63. Printed copies of the statute laws of any other state and of the United States, or of the territories thereof, if purporting to be published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted



in all courts of law, and on all other occasions, in this state, as *prima facie* evidence of such laws.

SECT. 64. The unwritten or common law of any other of the United States, or of the territories thereof, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as evidence of such law.

Unwritten laws of other states, how proved.  
R. S. 94, § 60.

SECT. 65. The existence, tenor, or effect, of all foreign laws, may be proved as facts, by parol evidence; but if it appears that the law in question is contained in a written statute or code, the court may in its discretion reject any evidence of such law that is not accompanied by a copy thereof.

Laws of foreign countries, how proved.  
R. S. 94, § 61.  
14 Mass. 455.

## CHAPTER 132.

### OF JURIES.

- QUALIFICATION AND EXEMPTION.
- SECTION
1. Qualification of jurors.
  2. Persons absolutely exempt.
  3. To serve but once in three years.
  4. except, &c.
  5. Jurors before justices of peace and police courts, when exempt, &c.
- JURY LIST AND BOX.
6. Selectmen to prepare lists of persons qualified.
  7. List to be posted up and approved or altered by town.
  8. Names to be put into a box.
  9. Name of person convicted, &c., to be withdrawn.
- VENIRES FOR JURORS.
10. Clerks to issue writs of *venire facias*.
  11. Jurors to be apportioned.
  12. *Venires*, how served.
  13. Additional *venires* may be issued in term time. How served.
  14. Special provisions for Dukes County.
- DRAWING AND SUMMONING JURORS.
15. Jurors selected by drawing names.
  16. Names, when and how to be drawn.
  17. Date of each draft to be indorsed on ballot.
  18. May be drawn in town meeting.
  19. Meetings for drawing jurors, when held.
  20. Summoning jurors and returning *venire*.

- SPECIAL PROVISIONS FOR CITIES.
- SECTION
21. Lists, how made, &c., in cities.
  22. Drawing jurors, &c., in cities.
- EMPANELLING AND OTHER PROVISIONS RESPECTING JURORS.
23. Empanelling juries for civil causes.
  24. supernumeraries, &c.
  25. foreman to be chosen by jury.
  26. Empanelling juries in criminal cases.
  27. Talesmen, when and how returned.
  28. who and by whom returned.
  29. Jurors may be examined, &c., as to interest, &c.
  30. When interest not to disqualify.
  31. Objections to jurors, when to be made.
  32. Certain irregularities not material.
  33. Gratuities, &c., to jurors forbidden.
  34. Jury not to be sent out more than twice, unless, &c.
  35. Court may direct a view by jury.
- PENALTIES.
36. Fines on jurors neglecting to attend.
  37. on officers and others for neglect.
  38. Same, in cases of highways, mills, &c.
  39. Punishment for fraud in drawing jurors.
- EXCEPTIONS OF SPECIAL JURIES.
40. Special juries not affected by this chapter.

### QUALIFICATION AND EXEMPTION.

SECTION 1. All persons who are qualified to vote in the choice of representatives in the general court shall be liable to be drawn and serve as jurors, except as is hereinafter provided.

Qualifications of Jurors.  
R. S. 95, § 1.  
9 Mass. 107.

SECT. 2. The following persons shall be exempt from serving as jurors, to wit:—

Persons absolutely exempt.  
R. S. 18, § 17.  
R. S. 95, §§ 2, 3.  
1838, 21.  
1849, 218, § 8.  
1851, 204.  
1853, 93.  
19 Pick. 368.

The governor, lieutenant-governor, members of the council, secretary of the commonwealth, members and officers of the senate and house of representatives during the session of the general court, judges and justices of any court, (except justices of the peace,) county and special commissioners, clerks of courts, registers of probate and insolvency, registers of deeds, sheriffs and their deputies, coroners, constables, mar-

shals of the United States and their deputies, and all other officers of the United States, counsellors and attorneys at law, settled ministers of the gospel, officers of colleges, preceptors and teachers of incorporated academies, practising physicians and surgeons regularly licensed, cashiers of incorporated banks, constant ferrymen, persons who are more than sixty-five years old, members of the volunteer militia, members of the ancient and honorable artillery company, and engineers and members of the fire department of the city of Boston; and enginemen and members of the fire department of other places may be exempt by the vote of the city council of the city or the inhabitants of the town.

To serve but once in three years.  
R. S. 95, § 12.  
16 Mass. 220.  
8 Pick. 504.  
except, &c.  
R. S. 95, § 38.

SECT. 3. No person shall be liable to be drawn and serve as a juror in any court oftener than once in three years, except as provided in the two following sections, but he shall not be so exempt unless he actually attends and serves as a juror in pursuance of the draft.

SECT. 4. The inhabitants of the counties of Nantucket and Dukes County shall be liable to be drawn and serve as jurors once in every two years.

Jurors before justices of peace and police courts, when exempt, &c.  
1852, 314, §§ 2, 10.

SECT. 5. No person shall be exempt from serving on a jury in any other court, in consequence of his having served before a justice of the peace or police court. No person shall be compelled to serve as a juror before any justice of the peace, or police court, more than twenty-four days in any one year, nor more than fourteen days at any one time, except to finish a case commenced within that time.

#### JURY LIST AND BOX.

Selectmen to prepare lists of persons qualified.  
R. S. 95, §§ 4, 38.  
1856, 125, §§ 1, 7 Met. 326.

SECT. 6. The selectmen of each town shall once in every year prepare a list of such inhabitants of the town not absolutely exempt, as they think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all legal exceptions; which list shall include not less than one for every one hundred inhabitants of the town, and not more than one for every sixty inhabitants, computing by the then last census, except that in the county of Dukes County it may include one for every thirty inhabitants.

List to be posted up and approved or altered by town.  
R. S. 95, § 5.  
1856, 125, §§ 1, 2.  
7 Met. 326.

SECT. 7. The list when so prepared shall be posted up by the selectmen in public places in the town, ten days at least before it is submitted for revision and acceptance, and shall then be laid before the town; and the town may alter it by adding the names of any persons liable to serve, or striking any names therefrom.

Names to be put into a box.  
R. S. 95, § 6.

SECT. 8. The selectmen shall cause the names borne on the list to be written, each on a separate paper or ballot, and shall roll up or fold the ballots so as to resemble each other as much as possible, and so that the name written thereon shall not be visible on the outside; and they shall place the ballots in a box to be kept by the town clerk for that purpose.

Name of person convicted, &c., to be withdrawn.  
R. S. 95, § 7.

SECT. 9. If any person whose name is so placed in the jury box is convicted of any scandalous crime, or is guilty of any gross immorality, his name shall be withdrawn therefrom by the selectmen, and he shall not be returned to serve as a juror.

#### VENIRES FOR JURORS.

Clerks to issue writs of *venire facias*.  
R. S. 86, § 7.  
R. S. 95, §§ 13, 37.  
1859, 196.  
See Ch. 171, §§ 1, 2, 3.

SECT. 10. The clerks of the supreme judicial and superior courts, in due season before each term, (except the terms of the superior court in the county of Suffolk for criminal business commencing at other times than in January, April, July, and October,) and at such other times as the respective courts may order, shall issue writs of *venire facias* for jurors, and shall therein require the attendance of the jurors on such

day of the term as the court may order. The jurors returned for the superior court for criminal business in the county of Suffolk shall serve three terms.

SECT. 11. The clerks in issuing the *venires* shall require from each town and city a number of jurors as nearly as may be in proportion to their respective number of inhabitants, so as to equalize as far as possible the duty of serving as jurors.

Jurors to be apportioned.  
R. S. 95, § 14.

SECT. 12. The *venires* shall be delivered to the sheriff of the county, and by him transmitted to a constable in each of the towns and cities to which they are respectively issued, and they shall be served by the constable, without delay, on the selectmen and town clerk.

*Venires*, how served.  
R. S. 95, § 15.

SECT. 13. Nothing contained in the preceding sections shall prevent any court from issuing *venires* for additional jurors in term time whenever it is necessary for the convenient despatch of their business; in which case the *venires* shall be served and returned, and the jurors required to attend on such days, as the court shall direct.

Additional *venires* may be issued in term time.  
R. S. 95, § 18.

SECT. 14. When a suit is pending in the superior court for the county of Dukes County, wherein the inhabitants of any town in said county are disqualified from acting as jurors, any justice of the court, in term time or in vacation, may order the clerk of the court to issue writs of *venire facias* for a sufficient number of jurors to try such cause, from any town whose inhabitants are not so disqualified; and the clerk shall issue a *venire facias* accordingly.

Special provisions for Dukes County.  
1852, 75.  
1859, 196.

DRAWING AND SUMMONING JURORS.

SECT. 15. All jurors, whether required to serve on a grand or traverse jury, by force of the laws relating to highways or mills, or on any other occasion, (except inquests and proceedings relating to the commitment of insane persons,) shall be selected by drawing ballots from the jury box, and the persons whose names are borne on the ballots so drawn shall be returned to serve as jurors.

Jurors selected by drawing names.  
R. S. 95, § 8.  
1837, 228.  
1838, 73.  
1839, 149.  
1854, 424.

SECT. 16. When jurors are to be so drawn, the town clerk and selectmen shall attend at the clerk's office or some other public place appointed for the purpose, and if the clerk is absent, the selectmen may proceed without him. The ballots in the jury box shall be shaken and mixed together, and one of the selectmen without seeing the names written thereon shall openly draw therefrom a number of ballots equal to the number of jurors required. If a person so drawn is exempt by law, or is unable by reason of sickness or absence from home to attend as a juror, or if he has served as a juror in any court within three years then next preceding, his name shall be returned into the box and another drawn in his stead.

Names, when and how to be drawn.  
R. S. 95, § 9.

SECT. 17. When a person is drawn and returned to serve as a juror in any court, the selectmen shall indorse on the ballot the date of the draft and return it into the box, and whenever there is a revision and renewal of the ballots in the box, the selectmen shall transfer to the new ballots the date of all the drafts made within three years then next preceding.

Date of each draft to be indorsed on ballot.  
R. S. 95, § 11.

SECT. 18. Any town may at a legal meeting order that all drafts for jurors therein shall be made in open town meeting, in which case the draft shall be made by the selectmen in the manner prescribed in the two preceding sections, except that it shall be done in a town meeting. In such town when a *venire* is served upon the selectmen they shall cause a town meeting to be notified and warned for that purpose in the manner ordered by the town or otherwise prescribed by law.

May be drawn in town meeting.  
R. S. 95, §§ 10, 15.

SECT. 19. The meeting for drawing jurors, whether the draft is made in town meeting or before the selectmen and town clerk only, shall be

Meetings for drawing jurors, when held.  
R. S. 95, § 16.



held not less than seven nor more than twenty-one days, before the day when the jurors are required to attend.

Summoning jurors and returning *venire*.  
R. S. 95, § 17.  
13 Met. 325.

SECT. 20. The constable shall, four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the *venire* with the indorsement thereon of his having been drawn, or by leaving at his place of abode a written notification of his having been drawn and of the time and place of the sitting of the court at which he is to attend, and shall make a return of the *venire* with his doings thereon to the clerk, before the opening of the court from which it was issued.

#### SPECIAL PROVISIONS FOR CITIES.

Lists, how made, &c., in cities.  
1856, 125, §§ 1, 2.

SECT. 21. The list of jurors in cities shall be prepared and posted therein by the mayor and aldermen in like manner as required of selectmen, and when posted for ten days shall be submitted to the common council, which shall have like power as towns to revise and accept the same.

Drawing jurors, &c., in cities.  
R. S. 95, § 35.  
1856, 125, §§ 1, 2.

SECT. 22. The mayor and aldermen and the clerks of each city shall severally have and exercise all the powers and duties with regard to drawing and all other matters relating to jurors therein, which are in this chapter required to be performed by the selectmen and town clerks in their respective towns, and all *venires* for jurors to be returned from cities shall be served on the mayor and aldermen.

#### EMPANELLING AND OTHER PROVISIONS RESPECTING JURIES.

Empanelling jurors for civil causes.  
R. S. 95, §§ 20, 21.

SECT. 23. On the day when the jurors are summoned to attend at any court, the clerk shall prepare a list of their names arranged in alphabetical order. The first twelve on the list who are not excused shall be sworn and empanelled as a jury for the trial of civil causes, and shall be called the first jury. The next twelve on the list shall then be sworn and empanelled in like manner, and shall be called the second jury.

supernumeraries, &c.  
R. S. 95, § 21.

SECT. 24. Supernumerary jurors may be excused from time to time until wanted, and may be put on either of the juries as occasion requires, in the place of absentees. Nothing herein contained shall prevent the transferring of jurors from one jury to the other, when the convenience of the court or of the jurors requires it.

foreman to be chosen by jury.  
R. S. 95, § 22.

SECT. 25. Each jury after being thus empanelled shall retire and choose their foreman by ballot, or shall make such choice upon retiring with the first cause with which they are charged; and whenever the foreman is absent or excused from further service, a new foreman shall be chosen in like manner.

Empanelling jurors in criminal cases.  
R. S. 95, § 23.  
6 Met. 225, 235.  
See Ch. 172.

SECT. 26. Nothing contained in the preceding sections shall apply to the empanelling of juries in criminal cases, but the jurors shall be called, sworn, and empanelled anew, for the trial of each case according to the established practice; and their foreman shall be appointed by the court or by the jury when they retire to consider of their verdict.

Talesmen, when and how returned.  
R. S. 95, § 24.

SECT. 27. When by reason of challenge or otherwise a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of any cause, civil or criminal, the court shall cause jurors to be returned from the bystanders, or from the county at large, to complete the panel: *provided*, that there are on the jury not less than seven of the jurors who were originally drawn and summoned as before provided.

who and by whom returned.  
R. S. 95, §§ 25, 26.  
6 Cush. 174.

SECT. 28. The jurors so returned from the bystanders shall be returned by the sheriff or his deputy, or by a coroner, or by any disinterested person appointed therefor by the court, and shall be such as are qualified and liable to be drawn as jurors according to the provisions of law.

SECT. 29. The court shall, on motion of either party in a suit, examine on oath any person who is called as a juror therein, to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror does not stand indifferent in the cause, another shall be called and placed in his stead for the trial of that cause.

Jurors may be examined, &c., as to interest, &c.  
R. S. 95, § 27.  
16 Pick. 153.  
13 Met. 120.  
5 Cush. 205.

SECT. 30. In indictments and penal actions for the recovery of any sum of money or other thing forfeited, it shall not be a cause of challenge to a juror that he is liable to pay taxes in any county, city, or town which may be benefited by such recovery. 1 Gray, 472. See Ch. 123, § 13.

When interest not to disqualify.  
R. S. 95, § 28.  
5 Mass. 90.  
9 Met. 576.

SECT. 31. If a party knows of any objection to a juror in season to propose it before the trial, and omits to do so, he shall not afterwards be allowed to make the same objection, unless by leave of the court.

Objections when made.  
R. S. 95, § 29.  
1 Pick. 38, 196.  
21 Pick. 471.

2 Gray, 281.

SECT. 32. No irregularity in any writ of *venire facias*, or in the drawing, summoning, returning, or empanelling of jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity, or unless the objection was made before the returning of the verdict.

Certain irregularities not material.  
R. S. 95, § 30.  
1 Pick. 38, 196.  
2 Pick. 550.  
9 Met. 572.

SECT. 33. If either party in a case in which a verdict is returned, during the same term of the court, either before or after the trial, gives to any of the jurors who try the cause any thing by way of treat or gratuity, the court may, on the motion of the adverse party, set aside the verdict and award a new trial of the cause.

Gratuities to jurors forbidden.  
R. S. 95, § 31.

SECT. 34. When a jury, after due and thorough deliberation upon any cause, return into court without having agreed on a verdict, the court may state anew the evidence or any part of it, and explain to them anew the law applicable to the case, and may send them out for further deliberation; but if they return a second time without having agreed on a verdict, they shall not be sent out again without their own consent, unless they shall ask from the court some further explanation of the law.

Jury not to be sent out more than twice, unless, &c.  
R. S. 95, § 32.

SECT. 35. The jury in any case may, at the request of either party, be taken to view the premises or place in question, or any property, matter, or thing relating to the controversy between the parties, when it appears to the court that such view is necessary to a just decision: *provided*, the party making the motion advances a sum sufficient to defray the expenses of the jury and the officers who attend them, in taking the view; which expenses shall be afterwards taxed like other legal costs, if the party who advanced them prevails in the suit.

Court may direct a view by jury.  
R. S. 95, § 33.

PENALTIES.

SECT. 36. If a person duly drawn and summoned to attend as a juror in any court neglects to attend without sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

Fines on jurors neglecting to attend.  
R. S. 95, § 19.

SECT. 37. When, by neglect of any of the duties required in this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned from any place are not duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the same court to the use of the county in which the offence is committed.

on officers and others for neglect.  
R. S. 95, § 39.

SECT. 38. If such neglect occurs with regard to jurors required to serve on any other occasion than in the supreme judicial court, the

Same, in cases of highways, mills, &c.

R. S. 95, § 40.  
1852, 314, § 7.  
1859, 196.

superior court, or before any justice of the peace or police court, the sheriff or other officer before whom the jurors were required to appear shall make known the fact to the superior court, next to be held in the same county, and the court, after due examination and a hearing of the parties who are charged, shall impose the fine.

Punishment for fraud in drawing jurors.  
R. S. 95, § 41.  
1839, 135.

SECT. 39. If any city or town clerk, selectmen, mayor, or alderman is guilty of fraud, either by practising on the jury box previously to a draft, or in drawing a juror, or in returning into the box the name of any juror which had been lawfully drawn out and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall be punished by a fine not exceeding five hundred dollars.

EXCEPTION OF SPECIAL JURIES.

Special juries not affected.  
R. S. 95, § 42.  
1837, 228.  
1838, 73.  
1839, 149.

SECT. 40. Nothing contained in this chapter shall affect the power and duty of coroners or magistrates to summon and empanel jurors when authorized by other provisions of law.

CHAPTER 133.

OF JUDGMENT AND EXECUTION.

ENTERING JUDGMENT; AWARDING AND ISSUING EXECUTION.

SECTION

1. Judgment, of what day to be entered.
2. Award of judgment on default.
3. Court may order damages to be assessed by jury.
4. or the damages may be ascertained by the clerk in certain cases.
5. Judgment may be rendered against such defendants as are defaulted, &c.
6. how entered, and separate executions issued.
7. to be entered as of a former term in certain cases.
8. Interest on awards, reports, verdicts, judgments, &c.
9. Judgment on forfeiture of a penalty.
10. For what sum execution shall issue, and how determined.
11. *Scire facias* to recover further damages.
12. Proceedings thereon.
13. Plaintiff may sue for damages instead of penalty.
14. Execution, when action is brought in erroneous venue.
15. when to issue.
16. not to issue after one year, &c.
17. Remedy for creditor after time for taking out execution.
18. when a levy is not effectual.
19. When property, &c., of a stockholder taken on execution against a corporation is recovered back.
20. Executions, forms of.
21. changes in, to be under control of S. J. C.
22. when returnable.

SET-OFF OF EXECUTIONS.

23. Executions may be set off.
24. Proceedings for that purpose.
25. Such set-off, when not to be allowed.

LEVY OF EXECUTIONS AND PERSONAL PROPERTY EXEMPT THEREFROM.

SECTION

26. Creditor may direct mode of service.
27. Officer, how to levy on real and personal estate.
28. how on property of a corporation.
29. What goods liable to execution.
30. Current coin.
31. Bank notes.
32. What goods are exempt.
33. Officer may demand security of creditor.

SALE, &C., OF GOODS TAKEN ON EXECUTION.

34. Goods, how sold on execution.
35. Notice of sale, how given.
36. how when value exceeds \$300.
37. Sale may be adjourned, &c.
38. Re-sale to be made, in case, &c.
39. Return of execution. Liability for fraud.
40. Proceeds of sale, how disposed of.
41. when liable to two or more creditors.
42. when there have been successive attachments.

LEVY, &C., ON SHARES IN CORPORATIONS.

43. Shares in incorporated companies.
- 44, 45. Proceedings.
46. Officer of company to make known the shares held by debtor.
47. to give new certificates to purchaser.
48. Purchaser entitled to dividends after attachment.

LEVY, &C., ON TERMS FOR YEARS.

49. Terms for years, when to be levied on as real or personal estate.

SUSPENSION OF LEVY.

- 50, 51. Execution suspended by prior attachment.



DEATH, &C., OF OFFICER OR PARTY AFTER COMMENCEMENT OF LEVY.  SECTION 52. Case of death, &c., of officer after beginning to serve an execution. 53. Case of removal, &c., of officer. 54. Case of death of either party.	RECORDING OF CERTAIN EXECUTIONS.  SECTION 55. Execution on writ of entry to be recorded in registry of deeds.  PENALTY ON OFFICER FOR NOT PAYING MONEY COLLECTED.  56. Penalty for detaining money collected.
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ENTERING JUDGMENT ; AWARDING AND ISSUING EXECUTION.

SECTION 1. Every judgment shall be entered as of the last day of the term in which it is rendered, unless there is an express order of the court for the entry thereof on some other day ; in which case, the day shall be noted by the clerk on his docket. The court may enter up judgment upon default at any time after four days from the day of default.

Judgment, of what day to be entered.  
 R. S. 97, § 1.  
 1852, 312, § 11.  
 8 Mass. 113.  
 11 Mass. 204.  
 16 Mass. 381.

SECT. 2. When the defendant is defaulted in any stage of the proceedings, the court shall award such judgment for the plaintiff as they shall upon inquiry find to be just and proper ; unless the plaintiff or defendant moves to have the damages assessed by a jury, in which case they shall be so assessed.

Award of judgment on default.  
 R. S. 97, § 2.

SECT. 3. The court may, in all cases in which damages are demanded, refer the assessment thereof to a jury, although it is not moved for by either party.

Court may order damages to be assessed by jury.  
 R. S. 97, § 3.

SECT. 4. In actions upon promissory notes and other contracts where the amount due appears to be undisputed, the debt or damages may be assessed and ascertained by the clerk, under a general order of the court or by a special reference of the case to him. The judgment in either case shall be entered in the same form as if it had been awarded by the court on an assessment or computation made by themselves.

or damages may be ascertained by the clerk in certain cases.  
 R. S. 97, § 4.

SECT. 5. In any action founded on a contract express or implied in which there is more than one defendant, the plaintiff shall be entitled to judgment against such defendants as are defaulted, and against those who upon trial are found liable on the contract declared on, notwithstanding it is found that all the defendants are not jointly liable thereon.

Judgment may be rendered against such defendants as are defaulted, &c.  
 1851, 255, § 1.

SECT. 6. In such action when any defendants are defaulted, and upon trial any of the others are found liable, the court shall render judgment both against those defendants defaulted and those found liable for the debt or damages with costs to the time of the default, and against those who defend, for all costs accruing after the default ; and shall issue separate executions on such judgment.

how entered, and separate executions issued.  
 1851, 255, § 2.

SECT. 7. When a motion for a new trial is overruled, the court shall enter judgment as of the term when the verdict was rendered, if necessary or expedient to secure the rights of the prevailing party, or prevent loss by reason of the death of either party or otherwise.

to be entered as of a former term in certain cases.  
 1842, 89, § 2.  
 2 Cush. 61.

SECT. 8. When judgment is made up upon an award of county commissioners, a committee, or referees, or on the report of an auditor or master in chancery, or on a verdict of a jury, interest shall be computed upon the amount of the award, report, or verdict, from the time when made to the time of making up the judgment. Every judgment for the payment of money rendered subsequently to the sixth day of May in the year eighteen hundred and forty-seven, shall bear interest from the day of the rendition thereof. The warrant or execution issued on a judgment for the payment of money, shall specify the day upon which judgment is rendered, and shall require the collection or satisfaction thereof with interest from the day of its rendition.

Interest on awards, reports, verdicts, judgments, &c.  
 1847, 153.  
 1849, 124.

SECT. 9. In actions for a breach of the condition of a bond or to recover a penalty for the non-performance of a covenant, contract, or agreement, when it appears by verdict, default, confession, or otherwise, that the condition is broken or the penalty forfeited, judgment shall be

Judgment on forfeiture of a penalty.  
 R. S. 100, § 8.  
 7 Met. 116.  
 13 Gray, 157.

entered for the penal sum, but no execution shall issue thereon except as is provided in the following sections.

For what sum execution shall issue, and how determined.  
R. S. 100, § 9.

SECT. 10. The court shall award an execution for so much of the penal sum as is then due and payable in equity and good conscience for the breach of the condition, or other non-performance of the contract. The sum shall be ascertained and determined by the court, unless the court thinks proper or either party moves to have it assessed by a jury, in which case it shall be so assessed.

*Scire facias* to recover further damages.  
R. S. 100, § 10.

SECT. 11. If any further sum afterwards becomes due on such bond or other contract, the plaintiff, his executors, or administrators, may have a *scire facias*, on the judgment, from the court in which it was rendered, against the original defendant, his executors, administrators, heirs, devisees, or assigns, as the case may be, suggesting such further breaches of the contract as have occurred, and summoning the adverse party to show cause why execution should not be awarded upon the judgment for the damages caused by such further breaches.

Proceedings thereon.  
R. S. 100, § 11.

SECT. 12. The sum due in such suit shall be assessed and determined in the same manner as in the original suit, and execution awarded accordingly; and like proceedings may be repeated upon occasion of further breaches of the same contract, as often as they occur until the whole of the penalty is exhausted.

Plaintiff may sue for damages instead of penalty.  
R. S. 100, § 12.

SECT. 13. Nothing herein contained shall prevent any person from bringing an action for the breach of any covenant or other contract, instead of suing for the penalty by which the performance of the covenant or contract was secured.

Execution, when action is brought in erroneous venue.  
1852, 312, § 79.

SECT. 14. When judgment is rendered in a local action brought in an erroneous venue, the court shall cause its writ of possession or other needful writ of execution to be directed to the sheriff of the proper county, so that the judgment may be duly executed.

when to issue.  
R. S. 97, § 5.  
8 Met. 496.

SECT. 15. No execution shall be issued within twenty-four hours after the entry of judgment.

not to issue after one year, &c.  
159, 16.  
5 Mass. 383.

SECT. 16. No original execution shall be issued, unless within one year after the party is entitled to sue out the same; and no alias or other successive execution shall be issued afterwards, unless sued out within five years after the return day of that which preceded it.

Remedy for creditor after time for taking out execution.  
R. S. 97, § 8.  
1852, 312.

SECT. 17. If a judgment remains unsatisfied after the expiration of the time for taking out execution thereon, the creditor may have a *scire facias* to obtain a new execution, or he may at any time after the judgment have an action of contract thereon.

when a levy is not effectual.  
R. S. 97, § 43.

SECT. 18. If an execution is returned satisfied in whole or in part by the sale of property not liable to such execution, and if damages are recovered against the judgment creditor or the officer who served the execution on account of the seizure and sale of the property, the creditor may have a writ of *scire facias* on his judgment, and shall thereupon be entitled to a new execution for the sum then remaining justly and equitably due to him.

when property, &c., of a stockholder taken on execution against a corporation is recovered back.  
1851, 213.

SECT. 19. If an execution against a corporation is satisfied in whole or in part by service or levy on the person or property of any member thereof, and the property levied on, or damages for service or levy, are subsequently recovered by such member from the officer or judgment creditor, the creditor may have a writ of *scire facias* on his judgment, and shall thereupon be entitled to a new execution for the sum remaining justly and equitably due to him.

Executions, forms of.  
1784, 28.  
R. S. 73, § 54.  
R. S. 97, § 10.  
1853, 269, § 1.  
10 Met. 330.  
See Ch. 103, § 47.

SECT. 20. The forms of executions shall be the same as heretofore established by law and the usage and practice of the courts. Executions issued upon judgments in civil actions in favor of the commonwealth shall be in form like those in favor of citizens. Executions issued by a justice of the peace, or police court, for a sum as damages exceeding twenty dollars, shall be so framed as to direct a levy upon the lands

and tenements of the debtor. Alterations in the forms may from time to time be made, or allowed by the courts, when necessary to adapt them to changes in the law, or for other sufficient reasons.

SECT. 21. All changes in the forms of executions shall be subject to the final control of the supreme judicial court, and said court may by general rules regulate such changes in all courts of the state.

SECT. 22. All executions shall be made returnable in sixty days from their date.

SET-OFF OF EXECUTIONS.

SECT. 23. Executions between the same parties may be set off one against another, if required by either party, as prescribed in the following sections.

SECT. 24. When one of the executions is delivered to an officer to be served, the debtor therein may deliver his execution to the same officer, whether the second execution is directed to the same or to any other officer, and the officer shall apply it as far as it will extend to the satisfaction of the first execution; and the balance due on the larger execution may be collected and paid in the same manner as if there had been no set-off.

SECT. 25. Such set-off shall not be allowed in the following cases:—  
First. When the creditor in one of the executions is not, in the same capacity and trust, the debtor in the other;

Second. When the sum due on the first execution was lawfully and in good faith assigned to another person before the creditor in the second execution became entitled to the sum due thereon;

Third. When there are several creditors in one execution and the sum due on the other is due from a part of them only;

Fourth. When there are several debtors in one execution and the sum due on the other is due to a part of them only;

Fifth. Nor shall it be allowed as to so much of the first execution as is due to the attorney in that suit for his fees and disbursements therein.

LEVY OF EXECUTIONS, AND PERSONAL PROPERTY EXEMPT THEREFROM.

SECT. 26. When an execution is in the alternative, so that it may be lawfully served in either of two or more ways, the creditor or his attorney may require the officer to serve it in either way; and the officer shall conform to such directions if in his power.

SECT. 27. If the creditor directs an officer to levy his execution on real estate, the officer shall serve it as prescribed in chapter one hundred and three. If he directs the officer to levy it on the goods of the debtor, the officer shall serve it as hereinafter provided.

SECT. 28. Executions against corporations, when levied upon any corporate property, shall be levied in the same manner as other executions are levied, except in the cases provided for in chapters fifty-seven and sixty-eight.

SECT. 29. All chattels, real or personal, and all other goods which by the common law are liable to be taken on execution, may be taken and sold thereon, except as is otherwise provided in this chapter.

SECT. 30. Current gold or silver coin may be taken on execution, and may be paid to the creditor as money collected.

SECT. 31. Bank notes and all other bills or evidences of debt, issued by a moneyed corporation and circulated as money, may be taken on execution and paid to the creditor at their par value as money collected if he will accept them; otherwise they shall be sold like other chattels.

SECT. 32. The following articles of the debtor shall be exempt from execution, viz.:—

Executions, changes in, to be under control of S. J. C.  
R. S. 97, § 11.  
when returnable.  
1852, 312, § 83.  
2 Met. 587, 590.  
4 Cush. 420.

may be set off.  
R. S. 97, § 74.  
22 Pick. 210.  
9 Met. 509.

Proceedings for that purpose.  
R. S. 97, § 75.

Such set-off, when not to be allowed.  
R. S. 97, § 76.  
9 Met. 509.

Creditor may direct mode of service.  
R. S. 97, § 12.  
11 Mass. 317.  
2 Gray, 210.

Officer, how to levy on real and personal estate.  
R. S. 97, §§ 16, 17.  
7 Mass. 123.

how on property of a corporation.  
R. S. 97, § 42.

What goods liable to execution.  
R. S. 97, § 19.  
7 Mass. 123.

Current coin.  
R. S. 97, § 20.

Bank notes.  
R. S. 97, § 21.  
4 N. H. R. 198.  
3 Mass. 291.  
7 Mass. 438.  
9 Mass. 537.  
20 Pick. 352.  
1 Pick. 271.

What goods are exempt from execution. | *Allen 285*



1857, 235.  
1859, 142.  
3 Mass. 198.  
5 Mass. 313.  
13 Mass. 82.  
15 Mass. 170,  
205.  
2 Pick. 80.  
10 Pick. 423.  
19 Pick. 470.  
10 Met. 506.  
4 Cush. 359.  
6 Gray, 298.  
7 Gray, 67, 70.

1860 Ch. 65.

First. The necessary wearing apparel of himself and of his wife and children; one bedstead, bed, and the necessary bedding for every two persons of the family; one iron stove used for warming the dwelling-house, and fuel not exceeding the value of twenty dollars procured and designed for the use of the family;

Second. Other household furniture necessary for him and his family, not exceeding one hundred dollars in value;

Third. The bibles, school books, and library, used by him or his family, not exceeding fifty dollars in value;

Fourth. One cow, six sheep, one swine, and two tons of hay;

Fifth. The tools, implements, and fixtures, necessary for carrying on his trade or business, not exceeding one hundred dollars in value;

Sixth. Materials and stock designed and procured by him, and necessary for carrying on his trade or business, and intended to be used or wrought therein, not exceeding one hundred dollars in value;

Seventh. Provisions necessary and procured and intended for the use of the family, not exceeding fifty dollars in value;

Eighth. One pew occupied by him or his family in a house of public worship: *provided*, that nothing herein contained shall prevent the sale of any pew for the non-payment of any tax legally laid thereon;

Ninth. The boat, fishing tackle, and nets of fishermen, actually used by them in the prosecution of their business, to the value of one hundred dollars;

Tenth. The uniform of an officer or soldier in the militia, and the arms and accoutrements required by law to be kept by him;

Eleventh. Rights of burial and tombs while in use as repositories for the dead.

SECT. 33. If there is reasonable doubt as to the ownership of the goods, or as to their liability to be taken on the execution, the officer may require sufficient security to indemnify him for taking them.

Officer may demand security of creditor.  
R. S. 97, § 18.

#### SALE, &c., OF GOODS TAKEN ON EXECUTION.

Goods, how sold on execution.  
R. S. 97, § 23.  
14 Mass. 473.

SECT. 34. Goods seized on execution shall be safely kept by the officer, at the expense of the debtor, for four days at least; and shall be sold by public auction within fourteen days next after the seizure except as hereinafter provided, unless the debtor before such sale redeems them by otherwise satisfying the execution.

Notice of sale, how given.  
R. S. 97, § 24.

SECT. 35. The officer shall give public notice of the time and place of the sale, by causing notifications thereof to be posted up forty-eight hours at least before the time of sale in some public place in the city or town where the sale is to be made, or by causing an advertisement of the time and place of sale to be published in some newspaper printed in the county, if there is any such paper.

how when value exceeds \$300.  
R. S. 97, § 25.

SECT. 36. If the value of the goods to be sold exceeds three hundred dollars, the officer, if requested by either party, shall give notice of the sale by advertisement in a newspaper as provided in the preceding section; and the sale may be made at any time after the expiration of four days, and within thirty days after the seizure on execution.

Sale may be adjourned, &c.  
R. S. 97, § 26.  
9 Mass. 265.

SECT. 37. If at the time appointed for the sale the officer considers it for the interest of all persons concerned therein to postpone the sale for want of purchasers or other sufficient cause, he may postpone it for any time not exceeding seven days, and so from time to time, for like good cause, until the sale is completed; giving notice of every such adjournment by a public declaration thereof at the time and place previously appointed for the sale.

Resale to be made in case, &c.  
R. S. 97, § 27.

SECT. 38. If the highest bidder for any article at such sale refuses to take and pay for it, the officer shall sell it again by auction, at the same time or within ten days thereafter, giving notice of the second sale; and

he shall account for what he receives on the second sale, and for any damages recovered of the first bidder for a loss on the resale, as for so much received on the execution. 7 Mass. 302.

SECT. 39. The officer making such sale shall in his return of the execution particularly describe the goods sold, and the sum for which each article was sold; and if he is guilty of fraud in the sale or return, he shall be liable in an action of tort, at the suit of the party injured, for five times the amount of the actual damage sustained by reason of such fraud. Return of execution. Liability for fraud. R. S. 40, § 13. R. S. 97, § 28. 1852, 312.

SECT. 40. The money arising from the sale shall be applied to paying the charges and satisfying the execution, and the officer shall return the residue, if any, to the debtor on demand, or shall apply and pay over the same as provided in the following sections. Proceeds of sale, how disposed of. R. S. 97, § 29.

SECT. 41. If the goods sold on execution have been attached by another creditor, or seized on another execution, either by the same or any other officer, or if before the payment of such residue to the debtor another writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds of the sale shall be applied to the discharge of the several judgments in the order in which the respective writs of attachment or execution were served, and the residue, if any, shall be returned to the debtor. when liable to two or more creditors. R. S. 97, § 30.

SECT. 42. If an attachment or seizure on execution is made of a share in any incorporated company, or of any other property which may be attached without taking and keeping the exclusive possession thereof, and if the same property is subsequently attached or taken in execution by another officer, he shall give notice thereof to the officer who makes the sale under the first attachment or seizure; and if the latter without such notice pays to the debtor the balance of the proceeds of the sale, he shall not be liable therefor to the person claiming under such subsequent attachment or seizure. when there have been successive attachments. R. S. 97, § 31. 9 Mass. 265.

LEVY, &C., ON SHARES IN CORPORATIONS.

SECT. 43. The share or interest of a stockholder in any corporation established under the authority of this state, may be taken on execution and sold as hereinafter provided. Shares in incorporated companies. R. S. 97, § 36.

SECT. 44. If the property has not been attached in the same suit, the officer shall leave an attested copy of the execution with the clerk, treasurer, or cashier, of the company, if there is any such officer, otherwise with any officer or person having the custody of the books and papers of the corporation; and the property shall be considered as seized on execution when the copy is so left, and shall be sold in like manner as goods and chattels. Proceedings. R. S. 97, § 37.

SECT. 45. If the share is already attached in the same suit, the officer shall proceed in seizing and selling it on the execution, in the same manner as in selling goods and chattels. Same subject. R. S. 97, § 38.

SECT. 46. The officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, shall, upon the exhibiting to him of the execution, be bound to give a certificate of the number of shares or amount of the interest held by the judgment debtor, in like manner and upon the like penalty as is prescribed in chapter one hundred and twenty-three upon the exhibiting to him of a writ of attachment. Officer of company to make known the shares held by debtor. R. S. 97, § 39. See Ch. 123, § 61.

SECT. 47. An attested copy of the execution and of the return thereon shall within fourteen days after the sale be left with the officer of the company whose duty it is to record transfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor and for recording the transfer. to give new certificates to purchaser. R. S. 97, § 40.

Purchaser entitled to dividends after attachment.  
R. S. 97, § 41.

SECT. 48. If the shares or interest of the judgment debtor had been attached in the suit in which the execution issued, the purchaser shall be entitled to all the dividends which have accrued after the attachment.

#### LEVY, &c., ON TERMS FOR YEARS.

Terms for years, when to be levied on as real or personal estate.  
R. S. 97, § 33.  
1847, 267, § 4.  
See Ch. 90, § 20.

SECT. 49. Terms for years, when the original lease was for one hundred years or more, and so long as fifty years or more thereof remain unexpired, shall be regarded as real estate so far as concerns the levying of an execution thereon. Other terms for years shall be seized and sold on execution in like manner as personal chattels, except that the officer before selling the same shall give fourteen days' notice of the time and place of sale, by leaving notice thereof in writing with the debtor personally or at his last and usual place of abode, and by posting notice on the demised premises.

#### SUSPENSION OF LEVY.

Execution suspended by prior attachment.  
R. S. 97, § 34.  
5 Met. 245, 251.  
5 Met. 90.

SECT. 50. When any estate, either real or personal, is seized on execution, and the further service of the execution is suspended by reason of any prior attachment on the same estate, the estate shall remain bound by such seizure until it is set off or sold, in whole or in part, under the prior attachment, or until that attachment is dissolved.

Same subject.  
R. S. 97, § 35.

SECT. 51. If the estate is set off or sold in part under the prior attachment, or if that attachment is dissolved, the estate, or such part thereof as remains undisposed of, shall continue bound for thirty days thereafter, by the seizure on the execution; and the service of the execution may be completed in like manner as if the estate had been first seized thereon at any time within said thirty days, although the return day of the execution has passed.

#### DEATH, &c., OF OFFICER OR PARTY AFTER COMMENCEMENT OF LEVY.

Case of death, &c., of officer after beginning to serve an execution.  
R. S. 97, § 13.  
2 Pick. 276.

SECT. 52. When an officer has begun to serve an execution and dies, or is incapable of completing the service and return thereof, the same may be completed by any other officer who might by law have served the execution if originally delivered to him. If the first officer has not made a certificate of his doings, the second officer shall certify whatever he finds to have been done by the first, and shall add thereto a certificate of his own doings in completing the service.

of removal, &c., of officer.  
R. S. 97, § 14.  
6 Mass. 20.  
9 Mass. 393.

SECT. 53. When an officer has begun to serve an execution, he may complete the service and return thereof although he is removed from office, or the service cannot be completed until after the return day.

of death of either party.  
R. S. 97, § 15.  
9 Mass. 209.  
3 Met. 253.

SECT. 54. If either party dies after any real estate, goods, or chattels, have been seized on execution, the service thereof may be completed in like manner and with the same effect as if both parties were still living, and the officer, when necessary, may appoint an appraiser for the deceased party.

#### RECORDING OF CERTAIN EXECUTIONS.

Execution on writ of entry to be recorded in registry of deeds.  
1848, 144, § 1.  
7 Gray, 202.

SECT. 55. When an execution issuing upon a judgment in a writ of entry for the possession of real estate is served by an officer, he shall, within three months after the service and before the return thereof into the clerk's office, cause the execution with his doings thereon to be recorded in the registry of deeds for the county or district in which the estate is situated, the expense of which shall be added to the charge for service.



PENALTY ON OFFICER FOR NOT PAYING MONEY COLLECTED.

SECT. 56. If any officer unreasonably neglects to pay any money collected by him on execution, when demanded by the creditor therein, he shall forfeit and pay to the creditor five times the lawful interest of the money from the time of the demand until it is paid.

Penalty for detaining money collected.  
R. S. 97, § 73.  
7 Mass. 464.  
4 Met. 149.

## TITLE III.

### OF REMEDIES RELATING TO REAL PROPERTY.

- CHAPTER 134. — Of the Writ of Entry, and Petitions for the Settlement of Title.
- CHAPTER 135. — Of the Writ of Dower.
- CHAPTER 136. — Of the Partition of Lands.
- CHAPTER 137. — Of Forcible Entry and Detainer.
- CHAPTER 138. — Of Waste and Trespass on Real Estate.
- CHAPTER 139. — Of Actions for Private Nuisances.
- CHAPTER 140. — Of the Foreclosure and Redemption of Mortgages.
- CHAPTER 141. — Of Informations for Intrusion and the Recovery of Lands by the Commonwealth.

## CHAPTER 134.

### OF THE WRIT OF ENTRY, AND PETITIONS FOR THE SETTLEMENT OF TITLE.

SECTION

1. Action to recover the freehold.
2. Declaration therein.
3. Proof of the seisin alleged.
4. Descent, &c., not to bar right of entry.
- 5, 6. What constitutes a disseisin.
7. Proceedings on the trial.
8. Pleadings and evidence.
9. Joint tenants, &c., how to sue.
10. Demandant may recover part, &c.
11. On death of either party, action may proceed, &c.
12. Pleadings.
13. Damages may be recovered in same action.
14. may be assessed by same jury, unless, &c.
15. Rents and profits, how to be estimated.
16. Use of improvements not included.
17. Limitation.
18. Tenants for six years allowed for improvements.
19. so when for less than six years if under title, &c.
20. Proceedings for obtaining such allowance.

SECTION

21. When suggestion entered.
22. Amount may be assessed by the jury on the trial, or afterwards.
23. How to be assessed, upon default, &c.
24. May be assessed by arbitrators, &c.
25. Allowance for improvements, how limited.
26. Improvements and damages to be set off.
27. Demandant, when to pay for improvements, &c.
28. Further provisions as to set-off.
29. Demandant's remedy against other trespassers.
30. Value of premises, without improvements, may be ascertained, &c.
31. How to be estimated and assessed.
32. Demandant may relinquish his estate, &c.
33. Time may be allowed for making the election.
34. Tenant to hold estate upon paying value assessed.
35. To be paid in three annual instalments.
36. Upon failure to pay, demandant entitled to his writ of seisin, &c.

SECTION

- 37. Execution may be issued after the year, when, &c.
- 38. Remedy for tenant in case of a subsequent eviction.
- 39. if he has given notice, &c.
- 40. if notice not given.
- 41. On the death of either party after judgment, money may be paid, &c.
- 42. Writ of seisin, in whose name to issue in such case.

SECTION

- 43. Upon a recovery by tenant for life, reversioner, &c., to be liable.
- 44, 45. Amount, how ascertained.
- 46. Limitation.
- 47. This chapter not to apply to a mortgagee.
- 48. Certain real actions abolished. Saving for minors and others.
- 49. Party in possession claiming freehold, &c., may petition S. J. C. to compel claimant to try title.
- 50. Proceedings on such petition.

Action to recover the freehold.  
R. S. 101, § 1.  
6 Cush. 265.

Declaration therein.  
R. S. 101, §§ 2, 3.  
3 Met. 341.  
1 Cush. 468.  
See Ch. 129, § 3.

Proof of the seisin alleged.  
R. S. 101, § 4.

Descent, &c., not to bar right of entry.  
R. S. 101, § 5.  
What constitutes a disseisin.  
R. S. 101, § 6.

Same subject.  
R. S. 101, § 7.  
2 Gray, 135.

Proceedings on the trial.  
R. S. 101, § 8.

Pleadings and evidence.  
R. S. 101, § 9.  
See Ch. 129, § 84.

Joint tenants, &c., how to sue.  
R. S. 101, § 10.  
6 Gray, 428.

Demandant may recover part, &c.  
R. S. 101, § 11.  
2 Pick. 387.  
3 Pick. 52.  
9 Pick. 259.

On death of either party ac-

SECTION 1. All estates of freehold, whether in fee simple, fee tail, or for life, may be recovered by a writ of entry upon disseisin, unless a different action is prescribed by law.

SECT. 2. The demandant shall declare on his own seisin within twenty years then last past, without specifying any particular day, and shall allege a disseisin by the tenant, but need not aver a taking of the profits; and he shall then set forth the estate that he claims in the premises, whether it is in fee simple, fee tail, or for life, and if the latter whether it is for his own life or for the life of another, but he shall not be required to set forth the original gift, devise, or other conveyance or title, by which he claims the estate.

SECT. 3. The demandant shall not be required to prove an actual entry under his title, but if he proves that he is entitled to such an estate as he claims in the premises, whether as heir, devisee, purchaser, or otherwise, and also that he has a right of entry therein, this shall be deemed sufficient proof of his seisin as alleged in the declaration. No such action shall be maintained unless the demandant has at the time of commencing the same a right of entry into the premises.

SECT. 4. No descent or discontinuance shall take away or defeat any right of entry or of action for the recovery of real estate.

SECT. 5. Every person who is in possession of the premises demanded in such writ of entry, claiming any estate of freehold therein, may be considered as a disseisor for the purpose of trying the right, whatever was the manner of his original entry on the premises.

SECT. 6. If the person in possession has actually ousted the demandant or withheld from him the possession of the premises, he may, at the election of the demandant, be considered as a disseisor for the purpose of trying the right, although he claims therein an estate less than a freehold.

SECT. 7. Every suit upon such writ of entry shall be prosecuted and conducted in the same manner as if the demandant had at the time of commencing the action made an actual entry on the demanded premises, and had been immediately ousted by the tenant; so that on a trial upon the general issue, if the demandant proves that he is entitled to such estate in the premises as is set forth in the declaration, and that he had a right of entry on the day when the action was commenced, he shall recover the premises, unless the tenant proves a better title in himself.

SECT. 8. The law and practice relating to the pleadings and evidence in the action or writ of entry on disseisin, as now recognized and established, shall continue in force, except so far as they are altered by the provisions of this chapter, and chapter one hundred and twenty-nine.

SECT. 9. Any two or more persons claiming the same premises as joint tenants, tenants in common, or coparceners, may join in a suit for the recovery thereof, or any one may sue alone for his share.

SECT. 10. The demandant may recover any specific part of the premises or any undivided portion thereof to which he proves a sufficient title, though such part or portion is less than is demanded in the writ.

SECT. 11. Upon the death of either demandant or tenant, the action may proceed by or against the survivors and the heirs or devisees of the

deceased party, in the manner prescribed in chapter one hundred and twenty-seven.

SECT. 12. Non-tenure, disclaimer, several tenancy, and sole tenancy, may be pleaded in abatement or given in evidence under the general issue, but the party shall be allowed such costs only as accrue after the filing of the plea.

13 Mass. 439. 12 Met. 154. 7 Cush. 502. 4 Gray, 55.

tion may proceed, &c.  
R. S. 101, § 12.  
Pleadings.  
R. S. 101, § 13.  
1836, 273, § 1.  
2 N. H. 10, 442.  
14 Mass. 239.

SECT. 13. If the demandant recovers judgment in a writ of entry, he shall be entitled to recover in the same action damages for the rents and profits of the premises, from the time when his title accrued, subject to the limitations hereinafter contained; and he shall also recover damages for any destruction or waste of the buildings or other property, for which the tenant is by law chargeable.

Damages may be recovered in same action.  
R. S. 101, § 14.  
2 Met. 295.  
6 Cush. 267.  
4 Gray, 57.

SECT. 14. If an issue of fact is found for the demandant, the jury shall at the same time assess his damages, unless it is otherwise ordered by the court as hereinafter provided.

may be assessed by same jury, unless, &c.  
R. S. 101, § 15.

SECT. 15. The rents and profits for which the tenant is liable shall be the clear annual value of the premises for the time during which he was in possession thereof, after deducting all lawful taxes and assessments on the premises that have been paid by him, and all the necessary and ordinary expenses of cultivating the land, or of otherwise collecting the rents, profits, or income, of the premises.

Rents and profits, how to be estimated.  
R. S. 101, § 16.  
2 Met. 295.  
6 Cush. 269.

SECT. 16. In estimating the rents and profits, the value of the use by the tenant of any improvements, whether made by himself or those under whom he claims, shall not be computed nor allowed to the demandant.

Use of improvements not included.  
R. S. 101, § 17.  
12 Mass. 314.

SECT. 17. The tenant shall not be liable for the rents and profits for a longer term than six years, nor for any waste or other damage committed before that time, unless when the rents and profits are allowed by way of set-off to his claim for improvements, as hereinafter provided.

Limitation.  
R. S. 101, § 18.  
6 Cush. 269.  
See § 28.

SECT. 18. If the demanded premises have been actually held and possessed by the tenant in the action, and by those under whom he claims, for six years next before the commencement of the action, he shall, if judgment is against him, be entitled to compensation in the manner hereinafter provided for the value of any buildings or improvements made or erected on the premises by himself, or by any person under whom he claims.

Tenants for six years allowed for improvements.  
R. S. 101, § 19.  
12 Mass. 329.  
13 Mass. 241.  
15 Mass. 291.  
5 Pick. 140.  
7 Met. 310.

SECT. 19. The tenant shall also be entitled to the like compensation although the premises have not been so held six years, if he holds them under a title which he had reason to believe good.

2 Gallis, 105. 7 Met. 310.  
6 Mass. 303. 10 Cush. 451.

so when for less than six years if under title.  
R. S. 101, § 20.

SECT. 20. When the tenant in the action claims allowance for such improvements, he shall enter on the record a suggestion of his claim, with a request that the value of the improvements may be ascertained and allowed to him, if judgment is rendered for the demandant.

Proceedings for obtaining such allowance.  
R. S. 101, § 21.

SECT. 21. The suggestion shall be entered at the same term with the plea, if any, unless the court for sufficient reason allows it to be made afterwards; and if judgment is rendered for the demandant without a plea, the suggestion shall be entered at such stage of the proceedings as the court prescribes or allows.

When suggestion entered.  
R. S. 101, § 22.

SECT. 22. If any issue of fact is tried in the case and found for the demandant, the jury shall at the same time ascertain and determine the sum to be allowed to the tenant for such improvements, unless it appears to the court, on the motion of either party, that it would be more convenient to postpone the assessment of the sums due to the demandant for the rents and profits or other damages, or to the tenant for improvements, until after the trial of the title and a verdict thereon; in which case the court may make an order for that purpose, at any time before the verdict on the title is recorded.

Amount may be assessed by the jury on the trial, or afterwards.  
R. S. 101, §§ 23, 24.

SECT. 23. If the assessment of the sums due to either party is so

How to be as-



essed upon default, &c.  
R. S. 101, § 25.

postponed, or if there is no issue of fact tried in the cause, and judgment is to be rendered for the demandant, said sums shall be assessed by the court, unless either party moves to have them assessed by a jury, or unless the court thinks proper to have them so assessed, in which cases a jury shall be empanelled for that purpose.

Damage may be assessed by arbitrators, &c.  
R. S. 101, § 26.

SECT. 24. The sums due for rents and profits, or other damages, and for improvements, may in all cases be assessed by arbitrators or assessors appointed by the court with the consent of the parties.

Allowance for improvements, how limited.  
R. S. 101, § 27.

SECT. 25. The sum to be allowed for improvements shall never exceed the amount actually expended by the tenant and those under whom he claims, nor shall it exceed the amount to which the value of the premises is actually increased thereby at the time of the assessment.

Improvements and damages to be set off.  
R. S. 101, § 28.

SECT. 26. When any sum is allowed to the tenant for improvements, it shall be set off against the sum found due from him for rents and profits and other damages; and if there is a balance due from him, the demandant shall have judgment and execution therefor, as well as for his seisin of the demanded premises.

Demandant, when to pay for improvements, &c.  
R. S. 101, § 29.

SECT. 27. If there is any sum due to the tenant for improvements after deducting the rents and profits and other damages for which he may be found chargeable, the demandant shall before taking out his execution for seisin of the premises, pay the same to the tenant, or to the clerk of the court for his use; and the demandant shall not be entitled to recover, against the tenant or person claiming under him, any rents and profits that accrue after the judgment and before he has paid the sum so due.

Further provisions as to set-off.  
R. S. 101, § 30.

SECT. 28. If the sum found due to the tenant for improvements exceeds the sum due from him for the rents and profits accrued within the six years, he shall be chargeable with the rents and profits accrued before that time, so far as may be necessary to balance his claim for improvements; but in such case he shall not be liable to repay any excess of the rents and profits beyond the value of the improvements.

Demandant's remedy against other trespassers.  
R. S. 101, § 31.  
6 Cush. 208.

SECT. 29. Nothing contained in this chapter shall prevent the demandant from maintaining an action of trespass for mesne profits, or for damage done to the premises, against any person, except the tenant in the writ of entry, who may have had possession of the premises or may be otherwise liable to such action.

Value of premises without improvements may be ascertained, &c.  
R. S. 101, § 32.

SECT. 30. When the tenant in the action claims allowance for improvements as before provided, the demandant may, by a like entry on the record, require that the value of his estate in the demanded premises without the improvements be ascertained and determined.

How to be estimated and assessed.  
R. S. 101, § 33.

SECT. 31. The value of the premises in such case shall be estimated as it would have been at the time of the inquiry if no such buildings or improvements had been made or erected on the premises by the tenant or by any person under whom he claims; and this sum shall be ascertained and determined, either by the court or jury, or by arbitrators or assessors, in the same manner as is provided for assessing the sums due for rents and profits, and for improvements.

Demandant may relinquish his estate, &c.  
R. S. 101, §§ 34, 35.

SECT. 32. The demandant in such case, if judgment is rendered for him, may at any time during the same term by himself or his attorney enter on the record his election to relinquish his estate in the premises to the tenant, at the price or value thereof so ascertained and determined.

Time may be allowed for making the election.  
R. S. 101, § 36.

SECT. 33. If he requires further time to make his election, the court may, on his motion, suspend the entry of the judgment and continue the cause, but without further costs for him.

Tenant to hold estate upon paying value assessed.  
R. S. 101, § 37.

SECT. 34. If he relinquishes the premises as before provided, the tenant shall thenceforth hold all the estate that the demandant had therein at the commencement of the action: *provided*, he pays therefor the estimated price or value thereof, in the manner following.

To be paid in

SECT. 35. The price shall be paid in three equal instalments, with

interest annually; the first instalment to be paid on or before the expiration of one year from the time when the demandant's election to relinquish the premises is entered on the record, the second, on or before the expiration of two years from the time before mentioned, and the third, on or before the expiration of three years from the same time.

three annual instalments.  
R. S. 101, § 38.

SECT. 36. The sums shall be paid to the demandant or to the clerk of the court for his use, and if the tenant fails to make either of the payments within the times before limited therefor, respectively, the demandant shall be entitled forthwith to take out his writ of seisin on the judgment recovered by him, and shall take and hold the premises without allowance for any improvements made thereon.

Upon failure to pay, demandant entitled to his writ of seisin.  
R. S. 101, § 39.

SECT. 37. The expiration of a year after the judgment shall not prevent the issuing of the execution or writ of seisin in the case mentioned in the preceding section, but it may be taken out at any time within three months after such default of payment on the part of the tenant.

Execution may be issued after the year when, &c.  
R. S. 101, § 40.

SECT. 38. If the tenant or his heirs or assigns after the premises are so relinquished to him are evicted thereof by force of any better title than that of the original demandant, the person so evicted may recover from his demandant or his executors, administrators, heirs, or devisees, as the case may be, the amount so paid for the premises, as so much money had and received by such demandant in his lifetime for the use of the plaintiff, with lawful interest from the time of such payment.

Remedy for tenant in case of a subsequent eviction.  
R. S. 101, § 41.

SECT. 39. If the tenant or person holding under him, when impleaded in such second action for the recovery of the premises, gives notice thereof to the person so liable to refund the purchase money, and permits him to defend the action, the judgment, if rendered against the tenant in the action, shall be conclusive as to his right to recover the amount so paid for the premises.

if he has given notice, &c.  
R. S. 101, § 42.

SECT. 40. If the person impleaded does not give such notice to the other party and permit him to defend the suit, the latter shall be permitted in the suit afterwards brought against him for the price paid for the premises, to deny the title upon which the second recovery was had; and the party so evicted shall not recover said price unless he proves that he was evicted by force of a better title than that of the original demandant.

if notice not given.  
R. S. 101, § 43.

SECT. 41. If, after judgment is rendered for the demandant in a writ of entry, either party dies before the writ of seisin is executed, or before the case is otherwise settled according to the foregoing provisions, any money payable by the tenant may be paid by him or his executors or administrators, or by any person entitled to the estate under him, to the demandant or his executors or administrators, in like manner and with the like effect as if both parties were living; and any money payable by the demandant may be paid by him, his executors, administrators, or any person entitled to the estate under him, to the tenant or his executors or administrators, in like manner and with the like effect as if both parties were living.

On the death of either party after judgment, money may be paid, &c.  
R. S. 101, § 44.

SECT. 42. When the writ of seisin is issued in such case, it shall be in the name of the original demandant against the original tenant, although either or both of them are dead; and when executed, it shall inure to the benefit of the demandant or whoever is entitled to the premises under him, in like manner as if it had been executed on the day when the judgment was rendered.

Writ of seisin, in whose name to issue in such case.  
R. S. 101, § 45.

SECT. 43. If the demandant in a writ of entry claims an estate for life only in the premises, and if he pays any sum allowed to the tenant for improvements, he or his executors or administrators at the determination of his estate shall be entitled to receive of the remainder-man or reversioner the value of the improvements, as they then exist; and shall have a lien on the premises in like manner as if they had been mortgaged for the payment, and may keep possession until the sum is paid.

Upon a recovery by tenant for life, reversioner, &c., to be liable.  
R. S. 101, § 46.



Amount, how ascertained.  
R. S. 101, § 47.

SECT. 44. If the amount so due from the remainder-man or reversioner is not agreed on by the parties, it may be ascertained and determined as is provided for the redemption of a mortgage upon a suit in equity, to be brought by the remainder-man or reversioner as mortgagor; and the like proceedings shall be had as are prescribed in that case for ascertaining the sum due for redemption of the premises, and for the recovery thereof by the remainder-man or reversioner.

Same subject.  
R. S. 101, § 48.

SECT. 45. The remainder-man or reversioner, or those claiming under him, shall not in such case be limited to the three years prescribed for the redemption of a mortgage; but they shall not in any case be entitled to recover from the adverse party any balance in money, although the rents and profits of the premises which accrued after the determination of the estate for life exceed the amount due for the improvements.

Limitation.  
R. S. 101, § 49.

SECT. 46. Such remainder-man or reversioner and those claiming under him shall be considered as disseised at the time of the determination of the life estate, so far as to bar their suit in equity, and all other remedy by action or by entry, for the recovery of the premises after the expiration of the time prescribed for the limitation of the right of entry and of action in cases of disseisin.

This chapter not to apply to a mortgagee.  
R. S. 101, § 50.

SECT. 47. Nothing contained in this chapter concerning the rents and profits to be recovered in a writ of entry, or the allowance for improvements made on the demanded premises, or concerning the estimated value of the premises without the improvements, shall extend or apply to an action brought by a mortgagee, his heirs or assigns, against a mortgagor or his heirs or assigns, for the recovery of the mortgaged premises.

Certain real actions abolished. Saving for minors and others.  
R. S. 101, §§ 51, 52.

SECT. 48. Writs of right and of formedon, and all writs of entry except that which is allowed in this chapter, are abolished: *provided*, that any person who on the thirty-first day of December in the year one thousand eight hundred and thirty-nine was entitled to maintain any of said actions, and was then within the age of twenty-one years, a married woman, insane, imprisoned, or without the limits of the United States, may bring such action at any time within five years after the disability shall cease, or after the death of the person so disabled; but no such action shall be maintained after it would have been barred by the statutes of limitation in force at and immediately before the time when the Revised Statutes took effect.

Party in possession claiming freehold, &c., may petition S. J. C. to compel claimant to try title.  
1852, 312, § 52.  
12 Cush. 185.  
1 Gray, 416.  
4 Gray, 82.

SECT. 49. Any person in possession of real property claiming an estate of freehold or an unexpired term of not less than ten years, may file a petition in the supreme judicial court setting forth his estate whether of inheritance, for life, or years, describing the premises, averring that he is credibly informed and believes that the respondent makes some claim adverse to the estate of the petitioner, and praying that he may be summoned to show cause why he should not bring an action to try the alleged title. Thereupon the court shall order notice to be given to the respondent, and upon return of the order of notice, duly executed, if the respondent so summoned makes default, or, having appeared, disobeys the lawful order of the court to bring an action and try the title, the court shall enter a decree, that he be forever debarred and estopped from having or claiming any right or title adverse to the petitioner, to the premises described. If the petitioner prefers, such a petition may be inserted like a declaration in a writ, and served by copy like a writ of original summons.

Proceedings on such petition.  
1852, 312, § 53.  
1 Gray, 416.

SECT. 50. If the respondent appears and disclaims all right and title adverse to the petitioner, he shall recover his costs. If he claims title, he shall by answer show cause why he should not be required to bring an action and try such title; and the court shall make such decree respecting the bringing and prosecuting of such action as may seem equitable and just.



CHAPTER 135.

OF THE WRIT OF DOWER.

SECTION

- 1. Dower may be recovered by action.
- 2. must be previously demanded.
- 3. What a sufficient demand.
- 4. Damages.
- 5. Action against tenant of freehold. Damages.

SECTION

- 6. Damages against prior tenant, in case, &c.
- 7. Writ of seisin, how executed.
- 8. when tenement cannot be divided.
- 9. Dower in certain cases of divorce.
- 10. General provisions.

SECTION 1. When a woman is entitled to dower and it is not set out to her by the heir or other tenant of the freehold to her satisfaction according to the true intendment of law, nor assigned to her by the probate court, she may recover the same by a writ of dower in the manner hereinafter provided.

Dower, how recovered.  
R. S. 60, § 5.  
R. S. 102, § 1.  
12 Mass. 485.  
1 Pick. 189, 317.  
5 Met. 277.

SECT. 2. She shall demand her dower of the person seised of the freehold at the time of making the demand, and shall not commence her action therefor before the expiration of one month, nor after the expiration of one year, from such demand; but this shall not preclude her from making a new demand and commencing an action thereon.

must be previously demanded.  
R. S. 102, § 2.  
12 Met. 557.

SECT. 3. A demand of dower in writing, signed by the widow or by her agent or attorney, containing a general description of the premises in which the dower is claimed, and given to the tenant of the freehold or left at his last and usual place of abode, shall be a sufficient demand of dower.

what a sufficient demand.  
1855, 438, § 1.

SECT. 4. If the demandant recovers judgment for her dower, she shall in the same suit recover damages for its detention.

Damages.  
R. S. 102, § 3.

SECT. 5. The action shall be brought against the tenant of the freehold at the time when it is commenced; but if the demand was not made on him, he shall be liable for damages only for the time during which he held the premises.

Action against tenant of freehold. Damages.  
R. S. 102, § 4.  
12 Mass. 485.  
16 Mass. 55.

SECT. 6. In such case if the demandant recovers her dower and damages in the writ of dower, she may afterwards maintain an action of tort against the prior tenant of the freehold of whom her demand was made, for the rents and profits for the time during which he held the premises after the demand.

Damages against prior tenant, in case, &c.  
R. S. 102, § 5.  
1852, 312.

SECT. 7. If the demandant recovers her dower, a writ of seisin shall be issued, requiring the officer to cause it to be set out by three disinterested persons appointed by the court; and they shall be sworn before a justice of the peace or the officer who serves the writ, to set out the same equally and impartially, and as conveniently as may be, according to their best skill and judgment. Said persons may also be authorized, by agreement of parties, to assess the damages for detention of dower.

Writ of seisin, how executed.  
R. S. 102, § 6.  
1848, 317.

SECT. 8. When the estate consists of a mill or other tenement which cannot be divided without damage to the whole, the dower may be assigned of the rents, issues, or profits, to be had and received by the demandant as tenant in common with the other owners.

when tenement cannot be divided.  
R. S. 102, § 7.  
5 N. 11. R. 134.  
13 Pick. 237.

SECT. 9. A woman divorced from her husband for the cause of adultery committed by him, or on account of his being sentenced to confinement to hard labor, may recover her dower in the manner provided in this chapter against whoever is the tenant of the freehold.

Dower in certain cases of divorce.  
R. S. 102, § 8.

SECT. 10. The provisions contained in chapter ninety as to the lands out of which dower may be claimed, the manner in which it may be barred, and the liability of the tenant for waste, shall be applied and enforced when dower is demanded or recovered by force of this chapter.

General provisions.  
R. S. 102, § 9.

## CHAPTER 136.

## OF THE PARTITION OF LANDS.

## IN COURTS OF COMMON LAW.

## SECTION

1. Partition, how made.
2. upon petition by one or more.
3. by one who has an estate in possession.
4. by a tenant for years, in what cases.
5. Duration of the partition.
6. Substance of the petition for partition.
7. Petition to be indorsed.
8. Filing and notice thereof.
9. Notice, how to be served.
10. to persons absent or unknown.
11. Proceedings in such case.
12. Defects in service, how supplied.
13. Time allowed for absent parties.
14. Removal of petitions to S. J. C.
15. Guardian for infant, &c.
16. Pleadings.
17. Replication by petitioner, &c.
18. Proceedings thereon.
19. Costs of trial of an issue.
20. Interlocutory judgment.
21. Commissioners to make partition.
22. to be sworn.
23. to give notice to all parties.
24. Acts of majority valid.
25. If several petitioners.
26. When money may be awarded to equalize partition.
27. Liability of occupant to co-tenants in such case.
28. Remedy of co-tenants for trespass by stranger.
29. Return of commissioners, and judgment.
30. Appeal on petition for partition.
31. on writ of partition.
32. Final judgment.
33. Absent part owner may apply for a new partition.
34. New partition, how to be made.
35. Case of a stranger claiming in severalty.
- 36, 37. claiming one of the shares, &c.
- 38, 39. of two respondents claiming the same share.
40. Stranger claiming an additional share may sue.
41. Case of a share left for part owner who is dead.
42. of a party evicted of his share.
43. Mortgagee, &c., bound by partition.
44. Costs, by whom paid.
45. When petitioner may recover costs.

## SECTION

46. Defendant, &c., entitled to betterments, &c.
47. Petitioner to pay for betterments before judgment.

## IN THE PROBATE COURT.

48. Partition by probate court.
49. Commissioners appointed, sworn, &c.
50. Partition of lands in different counties.
51. Proceedings in probate court.
52. Agents to act for absent heirs, &c.
53. Guardian for minor, &c.
54. Partition to be made of the whole, &c.
55. Share assigned to each owner, unless, &c.
56. When money may be awarded to equalize partition.
57. Preference of males, &c.
58. Whole or part set off to one party, and money paid.
59. Costs to be paid by all parties.
60. No partition in probate court when shares are disputable.
61. Estate of deceased to be severed.
62. Notice to be given to co-tenants.
63. If absent, proceedings to be stayed.
64. On whom partition is binding.
65. On whom it is not conclusive.

## ADVANCEMENTS.

66. Questions of advancement, how determined.

## GENERAL PROVISIONS.

67. Leases not to prevent or invalidate partitions.
68. Party being guardian, &c., of co-tenant, not to prevent, &c.
69. Case of remainders, &c., to persons not in being at time of application for partition.
70. Jurisdiction of the courts.
71. Money awarded to be paid before partition established.
72. Improvements after partition, compensation for.
73. party holding under partition entitled to.
74. Return may be set aside.
75. Returns of partitions, &c., to remain in office of clerk, &c.
76. Registries heretofore made, to be valid.

## DIVISION OF WATER RIGHTS.

77. Division of water rights.
78. of water of natural stream.

## IN COURTS OF COMMON LAW.

SECTION 1. Persons holding lands as joint tenants, coparceners, or tenants in common, may be compelled to divide the same, either by writ of partition at the common law or in the manner provided in this chapter.

13 Met. 462, 465. 6 Cush. 472. 12 Cush. 170. 3 Gray, 111.

SECT. 2. One or more of the persons so holding lands may apply by petition to the superior court, or supreme judicial court, held within or for the county in which the lands lie, for a partition of the same; and said courts may cause partition to be made, and the share or shares of the petitioners to be set off and assigned; and the residue of the

Partition, how made.

R. S. 103, § 1.

7 Mass. 475.

14 Mass. 431.

5 Met. 1.

10 Met. 419.

upon petition

by one or more.

R. S. 103, § 2.

1842, 14, § 1.

1859, 196.

7 Mass. 503.

13 Met. 465.

premises shall remain for the person or persons entitled thereto, and if more than one person is so entitled, subject to a future partition.

6 Cush. 472.  
3 Gray, 111.

SECT. 3. Such petition, except as provided in section sixty-seven, may be maintained by any person who has an estate in possession, but not by one who has only a remainder or reversion. 1853, 410, § 1. 5 Met. 6.

Petition by one who has an estate in possession.

SECT. 4. No tenant for a term of years, unless at least twenty years thereof remain unexpired, shall maintain such petition against a tenant of the freehold; but when two or more persons hold jointly or in common as tenants for a term of years, either of them may have his share set off and divided from the others.

R. S. 103, § 3.  
by a tenant for years, in what cases.  
R. S. 103, § 4.  
15 Mass. 155.  
5 Met. 6.

SECT. 5. Such partition between tenants for years shall continue in force only so long as their estates endure, and shall not affect the premises when they revert to the respective landlords or reversioners.

Duration of the partition.  
R. S. 103, § 5.

SECT. 6. The petition shall set forth the rights and titles, so far as known to the petitioner, of all persons interested in the premises who would be bound by the partition, whether they have an estate of inheritance, for life or years, in possession, remainder, or reversion, and whether vested or contingent; and if the petitioner holds an estate for life or years, the person entitled to the remainder or reversion shall be considered one of the persons so interested, and entitled to notice.

Substance of the petition.  
R. S. 103, § 6.

SECT. 7. Every petition for partition filed originally either in the supreme judicial court, or superior court, shall be indorsed in the same manner as is prescribed with respect to original writs, and all regulations concerning the indorsement of original writs shall apply in like manner to the indorsement of such petitions.

Petition to be indorsed.  
R. S. 103, § 73.  
1855, 449.  
See Ch. 123, § 20.  
Ch. 129, §§ 29-33.

SECT. 8. The petition may be filed in vacation or term time in the office of the clerk of the court in which the suit is brought; and a summons to appear and answer thereto shall be signed by the clerk, and served upon each of the parties named in the petition as interested in the premises, if found in this state, by delivering to him or leaving at the place of his abode a copy of the petition and of the summons, attested by the clerk or officer who serves the process, fourteen days at least before the sitting of the court to which he intends to present the same.

Filing and notice thereof.  
R. S. 103, § 7.

SECT. 9. The petitioner may fourteen days at least before the sitting of the court to which he intends to present his petition, without filing the same in the clerk's office, cause the parties interested to be served with a copy thereof attested by the officer, by delivering or leaving the same in the manner aforesaid fourteen days at least before the sitting of the court to which he intends to present it.

Notice, how to be served.  
R. S. 103, § 8.

SECT. 10. If any of the persons so named are absent from the state, or if there are any persons interested in the premises who would be bound by the partition and whose names are unknown to the petitioner, the court shall order notice to be given to all such persons by a publication of the petition or substance thereof, with the order of the court thereon, in one or more newspapers, to be designated in the order, or by delivering to any absent party who is known an attested copy of the petition and order, or in such other manner as the court considers most proper and effectual.

to persons absent or unknown.  
R. S. 103, § 9.

SECT. 11. The petition in the case last mentioned may be presented to the court when sitting in any county, without being previously filed in the clerk's office; but the cause shall be heard and determined by the court when held within or for the county in which the lands lie, and the summons or notice shall be made returnable to that court.

Proceedings in such case.  
R. S. 103, § 10.  
4 Mass. 122.

SECT. 12. If any person entitled to notice fails to appear, and if the service of the summons, or other notice to him, appears to the court to be in any way defective or insufficient, the court may order such further notice as it may deem proper.

Defects in service, how supplied.  
R. S. 103, § 11.

SECT. 13. If in any stage of the proceedings it appears to the court

Time allowed



for absent parties.  
R. S. 103, § 12.

that any person interested, whether named in the petition or not, is out of the state, and has not had opportunity to appear and answer to the suit, it shall be continued from term to term until he has had time to appear and answer thereto.

Removal of petitions to S. J. C.  
1842, 14, § 1.  
1859, 196.

SECT. 14. When commenced in the superior court, any respondent may at the first term of his appearance remove such petition to the supreme judicial court, by making affidavit substantially as required for the removal of actions at law.

Guardian for infant, &c.  
R. S. 103, § 13.

SECT. 15. The court may assign a guardian for any infant or insane person interested in the premises, in the same manner as a guardian is admitted for an infant defendant in actions at the common law.

Pleadings.  
R. S. 103, § 14.  
1852, 312.

SECT. 16. Any person interested in the premises may appear and answer to the petition, and may plead or answer, either separately or jointly with any other respondents, any matter tending to show that the petitioner ought not to have partition as prayed for, either in whole or in part; and the further pleadings shall be conducted as in actions at the common law.

Replication by petitioner, &c.  
R. S. 103, § 15.  
5 N. H. R. 216.  
2 Mass. 473.  
9 Pick. 66.

SECT. 17. If a person not named in the petition appears and pleads or answers, the petitioner may reply that such person has no estate or interest in the lands, and may pray judgment, if he shall be admitted to object; and the petitioner may in the same replication answer to such plea any other matter as he might have done if he had not disputed the respondent's right to appear.

Proceedings thereon.  
R. S. 103, § 16.

SECT. 18. If upon such replication it appears that the respondent has no estate or interest in the lands, the matter of his plea or objection to the partition shall be no further inquired of.

Costs of trial of an issue.  
R. S. 103, § 17.  
4 Pick. 246.  
19 Pick. 539.

SECT. 19. If upon the trial of an issue it appears that the petitioner is entitled to have partition as prayed for, he shall recover his costs of such trial against the party who objected thereto, and shall have execution therefor. If such issue is found or decided against him, in whole or in part, the adverse party shall recover against him the costs of the trial, and shall have execution therefor; but judgment may notwithstanding be rendered for the petitioner to have partition, and to have assigned to him such part of the premises if any as he appears to be entitled to.

Interlocutory judgment.  
R. S. 103, § 18.  
1 Greenl. 369.  
5 Greenl. 458.  
3 Mass. 299.  
11 Cush. 169.

SECT. 20. If it appears that the petitioner is entitled to have partition, whether for the share or proportion claimed in his petition or any less share, the court shall award the interlocutory judgment, that partition be made.

Commissioners to make partition.  
R. S. 103, § 20.  
11 Cush. 168.

SECT. 21. When partition is to be made, the court shall appoint three or five disinterested persons as commissioners to make the partition, and set off to the petitioner the share or shares belonging to him, which shall be expressed in the warrant.

to be sworn.  
R. S. 103, § 22.  
3 Mass. 299.

SECT. 22. The commissioners, before proceeding to the execution of their duties, shall be sworn faithfully and impartially to execute the same, a certificate of which oath shall be made on the warrant by the person who administers it.

to give notice to all parties.  
R. S. 103, § 23.

SECT. 23. The commissioners shall give sufficient notice of the time and place appointed for making the partition, to all persons interested therein who are known and within the state, that they may be present at the making thereof.

Acts of majority valid.  
R. S. 103, § 24.  
4 N. H. R. 53.

SECT. 24. All the commissioners shall meet for the performance of any of their duties, but the acts of a majority shall be valid.

If several petitioners.  
R. S. 103, § 21.

SECT. 25. If there are several petitioners, they may at their election have their shares set off together or in severalty.

When money may be awarded to equalize partition.

SECT. 26. When the premises consist of a mill or other tenement which cannot be divided without damage to the owners, or when any specific part of the estate is of greater value than either party's share and cannot be divided without damage to the owners, the whole estate,

or the part thereof so incapable of division, may be set off to any one of the parties who will accept it, he paying to any one or more of the others such sums of money as the commissioners award to make the partition just and equal; or the commissioners may assign the exclusive occupancy and enjoyment of the whole, or the part, to each of the parties alternately for certain specified times, in proportion to their respective interests.

R. S. 103, §§ 25, 26.  
5 N. H. R. 134.  
7 Pick. 209.  
13 Pick. 237.

SECT. 27. When the whole or any specific part of the premises is thus assigned, the person entitled for the time being to the exclusive occupancy shall be liable to his co-tenants for any injury to the premises occasioned by his misconduct, as a tenant for years under a common lease without express covenants would be liable to his landlord; and the other tenants in common may have their remedy therefor against him by an action of tort, jointly or severally, at their election.

Liability of occupant to co-tenants in such case.  
R. S. 103, § 27.  
1852, 312.

SECT. 28. While an estate is in the exclusive occupancy of a co-tenant under such an assignment, he shall be entitled to the same remedy against whoever trespasses upon or otherwise injures the premises, as if he held the same under a lease for the term for which they were so assigned to him; and he and all the other tenants in common shall be entitled to recover such other and further damages as they have sustained by the same trespass or injury, in like manner as if the premises had been leased by them. Joint damages recovered by such tenants in common by force of this or the preceding section, shall be apportioned and divided among them according to their respective rights, by the court in which the judgment is recovered.

Remedy of co-tenants for trespass by stranger.  
R. S. 103, § 28.

SECT. 29. The commissioners shall make a return of their doings under their hands, together with their warrant. If their report is confirmed, judgment shall be rendered that the partition be firm and effectual forever.

Return of commissioners, and judgment.  
R. S. 103, § 29.  
See § 75.

SECT. 30. Any party aggrieved by any judgment rendered in the superior court under section twenty, or upon a report of commissioners under this chapter, may appeal therefrom in any matter of law apparent upon the record, to the supreme judicial court; but upon an appeal from the judgment upon the report of commissioners, the interlocutory judgment awarding that partition be made shall not be drawn in question.

Appeal on petition for partition.  
R. S. 103, §§ 19, 31.  
1840, 87, §§ 4, 5.  
13 Mass. 211.  
1859, 196.

SECT. 31. The regulations herein prescribed as to appeals from the first and second judgment on a petition for partition, shall be enforced in like manner, in a writ of partition.

on writ of partition.  
R. S. 103, § 32.

SECT. 32. The final judgment shall, except as hereinafter provided, be conclusive as to the rights of property and possession of parties and privies to the judgment, including all persons who might by law have appeared and answered.

Final judgment.  
R. S. 103, § 33.  
2 Mass. 472.  
13 Mass. 213.  
22 Pick. 316.

SECT. 33. If any person who was a part owner with the petitioner, and for whom a share is left upon the partition, is out of the state when the summons or notice to him is served, and does not return in time to appear and answer, he may, within three years after the final judgment, apply to the same court for a new partition; and if, upon a hearing of all parties interested, it appears that the share left for the applicant was less than he was entitled to, or that the part left for him was not at the time equal in value to his share of the premises, the court may order a new partition, which shall be made in the manner before provided.

Absent part owner may apply for a new partition.  
R. S. 103, §§ 34, 35.

SECT. 34. In such new partition the commissioners shall not be required to make a new division of the whole premises, but may take from any one share or shares and add to any other or others so much as is necessary to make the partition just and equal, estimating the whole as in the state in which it was when first divided; or if an equal partition cannot be made without inconvenience to the owners, the com-

New partition, how to be made.  
R. S. 103, § 36.



missioners may award money to be paid by one party to another as before provided, to equalize the shares.

Case of stranger claiming in severalty.  
R. S. 103, § 38.  
2 Mass. 462.  
5 Met. 340.  
8 Met. 599.

SECT. 35. If any person who has not appeared and answered to the petition claims to hold in severalty any part of the premises, he shall not be concluded by the judgment, but may bring his action for the land claimed by him, against any or all of the petitioners or respondents, or of the persons holding under them, within the time in which he might have brought it if no such judgment for partition had been rendered.

of stranger claiming one of the shares, &c.  
R. S. 103, § 39.  
8 Met. 599.

SECT. 36. When a person who has not appeared and answered claims the share assigned to or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares, in like manner as if he had been a party to that suit, but may bring his action for the share claimed by him, against the person to whom it was assigned or for whom it was left.

same subject.  
R. S. 103, § 40.

SECT. 37. The action shall be brought against the tenant in possession as if the demandant had originally claimed the specific piece demanded instead of an undivided part of the land; and it may be brought within the time in which it might have been brought if no such judgment for partition had been rendered.

of two respondents claiming the same share.  
R. S. 103, § 41.

SECT. 38. If two or more persons appear as respondents, claiming the same share of the premises to be divided, it shall not be necessary to decide on their respective claims, except for the purpose of determining which shall be admitted to appear in the suit; and if partition is made, the share so claimed shall be left for whichever of the parties proves to be entitled to it, in a suit to be thereafter brought between themselves.

same subject.  
R. S. 103, § 42.

SECT. 39. If in such case it is decided in the suit for partition that either of the respondents is not entitled to the share that he claims, he shall be concluded by the judgment, so far as it respects the partition and assignment of the shares; but may bring an action against the other claimant in the manner provided in the three preceding sections.

of stranger claiming an additional share.  
R. S. 103, §§ 43, 44.  
22 Pick. 316.

SECT. 40. If any person who has not appeared and answered claims part of the premises as a part owner with any of those who were parties to the suit, and if the part or share so claimed was not known, or not allowed and left for him, in the process for partition, he shall be concluded by the judgment, so far as it respects the partition, but may bring an action for the share or proportion claimed by him, against each of the persons holding any part of the premises under the judgment for partition, and if he prevails, shall recover against each the same proportion or share of the part held by him, that he was entitled to claim out of the whole premises before the partition.

of a share left for part owner, who is dead.  
R. S. 103, § 45.

SECT. 41. If after partition it appears that any person for whom a share was left or assigned, had died before the partition, his heir or devisee shall not, by reason of his having been a party to the suit, be barred from claiming the share that belonged to him; but shall have the same rights and remedies as if he had not been such party, and had not had notice of the pendency thereof.

of a party evicted of his share.  
R. S. 103, § 46.

SECT. 42. If a person to or for whom any share has been so assigned or left, is evicted by a person who at the time of the partition had a title older and better than the title of those who were parties to the suit, the person so evicted may have a new partition of the residue, as if partition had not been made.

Mortgagee, &c., bound by partition.  
R. S. 103, § 47.

SECT. 43. A person having a mortgage, attachment, or other lien, on the share of a part owner, shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares; but his lien shall remain in full force upon the part assigned to or left for such part owner.



SECT. 44. The expenses and charges of the commissioners shall be ascertained and allowed by the court; the other costs shall be taxed in the usual manner; and the whole shall be paid by the petitioner, except the costs of a trial of issues. When there is more than one petitioner the whole costs and charges payable by them shall be paid in proportion to the shares or interests they respectively hold in the premises.

Costs, by whom paid.  
R. S. 103, § 49.

SECT. 45. When a petition is opposed by any respondent therein named, and it appears that the petitioner is entitled to have partition as prayed for, he shall recover costs against the party opposing, from and after the filing of the plea or answer, to be taxed as in other civil cases.

When petitioner may recover costs.  
1857, 149.

SECT. 46. If the plaintiff or petitioner recovers judgment in any writ or other process of partition in which it appears by the pleadings that the defendant or respondent denies the right and title of the plaintiff or petitioner to any part of the premises, and claims the same as his own estate in fee, and it is proved that the defendant or respondent held the same under a title which he believed to be good, he shall be entitled to compensation for the value of any buildings or improvements on the premises made or erected by himself or any other person under whom he claims; such value to be ascertained as provided for tenants in real actions, by chapter one hundred and thirty-four; and in like manner he shall be liable for the plaintiff or petitioner's share of the rents, profits, and other damages, mentioned in said chapter.

Defendant, &c., entitled to betterments, &c.  
1850, 278, § 1.  
13 Met. 462.  
12 Cush. 170.

SECT. 47. If any sum remains due to the defendant or respondent for improvements, after deducting the rents, profits, or other damages, for which he is found chargeable, the plaintiff or petitioner shall not have judgment for partition until he pays the same to the defendant or respondent, or for his use to the clerk of the court; and he shall not be entitled to any rents or profits which may accrue after verdict, and before he makes such payment.

Petitioner to pay for betterments before judgment.  
1850, 278, § 2.

IN THE PROBATE COURT.

SECT. 48. The probate court in which the estate of any deceased person is settled or in a course of settlement, may make partition of all his real estate lying within the state, among his heirs or devisees, and all persons holding under them by conveyance or otherwise, in the manner and under the restrictions hereinafter provided.

Partition by probate court.  
R. S. 103, § 50.  
13 Mass. 413.  
5 Pick. 210.  
21 Pick. 101.

SECT. 49. The partition shall be made by three or five disinterested persons to be appointed as commissioners for that purpose by the court. They shall before proceeding to the execution of their duties be sworn faithfully and impartially to execute the same, and shall proceed therein in the manner before prescribed with regard to commissioners appointed by the courts of law, except as hereinafter otherwise provided.

Commissioners appointed, sworn, &c.  
R. S. 103, § 51

SECT. 50. If an estate to be divided lies in different counties, the judge may if he thinks fit issue a separate warrant and appoint different commissioners for each county; and the partition shall be made of the estate in each county in like manner as if there were no other estate.

Partition of lands in different counties.  
R. S. 103, § 52.

SECT. 51. Such partition may be ordered on the petition of any of said parties interested, after due notice to all the others to appear and show cause against it. The notice shall be served fourteen days at least before the time appointed for the hearing; on the parties personally if they can be found within the state, and if not, it shall be published once in each week for three weeks at least before such hearing, in such newspapers as the court shall order.

Proceedings in probate court.  
R. S. 103, § 53.  
7 Pick. 209.

SECT. 52. After the commissioners are appointed, some disinterested person shall be appointed agent by the court for any heir at law or devisee absent from the state; and he shall act for such absent heir or devisee in all things relating to the partition.

Agents to act for absent heirs, &c.  
1839, 164, § 1.

Guardian for  
minor, &c.  
R. S. 103, § 54.

SECT. 53. If it appears that any infant or insane person is interested in the premises, and has no guardian within the state, the court shall assign him a guardian for the suit, to appear for him and defend his interests therein.

Partition to be  
made of the  
whole, &c.  
R. S. 103, § 55.

SECT. 54. The partition when made on the application of an heir, shall be made of all the estate that descended from the ancestor, and which any party interested, whether the applicant or others, requires to have included in the partition; and when made on the application of a devisee, it shall be made of all the estate held by the applicant jointly or in common with others holding under the testator, which he or any other devisee requires to have included. The same rule shall apply when the application is made by any person holding under an heir or devisee.

Share assigned  
to each owner,  
unless, &c.  
R. S. 103, § 56.

SECT. 55. Upon every such partition the court shall not only assign and set off to the applicant his share in the premises, but shall cause the residue to be divided among the parties interested, and the share of each one to be assigned to him, unless two or more of the parties consent to hold their shares together and undivided.

When money  
may be award-  
ed to equalize  
partition.  
R. S. 103, § 57.  
7 Pick. 209.

SECT. 56. When a message, piece of land, or other part of the premises, is of greater value than either party's share, and cannot be divided without great inconvenience to the owners, it may be set off to any one of the parties who will accept it, he paying to any one or more of the others such sums of money as the commissioners award to make the partition just and equal.

Preference of  
males, &c.  
R. S. 103, § 58.

SECT. 57. In the assignment of part of the premises under the preceding section, males shall be preferred to females, and among the children of the deceased, elder shall be preferred to younger sons.

Whole or part  
set off to one  
party, and  
money paid.  
1838, 28.  
8 Met. 365.

SECT. 58. When such real estate cannot be divided without damage to the owners, the whole or any part thereof may be set off to one or more of the parties among whom partition is ordered to be made, he or they paying to the other parties such sums of money as the commissioners shall award.

Costs to be  
paid by all par-  
ties.  
R. S. 103, § 60.

SECT. 59. The expenses and charges incurred shall be ascertained and allowed by the court, and paid by all the parties interested in the partition in proportion to their respective shares or interests in the premises. If any one neglects to pay his part, an execution therefor may be issued against him.

No partition in  
probate court  
when shares are  
disputable.  
R. S. 103, § 61.

SECT. 60. No partition shall be made by the probate court when the shares or proportions of the respective parties are in dispute between them, or appear to the judge to be uncertain, depending upon the construction or effect of any devise or other conveyance, or upon other questions that he deems proper for the consideration of a jury and a court of common law.

Estate of de-  
ceased to be sev-  
ered.  
R. S. 103, § 64.

SECT. 61. When any part of the real estate of the deceased lies in common and undivided with that of another person, the probate court may cause it to be divided and set off from the part held by such co-tenant, before making partition among the heirs or others claiming under the deceased.

Notice to be  
given to co-ten-  
ants.  
R. S. 103, § 65.

SECT. 62. The court in such case shall order a notice of the intended partition to be given to the co-tenant, containing a description of the premises to be divided, with a statement of the share or proportion claimed as belonging to the estate of the deceased, and of the time and place appointed for hearing the case. It shall be served on the co-tenant by delivering to him an attested copy, or by leaving such copy at the place of his abode in this state, fourteen days at least before the time appointed for the hearing.

If absent, pro-  
ceedings to be  
stayed.  
R. S. 103, § 66.

SECT. 63. If it appears in any stage of the proceedings that any person interested in the premises, other than the heirs and devisees of the deceased and those claiming under them, was absent from the state



when the notice was served, and has not returned, the probate court shall either dismiss the application for partition, or stay all further proceedings until such absent party appears and answers thereto, or signifies in writing to the court his consent that partition be made as proposed.

SECT. 64. The partition when finally confirmed and established shall be conclusive on all the heirs and devisees of the deceased, and all persons claiming under them; on all other persons interested in the premises who appeared and answered in the case, or assented to the proposed partition as before provided, and on every person so interested, on whom notice was served by delivering to him a copy thereof, or by leaving it at the place of his abode at a time when he was within the state.

On whom partition is binding.  
R. S. 103, § 68.

SECT. 65. Such partition shall not be conclusive upon any persons other than those mentioned in the preceding section. All other persons may pursue their legal remedies for recovering the premises, or any part thereof, and also for obtaining partition of the same, in like manner as if the proceedings in the probate court had not been had.

on whom it is not conclusive.  
R. S. 103, § 69.

ADVANCEMENTS.

SECT. 66. Questions concerning advancements of either party may be heard and determined upon a petition for partition, or the court may suspend proceedings until that question is decided in the probate court in which the estate of the deceased is settled; which court may hear and determine all such questions, saving an appeal as in other cases to the supreme judicial court. The final decree or sentence thereon shall be binding on all parties interested, whether the partition is made by the probate court or in the courts of common law.

Questions of advancement how determined.  
R. S. 103, §§ 62, 63.  
16 Mass. 200.  
See Ch. 91, § 6.

GENERAL PROVISIONS.

SECT. 67. Partitions may be made under this chapter notwithstanding the existence of any lease of the whole or a part of the estate to be divided; and no partition heretofore made by a court of competent jurisdiction, shall be rendered invalid by reason of the existence of such lease: *provided*, that such partition shall not prejudice the right of a lessee.

Leases not to prevent or invalidate partitions.  
1853, 410, § 1.  
6 Cush. 472.

SECT. 68. Such partitions may be made notwithstanding any of the tenants in common may be, alone or jointly with others, trustee, attorney, or guardian, of any other tenant; and no partitions of real estate heretofore made by a court of competent jurisdiction, shall be rendered invalid by reason that such trustee, attorney, or guardian, was a party.

Party being guardian, &c., of co-tenant, not to prevent, &c.  
1853, 410, § 2.  
9 Cush. 465.

SECT. 69. The provisions of this chapter shall apply to estates in which remainders or estates are devised or limited to, or in trust for, persons not in being at the time of application for partition, upon notice to the persons who may be parents of such persons, in the manner herein prescribed, setting forth the origin and nature of the remainder or interest so devised or limited. The court in such case shall appoint a suitable and competent person to appear and act as the next friend of such persons, in all proceedings touching the partition; the cost of whose appearance and services, including compensation of counsel, to be determined by the court, shall be paid by the persons applying for partition, and execution may be issued therefor in the name of the person appointed. The partition made in such case shall be conclusive upon all persons to whom such estate or remainder is devised or limited, in the same manner as if they had been in being and appeared and answered in the case, or assented to the partition.

Case of remainders, &c., to persons not in being.  
1850, 249.  
1853, 257.  
1858, 137.

SECT. 70. When proceedings for obtaining partition are lawfully

Jurisdiction of the courts.



R. S. 103, § 72.  
16 Mass. 167.

commenced in either of the courts mentioned in this chapter, that court shall retain jurisdiction of the case, saving the right of appeal in all cases where an appeal is allowed by law.

Money awarded to be paid before partition established.  
1850, 239.  
7 Pick. 208.  
3 Gray, 536.

SECT. 71. Where sums of money are awarded by the commissioners to make the partition just and equal, the partition shall not be established by the court until all such sums are paid to the parties entitled thereto, or secured to their satisfaction, or that of the court before which the matter is pending.

Compensation for improvements after partition.  
R. S. 103, §§ 37, 70.

SECT. 72. If after a first partition under this chapter any improvements have been made on any part of the premises which by the partition is taken from the share of the party who made the improvements, he shall be entitled to compensation therefor, to be estimated and awarded by the commissioners, and paid by the party to whom such part of the premises is assigned on the new partition, and the court may issue an execution therefor in the common form.

party holding under partition entitled to.  
R. S. 103, § 71.

SECT. 73. Every person holding lands under a partition made under this chapter, shall in case of an eviction be entitled to compensation for improvements made thereon, in the manner prescribed in chapter one hundred and thirty-four.

Return may be set aside.  
R. S. 103, §§ 30, 59.  
5 N. H. R. 329.

SECT. 74. In all cases of partition the court may for any sufficient reason set aside the return and commit the case anew to the same or to other commissioners, whereupon the same proceedings shall be had as are before directed.

Returns of partitions, &c., to remain in office of clerk, &c.  
1847, 170, § 1.

SECT. 75. The return of the commissioners, when accepted, shall remain in the office of the clerk of the courts, or in the registry of probate, as the case may be; and a copy thereof, certified by the clerk, or register, shall be recorded in the registry of deeds for the county or district where the land lies.

Registries heretofore made to be valid.  
1847, 170, § 2.

SECT. 76. All records in the registry of deeds of partitions heretofore made, if no other objection exists thereto, shall be deemed valid and sufficient whether recorded from the original return or from a copy thereof certified by the clerk or register of the court in which the partition was made.

#### DIVISION OF WATER RIGHTS.

Division of water rights.  
1854, 74.  
4 Gray, 486.

SECT. 77. All persons who are interested as joint tenants, tenants in common, or otherwise, in any mill privilege, water right, or other incorporeal hereditament, may be compelled to divide the same, either by suit in equity, in the supreme judicial court, or in the manner herein before provided for the division of land. In the latter case, the commissioners appointed to make partition shall set forth in their return the best method of setting off to the several parties their respective shares or interests, and thereupon the court may require the parties interested to perform such acts as justice and equity may require, and may make all such orders and decrees in the premises, according to the course of proceedings in equity, as may be necessary to do justice between the parties.

of water of natural stream.  
1859, 128.

SECT. 78. Under the provisions of the preceding section, partition may be made of the water of a natural stream not navigable, the banks of which are owned by different riparian proprietors.

CHAPTER 137.

OF FORCIBLE ENTRY AND DETAINER.

SECTION

1. Forcible entry forbidden.
2. Person ousted, or unlawfully held out, may be restored.
3. On termination of lease by reason of non-payment of rent, lessor, &c., restored. Proviso.
4. Suit to be commenced within three years.
5. Form of writ.
6. Proceedings in the suit.

SECTION

7. Judgment, when for plaintiff.
8. when for defendant.
9. Upon appeal or removal, defendant to recognize, &c. Remedy upon the recognition.
10. Liability of defendant for frivolous plea, &c.
11. The premises or further damages may be afterwards recovered.

SECTION 1. No person shall make an entry into lands or tenements, except in cases where his entry is allowed by law; and in such cases he shall not enter with force, but in a peaceable manner. 5 Cush. 214. 8 Cush. 32.

SECT. 2. When a forcible entry is made, or when a peaceable entry is made and the possession unlawfully held by force, or when the lessee of land or tenements, or a person holding under such lessee, holds possession without right after the determination of the lease by its own limitation, or by notice to quit or otherwise, the person entitled to the premises may be restored to the possession in the manner hereinafter provided.

13 Met. 273. 5 Cush. 563. 121, 409. 1 Gray, 571. See Ch. 87, § 8.  
 1 Cush. 487. 8 Cush. 29, 33. 11 Cush. 227. 4 Gray, 432. Ch. 90, § 31.

SECT. 3. When a lease in writing is determined in the manner provided in section thirty of chapter ninety, the lessor and his assigns may be restored to the possession of the premises in like manner: *provided*, that when a suit is brought under this chapter to recover the possession by reason of such termination, if the tenant four days at least before the return day of the writ pays or tenders to the landlord or his attorney the rent due, with interest thereon and all costs of suit, the lease shall be in force. Nothing contained in this section or said section [thirty] [*twenty-eight*] shall affect any other rights or remedies on the part of the lessor provided in the lease.

SECT. 4. No restitution shall be made under the provisions of this chapter of any lands or tenements of which the defendant, or his ancestors, or those under whom he holds the premises, have been in the quiet possession for three years next before the commencement of the suit, unless his estate therein is ended.

SECT. 5. The person entitled to the possession of the premises may take from a justice of the peace, or police court, a writ in the form used for an original summons in common civil actions before such justices or courts, in which the defendant shall be summoned to answer to the complaint of the plaintiff, for that the defendant is in possession of the lands or tenements in question, describing them, which he holds unlawfully and against the right of the plaintiff, as it is said; and no other declaration shall be required.

SECT. 6. The writ shall be served seven days at least before the return day, and the suit shall be conducted like other civil actions before such justices or courts.

SECT. 7. If it appears by default or on trial that the plaintiff is entitled to the possession of the premises, he shall have judgment and execution for the possession and for his costs.

SECT. 8. If the plaintiff becomes nonsuit, or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs.

Foreible entry forbidden.  
 R. S. 104, § 1.  
 7 Met. 151.

Person ousted, or unlawfully held out, may be restored.  
 R. S. 104, § 2.  
 10 Mass. 403.  
 3 Pick. 31.  
 2 Met. 29.  
 3 Met. 350.  
 5 Met. 343.  
 10 Met. 250, 298.  
 11 Met. 99.  
 12 Met. 300.

On termination of lease by reason of non-payment of rent, lessor, &c., restored, &c. Proviso.  
 1847, 267, § 2.  
 1857, 55.  
 6 Gray, 227.

Suit to be commenced within three years.  
 R. S. 104, § 3.  
 R. S. Act of amend. § 14.

Form of writ.  
 R. S. 104, §§ 4, 13.  
 1841, 55, § 2.  
 2 Met. 29.  
 3 Met. 350, 548.  
 10 Met. 223, 230, 294, 298.  
 13 Met. 186.  
 1 Cush. 487.  
 5 Cush. 563.  
 6 Cush. 415.  
 8 Cush. 32, 121, 124.

Proceedings in the suit.  
 R. S. 104, § 5.  
 See Ch. 18, § 61.  
 Judgment, when for plaintiff.  
 R. S. 104, § 6.

when for defendant.  
 R. S. 104, § 7.  
 10 Met. 294.

Upon appeal or removal, defendant to recognize, &c. Remedy upon the recognizance.  
R. S. 104, § 10.  
1848, 142.  
1852, 312.  
10 Met. 2.  
2 Gray, 311, 314.

SECT. 9. When judgment is rendered for the plaintiff for restitution, and the defendant appeals therefrom, or when the defendant removes the case as provided in section thirteen of chapter one hundred and twenty, he shall, before such appeal or removal is allowed, recognize to the plaintiff, with sufficient surety or sureties, to enter the action, to pay all rent then due, all intervening rent, and all damages and loss which the plaintiff may sustain by reason of the withholding of the possession of the demanded premises, and by reason of any injury done thereto during such withholding, together with all costs, until the restitution of the possession thereof to the plaintiff, in case the judgment from which the appeal is made is affirmed. Upon final judgment for the plaintiff, all sums of money then due to him may be recovered by writ of *scire facias* or action of contract upon the recognizance.

Liability of defendant for frivolous plea, &c.  
R. S. 104, § 11.  
1852, 312.

SECT. 10. If the case is transferred at the request of the defendant upon any plea or suggestion by him that brings in question the title to the freehold, and if it appears to the court in which the action is determined, that the defendant originally entered on the premises under a lease from the plaintiff, or from any person under whom the plaintiff claims, or that he held them under any such lease, and that his said plea or suggestion was frivolous and intended for delay, the court shall cause a certificate thereof to be entered on the record, and the defendant shall thereupon be liable to pay double the yearly value of the demised premises from the time of the notice to quit the same, which may be recovered by writ of *scire facias* or action of contract on the recognizance.

The premises or further damages may be afterwards recovered.  
R. S. 104, § 12.

SECT. 11. The judgment in such action shall not be a bar to any action thereafter to be brought by either party to recover the premises in question, or damages for any trespass thereon; but the sum recovered for rent, according to the provisions of the two preceding sections shall be allowed and deducted in any assessment of damages in such subsequent action by the original plaintiff.

## CHAPTER 138.

### OF WASTE AND TRESPASS ON REAL ESTATE.

#### SECTION

1. Action of waste may be brought by a reversioner.
2. by an heir.
3. Mode of trial.
4. Action of tort for waste.
5. by whom brought.
6. may be prosecuted or brought against executors, &c.
7. Penalty for waste on lands held in joint tenancy, &c.
8. Damages, how recovered and appropriated.

#### SECTION

9. Penalty for waste after action for possession.
10. Penalty for wilful trespass on lands.
11. Tender allowed in case of involuntary trespass.
12. Or money may be brought into court.
13. Injunction to stay waste.
14. how dissolved.
15. Injunction for waste in case of land attached, or action for possession, &c.
16. Applicant to give bond.
17. Further proceedings in such case.

Action of waste may be brought by reversioner.  
R. S. 105, § 1.  
5 Pick. 192.  
7 Pick. 152.  
8 Pick. 309.

SECTION 1. If a tenant in dower, by the curtesy, or for life or years, commits or suffers waste on the premises, the person having the next immediate estate of inheritance may have an action of waste against such tenant, wherein he shall recover the place wasted and the amount of the damage.

by an heir.  
R. S. 105, § 2.  
Mode of trial.  
R. S. 105, § 3.

SECT. 2. An heir may bring an action for waste done in the time of his ancestor.

SECT. 3. If an issue of fact is joined in the cause, it shall be tried



by a jury in the usual manner, either with or without a view of the premises, as the court shall order; and the jury that inquire of the waste shall assess the damages.

SECT. 4. A person entitled to such action of waste may instead thereof bring an action of tort in the nature of waste, in which he shall recover such damages as he has suffered by reason of the waste.

Action of tort for waste.  
R. S. 105, § 4.  
1852, 312.

SECT. 5. Such action of tort may be maintained by one who has the remainder or reversion in fee simple or fee tail, after an intervening estate for life, and also by one who has a remainder or reversion for life or years only, and each shall recover such damages as he has suffered by the waste.

by whom brought.  
R. S. 105, § 5.  
1852, 312.  
3 Pick. 203.

SECT. 6. An action of tort for waste, if commenced in the lifetime of the tenant, may be prosecuted against his executors or administrators; and such action may be originally brought against the executors or administrators of the tenant, for waste committed or suffered in his lifetime.

may be prosecuted or brought against executors, &c.  
R. S. 105, § 6.  
1852, 312.

SECT. 7. If a joint tenant, coparcener, or tenant in common, of undivided lands, cuts down, destroys, or carries away, any trees, timber, wood, or underwood, standing or lying on such lands, or digs up or carries away any stone, ore, or other valuable thing, found there, or commits any other strip or waste, without first giving thirty days' notice in writing under his hand to all the other persons interested therein, or to their respective agents or attorneys, of his intention to enter upon and improve the land; or if he does any of said acts during the pendency of a petition or other suit for the partition of the premises; he shall forfeit three times the amount of the damages that shall be assessed therefor, to be recovered and appropriated as provided in the following section.

Penalty for waste on lands held in joint tenancy, &c.  
R. S. 105, § 7.  
22 Pick. 496.  
1 Met. 206.

SECT. 8. Such damages may be recovered in an action of tort by any one or more of the other co-tenants, without naming any one except the plaintiff, and the damages shall be appropriated, one-half to the persons who shall sue, and the other half to the same persons with all the other co-tenants except the defendant, to be divided among them in proportion to their respective interests in the land.

Damages, how recovered and appropriated.  
R. S. 105, § 8.  
1852, 312.  
22 Pick. 496.  
6 Gray, 339.

SECT. 9. If, during the pendency of an action for the recovery of lands, the tenant or person in possession, with knowledge of such pendency, commits strip or waste, the demandant, if he recovers judgment, may afterwards recover, in an action of tort, three times the amount of the damages that shall be assessed therefor.

Penalty for waste after action for possession.  
R. S. 105, § 9.  
1852, 312.  
8 Pick. 514.  
2 Cush. 401.

SECT. 10. If any person without license wilfully cuts down, carries away, girdles, or otherwise destroys, any trees, timber, wood, or underwood, on the land of another, the owner may recover, in an action of tort, three times the amount of the damages that shall be assessed therefor, unless it appears that the defendant had good reason to believe that the land on which the trespass was committed was his own, or that he was otherwise lawfully authorized to do the acts complained of, in which case he shall be liable only for single damages.

Penalty for wilful trespass on lands.  
R. S. 105, §§ 10, 11.  
1852, 312.

SECT. 11. When a trespass on lands has been casual and involuntary, the trespasser may tender sufficient amends before an action is brought; and if afterwards sued, he may in his answer disclaim all title to the land, allege that the trespass was casual and involuntary, and set forth the tender, bringing the money into court. If upon the trial the allegations appear to be true, and the damages assessed do not exceed the amount so tendered, the defendant shall recover his costs.

Tender allowed in case of involuntary trespass.  
R. S. 105, § 12.  
1852, 312.

SECT. 12. If a tender was not made before the commencement of the action, the defendant may disclaim title, allege that the trespass was casual and involuntary, and bring into court sufficient amends, with the costs of suit up to that time. If the plaintiff does not accept the same in satisfaction, and if upon trial the allegations appear to be true, and

Or money may be brought into court.  
R. S. 105, § 13.  
1852, 312.

the damages assessed do not exceed the amount so brought into court, the defendant shall recover his costs.

Injunction to stay waste.  
R. S. 105, § 15.

SECT. 13. The supreme judicial court, or one of the justices thereof, may either in term time or vacation, after the filing of the bill or other commencement of a suit concerning waste, issue a writ of injunction to stay waste, and issue such other writs and processes, and make such orders and decrees, according to the course of proceedings in equity, as justice and equity may require.

how dissolved.  
R. S. 105, § 16.

SECT. 14. Every such injunction to stay waste may be dissolved, either in term time or vacation, by the supreme judicial court, or any one of the justices thereof.

Injunction for waste in case of land attached, or action for possession, &c.  
R. S. 105, § 17.  
1852, 312, § 54.  
1856, 278.

SECT. 15. When a person whose real estate is attached commits waste thereon, or threatens or makes preparations so to do, or when a real action is brought to foreclose a mortgage, or for possession under the same, or for the recovery of land, and any waste on the land has been committed or threatened by the defendant, or any one claiming under him or acting by his permission, the court in which the suit is pending or any one of the justices may on the application of the plaintiff, either in term time or vacation, issue a writ of injunction to stay such waste.

Applicant to give bond.  
1856, 278.

SECT. 16. In any case under the preceding section, the court or justice may require that the applicant shall before the issuing of the writ give bond with sufficient sureties to the adverse party, conditioned that the applicant shall pay all damages which may arise from the issuing of the injunction if it is dissolved.

Further proceedings in such case.  
R. S. 105, § 18.

SECT. 17. The court may arrest and commit the defendant for a violation of such injunction, and issue such other process as may be necessary or proper to enforce obedience thereto, in like manner as the supreme judicial court may do upon a suit in equity pending before them; and the injunction may be dissolved, either in term time or vacation, by the court in which the suit is pending, or by any one of the justices.

## CHAPTER 139.

### OF ACTIONS FOR PRIVATE NUISANCES.

#### SECTION

1. Judgment for abatement of nuisance. Warrant therefor.
2. may be postponed.
3. when demandable of right.
4. expenses of executing.

#### SECTION

5. Injunctions may be issued to prevent a nuisance.
6. Same subject.
7. Injunction, how dissolved.

Judgment for abatement of nuisance.  
Warrant therefor.  
R. S. 106, §§ 1, 2.  
1852, 312.  
11 Pick. 452.

SECTION 1. When the plaintiff prevails in an action of tort for a nuisance, the court may, in addition to the usual judgment for damages and costs, enter judgment that the nuisance be abated and removed, and may award an execution in common form for the damages and costs, and a separate warrant to the proper officer, requiring him to abate and remove the nuisance at the expense of the defendant, in like manner as public and common nuisances are abated and removed.

may be postponed.  
R. S. 106, § 3.

SECT. 2. The court may on motion of the defendant order a stay of such warrant for a time not exceeding six months, to give him opportunity to remove the nuisance, upon his undertaking to do so within the time ordered.

when demandable of right.  
R. S. 106, § 4.

SECT. 3. If the plaintiff recovers judgment in a second suit for the continuance or repetition of the same nuisance, whether there was in the first suit a judgment for abatement and removal or not, he shall be

entitled as of right to a judgment for abatement and removal, and to a warrant to be issued as before provided.

SECT. 4. The expense of abatement and removal shall be collected by the officer in the manner damages and costs are collected upon execution; except that the materials of buildings, fences, or other things, removed as a nuisance, may be sold by the officer as goods are sold on execution for the payment of debts. The officer shall apply the proceeds of the sale to defray the expenses of the removal, and pay over any balance to the defendant upon demand. If the proceeds are not sufficient to defray the expenses, he shall collect the residue.

Expenses of executing warrant for abatement of nuisance.  
R. S. 106, § 5.

SECT. 5. After the commencement of a suit in equity concerning a nuisance, the supreme judicial court or any one of the justices, either in term time or vacation, may issue an injunction to stay or prevent any nuisance on the premises in question.

Injunction to prevent nuisance.  
R. S. 106, §§ 6, 7.

SECT. 6. When an action of tort for a nuisance is pending, either in the superior court or the supreme judicial court, an injunction may be issued and enforced by the same court or one of the justices, in the manner provided in the preceding section.

Same subject.  
R. S. 106, § 8.  
1852, 312.  
1859, 196.

SECT. 7. Every injunction issued as provided in the two preceding sections may be dissolved, either in term time or vacation, by the court by which it was issued or one of the justices.

Injunction, how dissolved.  
R. S. 106, § 9.

## CHAPTER 140.

### OF THE FORECLOSURE AND REDEMPTION OF MORTGAGES.

#### POSSESSION AND FORECLOSURE.

##### SECTION

1. Foreclosure by action or entry.
2. Certificate of entry to be recorded.
- 3, 4. Form of action and judgment.
- 5, 6. Form of conditional judgment.
7. Assignee of mortgagee may enter or sue.
8. Proceedings in such case.
9. Mortgagee may enter before breach, and hold subject to account.
- 10, 11. Mortgage, how foreclosed in such case.
12. Certificate of notice or new entry to be recorded.

#### REDEMPTION.

13. Mortgage, may be redeemed.
14. Party redeeming to pay, or tender debt, &c.
15. Account to be taken of rents, &c.
16. Tender, when to be made. Suit for redemption.
17. Suit to be brought within one year.
18. Plaintiff to pay into court sum tendered, &c.
19. Suit may be brought without previous tender.
20. In suits in equity, court may at any time order sum not in dispute to be paid.
21. Costs upon redemption.
22. Proceedings when tender is insufficient.
23. In what court suit to be brought.
24. Commencement of suit.
25. Decree for redemption.
26. Court to award balance due with interest at twelve per cent.
27. Plaintiff may have execution thereon.
28. Judgment, &c., for balance due from mortgagee.
29. If money tendered, &c., exceeds sum due, amount due to be deducted, &c.

#### SECTION

30. If mortgagee receives more than due, excess may be recovered back.
31. New parties may be brought in.
32. Executors, &c., may tender and redeem.
33. may bring suit upon tender by deceased.
34. Tender may be made to guardian.
35. Where execution for possession is satisfied, mortgagee, &c., to discharge.

#### OPENING OF FORECLOSURE.

36. Foreclosure to be opened, in case, &c.

#### MORTGAGES BY DEFEASANCE.

37. Conveyance with defeasance constitutes a mortgage.

#### MORTGAGES WITH POWER OF SALE.

38. When power of sale in mortgage deed, demandant may have decree of sale.
39. Sale by mortgagor not to impair rights of mortgagee.
40. Party selling to report to court. Sale confirmed. Persons interested may intervene.
41. Parties interested in equity of redemption to be summoned before decree.
42. Mortgagee, &c., may give notice and sell in pursuance of power, file copy of notice, and affidavit, in registry of deeds.
43. Affidavit or copy of record, evidence of due execution of power.
44. When sale under power shall bar dower.

#### MORTGAGES TO THE COMMONWEALTH.

45. Mortgages to the commonwealth.
46. Proceedings for foreclosure.
47. for redemption.
48. Suit in equity may be brought; service, judgment, &c.



## POSSESSION AND FORECLOSURE.

Foreclosure by action or entry.  
R. S. 107, § 1.  
7 Greenl. 31.  
5 Pick. 268.  
10 Met. 172.  
11 Met. 384, 566.  
2 Cush. 374.  
6 Cush. 91.  
10 Cush. 166.  
2 Gray, 473.  
5 Gray, 545.

SECTION 1. After the breach of condition of a mortgage of real estate, the mortgagee may recover possession of the mortgaged premises by action in the manner hereinafter provided; or he may make an open and peaceable entry thereon, if not opposed by the mortgagor or other person claiming the premises; and such possession, obtained in either mode, continued peaceably for three years, shall forever foreclose the right of redemption.

Certificate of entry to be recorded.  
R. S. 107, § 2.  
13 Mass. 309.  
17 Mass. 429.  
4 Pick. 468.  
4 Met. 498.  
10 Met. 344.  
4 Cush. 172.  
6 Cush. 91.  
10 Cush. 163.  
5 Gray, 318.  
7 Gray, 203.

SECT. 2. When an entry for breach of the condition is made without a judgment, a memorandum or certificate thereof shall be made on the mortgage deed and signed by the mortgagor or the person claiming under him, or a certificate of two competent witnesses to prove the entry shall be made and sworn to before a justice of the peace; and the same shall within thirty days after the entry be recorded in the registry of deeds for the county or district where the land lies, with a note of reference from each record to the other, if the mortgage is recorded in the same registry. No such entry shall be effectual for the purposes mentioned in the preceding section, unless a certificate or a deposition in proof thereof is thus made and recorded.

Form of action and judgment.  
R. S. 107, § 3.  
1852, 312, § 2.  
2 Mass. 496.  
13 Mass. 519.  
15 Mass. 487.  
16 Mass. 348.  
3 Met. 341.  
8 Met. 517.  
13 Met. 300.  
6 Cush. 170.

SECT. 3. The mortgagee in an action for possession may declare on his own seisin, stating that it is in mortgage; and if it appears to the court, upon default, demurrer, verdict, or otherwise, that the plaintiff is entitled to the possession of the premises for breach of the condition of the mortgage, the court shall, on motion of either party, award the conditional judgment hereinafter mentioned, except as provided in the following section.

Same subject.  
R. S. 107, § 4.  
10 Met. 174.

SECT. 4. Unless the defendant is the mortgagor or his assignee, or entitled to hold or claim the premises under him, he shall not redeem the premises, nor have a conditional judgment rendered, unless with the consent of the plaintiff; but the suit shall be conducted in all respects like a writ of entry; and in all cases the judgment for the plaintiff may be entered for possession as at common law, unless one or the other of the parties moves for the conditional judgment.

Form of conditional judgment.  
R. S. 107, § 5.  
7 Met. 581.  
8 Met. 517.  
11 Met. 384.  
4 Gray, 116.  
5 Gray, 423.

SECT. 5. When the conditional judgment is to be entered, the court shall inquire and determine how much is due to the plaintiff on the mortgage, and shall then enter judgment, that if the defendant, within two months after the judgment, pays to the plaintiff the sum so found due on the mortgage, with interest and the costs of the suit, the mortgage shall be void and the defendant shall hold the premises discharged thereof; otherwise, that the plaintiff shall have his execution for possession, and for costs of suit.

Same subject.  
R. S. 107, § 6.  
11 Met. 384.

SECT. 6. If the condition of the mortgage is for the doing of something other than the payment of money, or if but part of the mortgage money is due, the court shall vary the terms of the judgment as the case may require; but shall award execution as before provided, unless the defendant within two months after the judgment performs what is therein prescribed.

Assignee of mortgage may enter or sue.  
R. S. 107, § 7.  
6 Gray, 423.

SECT. 7. An entry for breach of the condition may be made, and an action for possession may be brought, by an assignee of the mortgagee, whether the assignment is by deed or by operation of law, and the action shall be conducted in like manner as if brought by the original mortgagee.

Proceedings in such case.  
R. S. 107, § 8.  
7 Pick. 31.  
10 Met. 174.  
12 Met. 154.  
2 Cush. 262.

SECT. 8. The action may be brought like a writ of entry, against whoever is tenant of the freehold, and the mortgagor may in all cases be joined as a defendant, whether he then has any estate in the premises or not; but he shall not be liable for costs when he has no estate and makes no defence to the suit.

SECT. 9. Nothing contained in this chapter shall prevent a mortgagee or any person claiming under him from entering on the premises, or recovering possession thereof, before breach of the condition of the mortgage, when there is no agreement to the contrary; but, in such case, if the debt is afterwards paid, or the mortgage redeemed, the amount of the clear rents and profits from the time of the entry shall be accounted for, and deducted from the sum due on the mortgage.

Mortgagee may enter before breach, and hold subject to account.  
R. S. 107, § 9.  
3 Mass. 138.  
11 Met. 458.  
1 Gray, 512.

SECT. 10. If such entry is before a breach of the condition, the three years limited for the redemption shall not begin to run until after the condition is broken, nor until after a notice in writing given by the mortgagee or the person claiming under him, to the mortgagor or the person claiming under him, that the former will thenceforward hold the premises for the breach of the condition, or for the purpose of foreclosing the mortgage.

Mortgage, how foreclosed in such case.  
R. S. 107, § 10.  
2 Mass. 496.  
3 Mass. 155.  
12 Mass. 514.  
6 Cush. 91.

SECT. 11. The person thus entitled to hold the premises for breach of the condition may instead of such notice in writing make a new formal entry for the breach of the condition, or may bring an action therefor in the manner herein before provided; and such action, if brought against the mortgagor or any person claiming under him, may be maintained notwithstanding the premises are at that time in the possession of the plaintiff.

Same subject.  
R. S. 107, § 11.  
13 Mass. 313.  
6 Cush. 91.

SECT. 12. Such notice of intention and such new entry shall not be effectual for the purposes aforesaid, unless a certificate or deposition to prove the same is made and recorded, as before provided in the case of an original entry for breach of the condition.

Certificate of notice or new entry to be recorded.  
R. S. 107, § 12.

REDEMPTION.

SECT. 13. When the condition of a mortgage has been broken, the mortgagor or any person lawfully claiming or holding under him, may redeem the same unless the mortgagee, or some person lawfully holding or claiming under him, has obtained possession of the premises for the breach of the condition, and has continued that possession for three years.

Mortgage may be redeemed.  
R. S. 107, § 13.  
22 Pick. 401.  
5 Gray, 481.  
6 Gray, 128.  
7 Gray, 279.  
See Ch. 118, § 123.

SECT. 14. The person entitled to redeem shall pay or tender to the mortgagee, or person lawfully claiming or holding under him, the whole sum then due and payable on the mortgage, and shall perform or tender performance of every other condition contained therein; and if there has been a suit for recovering the premises, he shall pay or tender the costs if unpaid.

Party redeeming to pay or tender debt, &c.  
R. S. 107, § 14.  
5 Met. 95.  
7 Cush. 220.  
2 Gray, 475.

SECT. 15. If the mortgagee or any person under him has had possession of the premises, he shall account for the rents and profits, and shall be allowed for all sums expended in reasonable repairs and improvements, all sums paid for lawful taxes and assessments, and all other necessary expenses in the care and management of the premises. If on such account there is a balance due from him, it shall be considered as so much paid towards the debt due on the mortgage. If there is a balance due him, it shall be added to the debt, and be paid or tendered as such.

Account to be taken of rents, &c.  
R. S. 107, § 15.  
2 Pick. 505.  
5 Pick. 259, 270.  
9 Pick. 171.  
10 Pick. 398.  
4 Met. 498.  
2 Cush. 405.  
7 Cush. 230.  
5 Gray, 423.  
6 Gray, 556.

SECT. 16. The tender may be made at any time within the three years limited for redemption, before as well as after an entry for breach of the condition; and if the mortgagee, or person claiming or holding under him, does not accept the same and discharge the mortgage in the manner prescribed by law, the mortgagor, or person claiming or holding under him, may recover the premises by a suit in equity for redemption.

Tender, when to be made.  
Suit for redemption.  
R. S. 107, § 16.

SECT. 17. The tender, if not accepted, shall not prevent the foreclosure of the right of redemption, unless a suit is commenced within one year after the tender is made.

Suit to be brought within one year.  
R. S. 107, § 17.

SECT. 18. If in such suit the plaintiff alleges that he has tendered

Plaintiff to pay



into court sum tendered, &c. 1857, 105, § 2.

Suit may be brought without previous tender. R. S. 107, § 18. 7 Met. 157. 7 Cush. 220. 7 Gray, 279.

In suits in equity, court may at any time order sum not in dispute to be paid. 1857, 105, § 1.

Costs upon redemption. R. S. 107, § 19.

Proceedings when tender is insufficient. R. S. 107, § 20.

In what court suit to be brought. R. S. 107, § 21. 1859, 196. See Ch. 114, § 10. Commencement of suit. 1853, 316. 7 Met. 157. See Ch. 113, § 3.

Decree of redemption. R. S. 107, § 23. 7 Cush. 220. 2 Gray, 475.

Court to award balance due, with interest at 12 per cent. 1850, 21.

Plaintiff may have execution thereon.

or offered to pay the sum due on the mortgage, he shall when he commences his suit pay the sum thus alleged to the clerk of the court for the use of the party entitled thereto.

SECT. 19. The person entitled to redeem may at any time within the three years limited for the redemption, and either before or after an entry for breach of the condition, bring a suit for redemption without a previous tender, and may therein offer to pay such sum as shall be found due from him, or to perform such other condition as the case requires.

SECT. 20. The court in which a suit to redeem is pending, or any justice thereof, may at any time after the commencement of the suit, in term time or vacation, ascertain and determine by reference to a master or otherwise, whether any and what sum not in dispute is due on the mortgage; and by an interlocutory order direct the same to be paid to the mortgagee, or for his use to the clerk of the court.

SECT. 21. If suit is brought without a previous tender, and it appears that any thing is due on the mortgage, the plaintiff shall pay the costs of suit, unless it appears that the defendant has unreasonably refused or neglected, when requested, to render a just and true account of the money due on the mortgage, and of the rents and profits, and sums paid for taxes, repairs, improvements, and other necessary expenses; or that he has otherwise by his default prevented the plaintiff from performing or tendering performance of the condition before the commencement of the suit. In all other cases of a suit for redemption, the court may in their discretion award costs to either party as equity may require.

SECT. 22. When such suit is founded on a previous tender, and it appears that the tender was insufficient, the plaintiff shall nevertheless be entitled to a decree for redemption, according to the provisions of sections nineteen and twenty-one, in the same manner as if no tender had been set forth in the suit: *provided*, that the suit is commenced within the three years limited for the redemption.

SECT. 23. A suit for redemption may be brought in the superior court, or the supreme judicial court, held for the county where the land lies, and if brought in the superior court an appeal may be had to the supreme judicial court as in other civil actions.

SECT. 24. When a bill in equity for redemption is inserted in a writ, the service shall be deemed the commencement of the suit, if the writ or a copy thereof, with or without the bill, but with a description of the premises sought to be redeemed, attested by the officer, is deposited within three days after the day on which the service is made, in the office of the clerk of the court to which the writ is returnable; otherwise the depositing of such copy or writ shall be deemed the commencement of the suit.

SECT. 25. If it appears that the plaintiff is entitled to redeem, the court shall inquire and determine what sum is due on the mortgage, or what other act the plaintiff is bound to perform for the redemption of the premises, and shall enter a decree, that, upon the payment of such sum, or the performance of such other thing, within such time as the court shall order, the plaintiff shall have possession of the premises, to hold discharged of the mortgage.

SECT. 26. When it appears to the court that the mortgagee has not unreasonably neglected or refused to render a true account of the rents and profits of the mortgaged estate, the court may award to him the balance found due on the mortgage with interest thereon from the expiration of three years after such entry to the time of rendering judgment in the suit, at a rate not exceeding twelve per cent. a year.

SECT. 27. The court may at the same time order or decree, that if the defendant neglects or refuses to accept the money or other thing



required by the decree to be paid or performed, the money shall be left for his use with the clerk of the court, or that such other thing shall be done as the case may require; and the plaintiff, after having performed every thing required of him by the decree of the court, may have an execution for possession of the mortgaged premises.

R. S. 107, § 24.

SECT. 28. If, upon a suit for redemption, it appears that the defendant has received from the rents and profits of the estate or otherwise more than is due on the mortgage, the court shall award judgment and execution against him for such sum as is due to the plaintiff; and if there are several defendants, such judgment and execution may be awarded against them, either jointly or severally as the case may require, for the sums received by them or either of them respectively.

Judgment, &c., for balance due from mortgage.  
R. S. 107, § 25.  
6 Mass. 264.  
9 Pick. 171.

SECT. 29. When the money tendered and brought into court exceeds the sum found due on the mortgage, and when any sum is awarded to the plaintiff on account of the rents and profits received by the defendant, or for costs of suit, the court may order the whole amount so due to the plaintiff to be deducted from the money brought into court, and the same shall be restored to the plaintiff, and the residue shall be paid to the defendant.

If money tendered, &c., exceeds sum due, amount due to be deducted, &c.  
R. S. 107, § 26.

SECT. 30. If the mortgagee or person claiming or holding under him receives from the rents and profits of the premises, or upon a tender made to him, or in any other manner, more than is due on the mortgage, and if no suit for redemption is brought against him, the mortgagor or other person entitled to such excess may recover it in an action of contract for money had and received to his use.

If mortgagee receives more than due, excess may be recovered back.  
R. S. 107, § 27.  
1852, 312.

SECT. 31. If, during the pendency of a suit for redemption, it appears that any other person is interested therein, the court may cause him to be made a party thereto upon such terms as they shall think proper; and may order a summons or a subpoena to be issued and served on him in such manner as they shall direct; and he shall thereupon be allowed and required to appear and answer to the suit.

New parties may be brought in.  
R. S. 107, § 28.

SECT. 32. If a person entitled to redeem a mortgaged estate dies without having made a tender for that purpose, a tender may be made, and a suit for redemption commenced and prosecuted, as well by the executors or administrators as by the heirs or devisees of the deceased.

Executors, &c., may tender and redeem.  
R. S. 107, § 30.

SECT. 33. If a tender has been made by such deceased person in his lifetime, a suit for redemption founded thereon may be commenced and prosecuted by his heirs, devisees, executors, or administrators, in like manner as it might have been by the party himself; and if the plaintiff in a suit dies, the suit, whether founded on a previous tender or not, may be prosecuted to final judgment by his heirs, devisees, executors, or administrators.

may bring suit upon tender by deceased.  
R. S. 107, § 31.

SECT. 34. When the mortgagee, or the person claiming or holding under him, is under guardianship as an infant or otherwise, the tender may be made to the guardian, and he may, upon satisfaction, execute a release of the mortgage.

Tender may be made to guardian.  
R. S. 107, § 32.  
12 Mass. 16.

SECT. 35. When execution has issued on a judgment for possession and has been levied, if it shall be afterwards satisfied by payment of the amount due on the mortgage and costs, the mortgagee, his executors, administrators, or assigns, shall at the expense of the mortgagor enter on the margin of the record of the execution an acknowledgment of satisfaction, or make to the mortgagor a deed of release which shall be recorded, with proper notes of reference to the execution discharged thereby.

Where execution for possession is satisfied, mortgagee, &c., to discharge.  
1848, 144, § 2.  
See Ch. 133, § 55.

OPENING OF FORECLOSURE.

SECT. 36. If after the foreclosure of a mortgage the person entitled to the debt recovers judgment for any part of it, on the ground that the

Foreclosure to be opened, in case, &c.

R. S. 107, § 33.  
3 Mass. 150, 562.  
8 Pick. 336.  
8 Met. 154.

value of the mortgaged premises at the time of the foreclosure was less than the sum due, such recovery shall open the foreclosure; and the person entitled may redeem the premises, notwithstanding the three years limited in that behalf have expired: *provided*, that his suit for redemption is brought within one year after the recovery of such judgment.

#### MORTGAGES BY DEFEASANCE.

Conveyance with defeasance.  
R. S. 107, § 34.  
22 Pick. 526.  
5 Gray, 509.  
See Ch. 89, § 15.

SECT. 37. The mortgages mentioned in this chapter shall include not only those made by a common deed of mortgage, but also such as are made by a conveyance with a separate deed of defeasance.

#### MORTGAGES WITH POWER OF SALE.

When power of sale in mortgage deed, demandant may have decree of sale.  
1854, 377, § 1.  
2 Met. 29.

SECT. 38. When a power of sale is contained in a mortgage, and a conditional judgment has been entered, the demandant may, instead of a writ of possession, have a decree entered that the property be sold pursuant to such power of sale; and thereupon the demandant shall give such notices and do all such acts as are authorized and required by the power, or the court passing the decree.

Sale by mortgagor not to impair rights of mortgagee.

SECT. 39. No sale or transfer by the mortgagor shall impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the mortgaged property, as attorney or agent of the mortgagor.

Party selling to report to court. Sale confirmed. Persons interested may intervene.  
1854, 377, § 2.

SECT. 40. The party selling shall within ten days thereafter make a report thereof and of his doings, to the court, under his oath, and file the same in the clerk's office, and the same may be confirmed and allowed, or set aside and a resale ordered, as to the court seems just and lawful. Any person interested may intervene or be summoned and heard on such proceedings; and the order of the court confirming the sale shall be conclusive evidence, as against all persons, that the power of sale was duly executed.

Parties interested in equity of redemption to be summoned before decree.  
1854, 377, § 3.

SECT. 41. If the tenant in the action in which such decree of sale is to be made, is not seised in fee simple in possession of the whole equity of redemption of the land demanded, no decree for a sale shall be made until all parties interested in the equity of redemption, and whose estate or interest therein would be affected by such sale, including any married woman having right or possibility of dower, have been summoned to appear and had due opportunity to be heard according to the order of court.

Mortgagee, &c., may give notice and sell in pursuance of power, file copy of notice and affidavit, in registry of deeds.  
1857, 229, § 1.  
2 Met. 29.  
2 Cush. 412.  
7 Gray, 243.

SECT. 42. Instead of such suit and decree of sale, the mortgagee, or any person having his estate therein, or authorized by such power to act in the premises, may upon a breach of the condition give such notices and do all such acts as are authorized or required by the power; and he shall, within thirty days after selling the property in pursuance of the power, file a copy of the notice, and his affidavit setting forth his acts in the premises fully and particularly, in the office of the registry of deeds in the county or district where the property is situated. The affidavit and copy of notice shall be recorded by the register, with a note of reference thereto on the margin of the record of the mortgage deed if recorded in his office.

Affidavit or copy of record, evidence of due execution of power.  
1857, 229, § 1.

SECT. 43. If it appears by such affidavit that he has in all respects complied with the requisitions of the power of sale, in relation to all things to be done by him before selling the property, and has sold the same in the manner required by such power, the affidavit, or a duly certified office copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed.

When sale under power shall bar dower.

SECT. 44. If the mortgage was executed by a man having at that time no lawful wife, or if being married the wife of the mortgagor joined



in the deed in token of her release of dower, the sale of the property in either of the modes aforesaid shall be effectual to bar all claim and possibility of dower in the property.

1854, 377, § 1.  
1857, 229, § 2.

MORTGAGES TO THE COMMONWEALTH.

SECT. 45. When a mortgage is made or assigned to the commonwealth, the treasurer may demand and receive the money due, and upon payment shall make and acknowledge a discharge of the mortgage.

Mortgages to the commonwealth.  
R. S. 107, § 35.

SECT. 46. If the condition of such mortgage is not duly performed, the treasurer may cause an entry for the breach of the condition to be made by himself, or by any person whom he appoints for the purpose, in the name and behalf of the commonwealth, or he may bring an action in the name of the commonwealth to recover possession of the mortgaged premises; and such possession, obtained either by entry or by action, shall have the same effect in foreclosing the right of redemption as a similar possession by any other mortgagee.

Proceedings for foreclosure.  
R. S. 107, § 36.

SECT. 47. The mortgagor or his assigns may redeem such premises in like manner and upon the same terms as if they were held by any other mortgagee; and the payment or performance of the condition for that purpose shall be made or tendered to the treasurer.

for redemption.  
R. S. 107, § 37.

SECT. 48. If the treasurer and the person applying to redeem the mortgage disagree as to the sum due, the person applying may bring a suit in equity against the commonwealth for the redemption, in the supreme judicial court for the county of Suffolk. The process shall be served on the treasurer, who shall appear and answer in behalf of the commonwealth; and like proceedings shall be had, and judgment rendered, as are provided in the case of other mortgages; except that the treasurer shall accept any payment due to the commonwealth, and upon the receipt thereof, or upon the performance of such other act as the court orders, shall discharge the mortgage in like manner as when the debt is paid without suit.

Suit in equity may be brought; service; judgment, &c.  
R. S. 107, §§ 38, 39.

CHAPTER 141.

OF INFORMATIONS FOR INTRUSION AND THE RECOVERY OF LANDS BY THE COMMONWEALTH.

SECTION

1. Information of intrusion: Filing and summons.
2. Service and proceedings.
3. Suits, when commenced by order of legislature.
4. when without such order.
5. Public notice, in what cases to be given.
6. Who may appear as defendants.
7. Costs, when several defendants.
8. Rents and improvements.
9. Commonwealth seised without execution.
10. Judgment, how far conclusive.

SECTION

11. Claimant not concluded may bring writ of entry.
12. against tenant or occupant. Service and proceedings.
13. Rents and improvements in such case.
14. Costs.
15. Informations against intruders on land held for Indians.
16. District-attorney to prosecute.
17. Trial in superior court final, &c.
18. Proceedings to conform to preceding provisions.
19. On recovery, title to vest in trustees, &c.

SECTION 1. When any person unlawfully enters and intrudes upon or holds any lands belonging to the commonwealth, the same may be recovered upon an information filed and prosecuted by the attorney-general or any district-attorney, in the supreme judicial court in any county, describing the premises and setting forth the title and claim of

Information of intrusion.  
Filing and summons.  
R. S. 108, §§ 1, 2.



the commonwealth thereto; and a summons shall thereupon issue to the persons therein named as intruders or trespassers, returnable in the county where the lands lie.

Service and proceedings.  
R. S. 108, § 3.

SECT. 2. The service of the summons and all other proceedings in the suit shall be conducted in the same manner substantially as in real actions between private persons, unless where a different course is prescribed.

Suits, when commenced by order of legislature.  
R. S. 108, § 6.

SECT. 3. When the title of the commonwealth is founded on a forfeiture for the breach of a condition in any grant or conveyance made by the commonwealth, or by the province or colony of Massachusetts Bay, no suit therefor shall be commenced unless by an order of the legislature.

when without such order.  
R. S. 108, § 7.  
3 Pick. 224.

SECT. 4. If the claim of the commonwealth is founded on an escheat for want of heirs of the last owner of the premises, or on any other title except that of the forfeiture mentioned in the preceding section, the attorney-general or district-attorney may commence and prosecute a suit therefor whenever he has good reason to believe that the claim of the commonwealth can be established by proof.

Public notice, in what cases to be given.  
R. S. 108, § 8.

SECT. 5. In case of any supposed escheat, when no person appears as the heir of the person last seised, and in all cases when there is reason to suppose that there is any person claiming any estate or interest in the premises whose name is unknown, or who is absent from the state, or cannot be found therein to be served with process, the court shall, in addition to any other service, order notice to be given to all persons interested to appear and answer to the information, by causing the substance thereof with the order of the court to be published three weeks successively in such newspaper as the court shall direct, the first publication to be ninety days at least before the time appointed for the appearance of the parties.

Who may appear as defendants.  
R. S. 108, § 9.

SECT. 6. Any person who claims an estate or interest in the premises, though he is not named in the information nor served with process, may appear and answer thereto; but a defendant who is not named shall not recover costs against the commonwealth, unless it appears that he has some estate or interest in the premises, although the commonwealth fails to establish its claim thereto.

Costs, when several defendants.  
R. S. 108, § 10.

SECT. 7. When there are several defendants, the court may award costs for or against any one of them, as the justice of the case may require, in like manner as if he were the sole defendant.

Rents and improvements.  
R. S. 108, § 11.  
See Ch. 134.

SECT. 8. If the commonwealth prevails in the suit, the defendant shall be chargeable for the rents and profits, and be entitled to an allowance for all improvements, in like manner as is provided in the case of a writ of entry between private persons.

Commonwealth seised without execution.  
R. S. 108, § 5.

SECT. 9. The commonwealth shall be deemed and taken to be actually seised and possessed of the premises as soon as judgment is rendered in its favor, without a writ of possession.

Judgment, how far conclusive.  
R. S. 108, § 12.

SECT. 10. The judgment shall be conclusive between the commonwealth and the defendants who appear and answer, and against every person named as a defendant upon whom the summons has been duly served within the state, and all persons claiming under such defendants.

Claimant not concluded may bring writ of entry.  
R. S. 108, § 13.

SECT. 11. Any person who is not concluded by a judgment for the commonwealth according to the provisions of the preceding section, may, until his claim is barred by the law for the limitation of real actions or otherwise, bring a writ of entry to recover the premises from the commonwealth or any person who may then hold under the commonwealth; may deny and disprove any facts alleged and proved in the first suit, and allege and prove any other facts in support of his claim; and if it appears that he is entitled to the premises, shall have judgment and execution therefor in common form.

Writ must be

SECT. 12. If the commonwealth continues seised of the premises at

the time when such new action is commenced, it shall be brought against the tenant or occupant of the premises, and in addition to the service on him a copy of the original writ or summons shall be left with the attorney-general or district-attorney fourteen days at least before the return day, that he may appear and defend the suit. If the commonwealth has granted away the premises, the action shall be brought against the tenant of the freehold. In either case it shall be conducted and disposed of as if no such information had been filed.

brought against tenant or occupant. Service and proceedings. R. S. 108, § 14.

SECT. 13. The demandant, if he recovers, shall be entitled to the rents and profits, and shall be chargeable for all improvements, in like manner as is provided in chapter one hundred and thirty-four, although the premises have not been held and possessed under the adverse title as much as six years.

Rents and improvements in such case. R. S. 108, § 15.

SECT. 14. Costs shall be awarded and taxed for the party prevailing. If the judgment is in favor of the commonwealth, an execution for the costs shall issue; if it is in favor of the defendant, the costs shall be paid out of the treasury, by the warrant of the governor and council.

Costs. R. S. 108, § 4.

SECT. 15. When any person unlawfully enters into, intrudes upon, or holds, any land, the title to which is in the commonwealth for the use and benefit of any tribe or body of Indians, or in trustees, guardians, treasurers, or agents, appointed by or under the authority of the commonwealth for the use and benefit of such tribe or body, or of any individuals thereof or their descendants, the same may be recovered upon an information filed and prosecuted by the attorney-general or district-attorney in the superior court for the county where the land is situated.

Informations against intruders on land held for Indians. 1840, 34, §§ 1, 2. 1853, 186. 1855, 245, § 1. 1859, 196.

SECT. 16. The district-attorney for such district shall file and prosecute such information whenever he has good reason to believe that the land can be recovered.

District-attorney to prosecute. 1855, 245, § 2. 1840, 34, § 2.

SECT. 17. The trial of such information in the superior court shall be final, saving to each party the right of exception in matter of law, according to the provisions of chapter one hundred and [fourteen] [thirteen.]

Trial in sup. ct. final, &c. 1840, 34, § 3. 1859, 196.

SECT. 18. The proceedings in the information and the effects thereof shall in all respects be conformable to the preceding provisions of this chapter; but if the final judgment is in favor of the commonwealth, a writ of possession may be sued out and served like a similar writ in other civil process.

Proceedings to conform to preceding provisions. 1840, 34, § 34.

SECT. 19. If in any such proceeding the commonwealth recovers possession of land to or in which such trustees, guardians, treasurers, or agents, have title or interest, such possession shall be deemed to be the possession of such trustees, guardians, treasurers, or agents, if any are living, otherwise the commonwealth shall hold the same upon and for the uses and trusts aforesaid until others are appointed.

On recovery, title to vest in trustees, &c. 1855, 245, § 3.

## TITLE IV.

### OF CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES.

- CHAPTER 142. — Of Trustee Process.  
 CHAPTER 143. — Of Replevin of Property.  
 CHAPTER 144. — Of Habeas Corpus, Personal Replevin, and Personal Liberty.  
 CHAPTER 145. — Of Audita Querela, Certiorari, Mandamus, and Quo Warranto.  
 CHAPTER 146. — Of Writs of Error and Review.  
 CHAPTER 147. — Of Reference to Arbitration by Agreement before a Justice of the Peace.  
 CHAPTER 148. — Of Improving Meadows and Swamps.  
 CHAPTER 149. — Of the Support and Regulation of Mills.  
 CHAPTER 150. — Of Liens on Buildings and Land.  
 CHAPTER 151. — Of Mortgages, Pledges, and Liens upon Personal Property.  
 CHAPTER 152. — Of Recognizances for Debts.  
 CHAPTER 153. — Of Seizing and Libelling Forfeited Goods.

## CHAPTER 142.

### OF TRUSTEE PROCESS.

COMMENCEMENT AND SERVICE OF PROCESS.	SECTION
1. In what cases the process lies, &c.	22. Liability of executors and administrators.
2. Writ, how issued.	23. of assignees of insolvents.
3. form of.	24. Debt may be attached before it is payable.
4. where returnable.	25. Fraudulent conveyance to trustee.
5. service of.	26. Mutual demands between principal and trustee.
6. New trustees and new service.	27. Certain demands excluded.
7. Suit not to proceed, unless, &c.	28. Trustee not chargeable if he has paid over before knowledge of service.
APPEARANCE AND ANSWER OF TRUSTEE.	29. nor for a certain sum due for wages, &c.
8. Trustee to file answer, &c.	30. If a savings bank is charged as trustee, and identity of defendant doubtful, plaintiff to give bond.
9. may be further examined on written interrogatories.	31. What demands not attachable by this process.
10. Corporations, how to answer.	JUDGMENT, EXECUTION, AND SCIRE FACIAS.
11. Answer to be taken as true, &c.	32. Form of judgment against trustee.
12. Mode of trial.	33. Goods not demanded in thirty days may be attached again.
13. Trustee, default of.	34. or recovered by defendant.
14. penalty on, for perjury.	35. or otherwise delivered to the officer on demand.
PROCEEDINGS IN RELATION TO ADVERSE CLAIMANTS.	36. Demand on absent trustee.
15. Adverse claimant may become a party.	37. Judgment against trustee shall protect him, &c.
16. Proceedings in such case.	38. for him not to bar defendant.
17. Testimony, how taken.	39. <i>Scire facias</i> against trustee, after judgment.
PROCEEDINGS WHEN SUIT IS PENDING AGAINST TRUSTEE.	40, 41. Proceedings therein upon default.
18. Case of attachment of a demand already in suit.	42. upon examination of trustee.
19, 20. Proceedings in such case.	43. Writ of <i>scire facias</i> to be served within two years after judgment, except, &c.
WHEN AND FOR WHAT TRUSTEES ARE CHARGEABLE, &C.	
21. Liability as trustees.	



DEATH OF PARTIES.

SECTION

- 44. Upon death of trustee, executor, &c., liable.
- 45. Proceedings when trustee dies before judgment.
- 46. when executor, &c., does not appear.
- 47. *scire facias* against executor, &c.
- 48. When trustee dies after judgment.
- 49. within thirty days after judgment.
- 50, 51. Judgment against executor, &c., how enforced.

PROCEEDINGS WHEN TRUSTEE HAS SPECIFIC GOODS.

- 52, 53. Case of trustee having specific goods, &c.
- 54. Suit not to prevent his delivering them, unless, &c.
- 55, 56. Case of trustee having lien on the goods.
- 57. Such goods, how disposed of.
- 58. may be sold by trustee in case, &c.
- 59. Trustee when liable for non-delivery of such goods.

COSTS.

- 60. Costs and expenses of trustee.
- 61. Trustee to retain costs out of effects in his hands and to recover balance of plaintiff.

SECTION

- 62. Costs when trustee is discharged.
- 63. when trustee is out of state.
- 64. when trustee does not dwell or have place of business in county.
- 65. when trustee is liable to pay.
- 66. proceedings in such case.
- 67. when several trustees are liable for.
- 68, 69, 70. against trustee on *scire facias*.
- 71. execution for, against trustee.
- 72. on *scire facias* against several trustees.
- 73. for or against adverse claimant.
- 74. not to be recovered by plaintiff, if wages attached and five dollars are not recovered.

TRUSTEE PROCESS BEFORE JUSTICES OF THE PEACE, &C.

- 75. Trustee process before police courts, &c.
- 76. Proceedings.
- 77. Writ may run into any county in certain cases.
- 78. Trustee not liable out of county.
- 79, 80, 81. how may appear and answer.
- 82. Costs for trustee, and allowance for expenses.
- 83. Justice may issue *scire facias*, although, &c.

COMMENCEMENT AND SERVICE OF PROCESS.

SECTION 1. All personal actions either in the superior court or the supreme judicial court, may be commenced by trustee process; except actions of replevin, actions of tort for malicious prosecution, for slander either by writing or speaking, and for assault and battery; and any person or corporation may be summoned as trustee of the defendant therein.

In what cases the process lies, &c.  
R. S. 109, §§ 1, 4, 6.  
1859, 196.  
2 Mass. 37.  
3 Pick. 302.  
21 Pick. 109.

SECT. 2. The writ shall be signed, sealed, bear teste, and be issued, like other original writs in civil actions.

Writ, how is sued.  
R. S. 109, § 2.  
form of.  
1794, 65, § 1.  
R. S. 109, § 3.

SECT. 3. It shall be in the form heretofore established, authorizing an attachment of the goods and estate of the defendant in his own hands, and also in the hands of the trustee, and shall be subject to alteration as is provided in chapter one hundred and twenty-three.

SECT. 4. If all the persons named in the writ as trustees dwell or have usual places of business in one county, the writ shall be returnable in such county, otherwise it may be returnable in any county in which either of them dwells or has his usual place of business, without regard to the domicile of the other parties.

where returnable.  
R. S. 109, § 7.  
1852, 287.  
22 Pick. 250.  
4 Cush. 588.  
6 Cush. 560.

SECT. 5. The attachment of the goods and estate of the defendant in his own hands and possession, if any, shall be made in the usual manner, and the writ shall be further served on the defendant and each of the trustees in the manner prescribed for the service of an original summons without an attachment.

service of.  
R. S. 90, § 39.  
R. S. 109, § 8.  
1837, 210, § 1.  
13 Met. 471.  
See Ch. 123.

SECT. 6. The plaintiff may at any time insert the names of other trustees, and cause the writ to be served on them; and after service on a trustee the writ may be again served on him in like manner and with the same effect as if it had not been previously served. If service is made on a trustee after service on the defendant, it shall be again served on the defendant.

New trustees and new service.  
R. S. 109, § 9.

SECT. 7. If all the trustees are discharged, the plaintiff shall not proceed in the suit against the defendant unless there has been legal service of the writ on him, or notice of the suit, or unless he actually appears and answers thereto.

Suit not to proceed, unless, &c.  
R. S. 109, § 10.  
13 Met. 471.

## APPEARANCE AND ANSWER OF TRUSTEE.

Trustee to file answer, &c.  
1852, 312, § 56.  
3 Met. 207.

SECT. 8. Every person summoned as trustee shall appear and file his answer within the first ten days of the return term of the writ if the court sits so long, or otherwise before the adjournment of the court, unless the court for good cause shown allows further time therefor. The answer shall be sworn to by the trustee, and shall disclose as plainly, fully, and particularly as practicable, what goods, effects, or credits, of the defendant, if any, were in his hands or possession at the time of the service of the writ upon him.

may be further examined on written interrogatories.  
1852, 312, § 57.

SECT. 9. The plaintiff may from time to time examine the supposed trustee upon written interrogatories filed in the clerk's office. The answers thereto shall be sworn to and filed in the clerk's office within seven days after notice to the trustee or his attorney of the filing of the interrogatories, unless the court otherwise orders. If answers are not so filed, the court may pass such order as the case may require.

Corporations, how to answer.  
R. S. 109, § 6.  
1852, 312, § 56.  
2 Mass. 37.  
3 Met. 564.  
1 Gray, 424.

SECT. 10. Corporations summoned as trustees may appear and answer by their cashier, treasurer, secretary, or such other officer as they shall appoint or as the court shall require to attend for that purpose. The answer and examination on oath of such officers or persons shall be received as the answer and examination of the corporation.

Answer to be taken as true, &c.  
R. S. 109, § 15.  
2 Mass. 96.  
4 Mass. 85.  
11 Mass. 488.

SECT. 11. The answers and statements sworn to by a trustee shall be considered as true, in deciding how far he is chargeable, but either party may allege and prove any other facts not stated nor denied by him, that may be material in deciding that question.

Mode of trial.  
R. S. 109, § 16.

SECT. 12. Any question of fact arising upon such additional allegations may be tried and determined by the court, or may be submitted to a jury in such manner as the court shall direct.

Trustee, default of.  
R. S. 109, § 14.  
1852, 312, § 56.

SECT. 13. When a person duly summoned as a trustee neglects to appear and answer to the suit as herein provided, he shall be defaulted and adjudged a trustee.

penalty on, for perjury.  
R. S. 109, § 78.  
1852, 312.  
4 Mass. 272.  
10 Mass. 258.  
8 Cush. 199.

SECT. 14. If a person summoned as trustee, or the executor or administrator of such person, or if an officer, agent, or other person, who appears and answers for a corporation so summoned, upon his examination on oath, knowingly and wilfully answers falsely, he shall, out of his own goods and estate, pay to the plaintiff in the trustee process, or to his executors or administrators, the full amount due on the judgment recovered therein, with interest therefor, to be recovered in an action of tort; and he shall moreover, on conviction thereof upon indictment, be adjudged guilty of perjury.

## PROCEEDINGS IN RELATION TO ADVERSE CLAIMANTS.

Adverse claimant may become a party.  
R. S. 109, § 17.  
11 Mass. 488.  
10 Met. 180.  
7 Cush. 483.  
5 Gray, 49.

SECT. 15. If it appears that any goods, effects, or credits, in the hands of a supposed trustee, are claimed by another person by force of an assignment from the defendant or otherwise, the court may permit such claimant to appear and maintain his right. If he does not voluntarily appear, notice for that purpose may be issued and served on him in such manner as the court shall direct.

Proceedings in such case.  
R. S. 109, § 18.

SECT. 16. If such claimant appears, he may be admitted as a party to the suit so far as respects his title to the goods, effects, or credits, in question, and may allege and prove any facts not stated nor denied by the supposed trustee; and such allegations shall be tried and determined in the manner before provided.

Testimony, how taken.  
R. S. 109, § 19.  
1839, 107, § 1.

SECT. 17. Upon the trial of any question arising upon the additional allegations of a party, any part of the testimony may be given by depositions taken and reduced to writing in the usual form, and filed in the case, or orally, as the court shall direct.

PROCEEDINGS WHEN SUIT IS PENDING AGAINST TRUSTEE.

SECT. 18. If during the pendency of an action the defendant is summoned as the trustee of the plaintiff, the first suit may nevertheless proceed so far as to ascertain by a verdict, award, or otherwise, what sum is due from the defendant. The suit shall not be delayed on account of the trustee process, unless the court for good cause shown sees fit to continue it for judgment until the termination of the trustee suit, or until the attachment therein is dissolved by the discharge of the trustee, or by the satisfaction of the judgment, or otherwise.

Case of attachment of a demand already in suit.  
R. S. 109, § 31.  
7 Mass. 149.

SECT. 19. The court may, on application of the plaintiff in the trustee process, continue the other suit, on such terms as it deems just and reasonable. If it is not so continued, and judgment is rendered against the defendant, he shall not afterwards be adjudged a trustee on account of the demand so recovered against him, so long as he is liable to an execution on the judgment.

Proceedings in such case.  
R. S. 109, § 32.

SECT. 20. If, before final judgment is rendered in the first suit, the defendant in that suit is adjudged a trustee in the other, and pays thereon the money demanded in the first suit, or any part thereof, the fact shall be stated on the record of the first suit, and judgment therein shall be rendered for the costs due to the plaintiff, and for such part of the debt or damages as remains due and unpaid.

Same subject.  
R. S. 109, § 33.

WHEN AND FOR WHAT TRUSTEES ARE CHARGEABLE, &c.

SECT. 21. When a person is summoned as trustee having goods, effects, or credits, of the defendant intrusted or deposited in his hands or possession, such goods, effects, and credits, shall be thereby attached and held to respond the final judgment in the suit, in like manner as goods or estate when attached by the ordinary process, except as hereinafter provided.

Liability as trustees.  
R. S. 109, § 4.  
7 Mass. 259.  
2 Pick. 617.  
3 Pick. 302.  
5 Pick. 28, 178.  
6 Pick. 120.  
3 Met. 303.  
12 Met. 397.

13 Met. 471. 4 Cush. 314. 7 Cush. 483, 487. 6 Gray, 116, 320. 7 Gray, 491.

SECT. 22. Debts, legacies, goods, effects, or credits, due from, or in the hands of, an executor or administrator as such may be so attached in his hands.

of executors and administrators.  
R. S. 109, § 62.  
7 Mass. 271.  
8 Mass. 246.

19 Pick. 354. 20 Pick. 503. 3 Met. 507. 2 Cush. 111. 7 Cush. 406. 2 Gray, 251.

SECT. 23. Any dividend of an estate of an insolvent debtor, if it is not upon a claim for wages which would not have been attachable in the hands of the original debtor, may after the dividend is declared be so attached in the hands of the assignee.

of assignees of insolvents.  
1858, 40.  
6 Cush. 558.  
Sec § 29.

SECT. 24. Any money or other thing due to the defendant may be attached as herein mentioned before it has become payable, if it is due absolutely and without any contingency; but the trustee shall not be compelled to pay or deliver it before the time appointed by the contract.

Debt may be attached before it is payable.  
R. S. 109, § 34.  
13 Gray, 200.

SECT. 25. If a person summoned as trustee has in his possession goods, effects, or credits, of the defendant, which he holds by a conveyance or title that is void as to the creditors of the defendant, he may be adjudged a trustee, although the defendant could not have maintained an action therefor against him.

Fraudulent conveyance to trustee.  
R. S. 109, § 35.  
4 Mass. 508.  
5 Mass. 390.  
12 Mass. 140.

SECT. 26. Every trustee shall be allowed to retain or deduct out of the goods, effects, and credits, in his hands, all demands against the defendant of which he could have availed himself if he had not been summoned as a trustee, whether by way of set-off on a trial, or by the set-off of judgments or executions between himself and the principal; and he shall be liable for the balance only, after all mutual demands between him and the principal are adjusted.

Mutual demands between principal and trustee.  
R. S. 109, § 36.  
16 Mass. 473.  
12 Met. 517.  
7 Gray, 153.

SECT. 27. In the demands mentioned in the preceding section to be adjusted between the trustee and the defendant, there shall not be

Certain demands excluded.



R. S. 109, § 37.

Trustee not chargeable if he has paid over before knowledge of service.  
R. S. 109, § 5.  
3 Pick. 65.  
3 Met. 301.  
5 Cush. 545.

nor for a certain sum due for wages, &c.  
1842, 91.  
1857, 200, § 2.  
See Ch. 90, § 29.

If savings bank charged as trustee, and identity of defendant doubtful, plaintiff to give bond.  
1850, 48.  
7 Gray, 134.

What demands not attachable.  
R. S. 109, § 30.  
See Ch. 118, § 78.

3 Mass. 289.  
5 Mass. 319.  
7 Cush. 257.

7 Mass. 259.

3 Mass. 33, 68.  
3 Pick. 1, 65.  
6 Pick. 120.  
4 Met. 186.  
12 Met. 12.

2 Mass. 94.  
3 Mass. 121.

Form of judgment against trustee.  
R. S. 109, § 42.  
21 Pick. 109.

Goods not demanded in 30 days may be attached again.  
R. S. 109, § 43.  
1 Mass. 117.  
6 Gray, 241.

or recovered by defendant.  
R. S. 109, § 44.

or otherwise delivered to officer on demand.  
R. S. 109, § 45.  
6 Gray, 241.

included on either side any claim for unliquidated damages for wrongs or injuries.

SECT. 28. If after the service of process on the trustee, but before he has knowledge thereof, he in good faith makes any payment, or becomes liable to a third person, by reason of the goods, effects, or credits, in his hands, or has delivered the same to the defendant, or to any other person entitled thereto, he shall be allowed therefor in the same manner as if the payment or delivery had been made, or the liability incurred, before the service of the writ.

SECT. 29. When the wages for the personal labor and services of a defendant are attached for a debt or demand other than for necessities furnished him or his family, and when a debt due for the services of the wife or minor children of the defendant is attached, there shall be reserved in the hands of the trustee a sum not exceeding twenty dollars, which shall be exempt from such attachment.

SECT. 30. When a savings bank or an institution for savings is charged as trustee, and in the opinion of the court there arises upon the answer a doubt as to the identity of the defendant, the court may in its discretion require the plaintiff to give bond with surety or sureties to be approved by the court, conditioned to save such bank or institution harmless therefrom.

SECT. 31. No person shall be adjudged a trustee in either of the cases following, viz. :—

First. By reason of having drawn, accepted, made, or indorsed, any negotiable bill, draft, note, or other security when either is payable on time and is not overdue :

Second. By reason of any money or other thing received or collected by him as a sheriff or other officer by force of an execution or other legal process in favor of the defendant in the trustee process, although the same has been previously demanded of him by the defendant :

Third. By reason of any money in his hands as a public officer, and for which he is accountable to the defendant merely as such officer :

Fourth. By reason of any money or other thing due from him to the defendant, unless it is at the time of the service of the writ on him due absolutely and without depending on any contingency : nor

6 Cush. 264. 7 Gray, 153. 13 Gray, 200.

Fifth. By reason of a debt due from him on a judgment, so long as he is liable to an execution thereon.

#### JUDGMENT, EXECUTION, AND SCIRE FACIAS.

SECT. 32. When a person is adjudged trustee in the original suit, it shall not be necessary to specify in the judgment the sum for which he is chargeable ; but if upon a writ of *scire facias* against him, it appears that he is chargeable as trustee, the sum shall be expressed in the judgment.

SECT. 33. If, after a person is adjudged trustee, the goods, effects, and credits, in his hands, are not demanded of him, by force of the execution, within thirty days after final judgment, they shall be liable to another attachment, whether made before or after the judgment, in like manner as if such prior attachment had not been made.

SECT. 34. If there is no such second attachment, the defendant in the suit may recover them, if not demanded as aforesaid within said thirty days, in like manner as if they had not been attached.

SECT. 35. If no such second attachment is made of the same goods, effects, and credits, and no action is brought therefor by the defendant, and if they are not paid or delivered to him before they are demanded of the trustee by the officer, the trustee shall be liable to pay and deliver the same, when so demanded, although it should be after the expiration of said thirty days.

SECT. 36. If the trustee cannot be found in the state by the officer to whom the execution is committed for service, a copy of the execution may be left at his dwelling-house or last and usual place of abode, with a notice to him indorsed thereon and signed by the officer, signifying that he is required to pay and deliver, towards satisfying the execution, the goods, effects, and credits, for which he is liable; and this shall be a sufficient demand for all the purposes expressed in the three preceding sections.

Demand on absent trustee.  
R. S. 109, § 46.

SECT. 37. The judgment against a trustee shall acquit and discharge him from all demands by the defendant, or his executors or administrators, for all goods, effects, and credits, paid, delivered, or accounted for, by the trustee, by force of such judgment.

Judgment against trustee shall protect him, &c.  
R. S. 109, § 47.  
7 Gray, 270, 500.

SECT. 38. If a person summoned as trustee is discharged, the judgment shall be no bar to an action brought against him by the defendant for the same demand.

for him not to bar defendant.  
R. S. 109, § 48.

SECT. 39. If a person who is adjudged a trustee in the original suit does not pay over to the officer, upon demand, goods, effects, or credits, sufficient to satisfy the execution, and if the execution is not otherwise satisfied, the plaintiff may sue out a writ of *scire facias* against all or a separate writ against each of the trustees, from the court in which the judgment was rendered, to show cause why judgment and execution should not be awarded against him and his own goods and estate, for the sum remaining unsatisfied on the judgment against the defendant.

*Scire facias* against trustee, after judgment.  
R. S. 109, §§ 61, 62.  
4 Cush. 420.  
9 Cush. 289.  
See § 72.

SECT. 40. If a trustee duly served with the *scire facias* neglects to appear and answer, he shall be defaulted; and if he was not examined in the original suit, judgment shall be rendered against him upon such default, for the whole sum remaining unsatisfied on the judgment against the defendant.

Proceedings thereon upon default.  
R. S. 109, § 39.

SECT. 41. If a trustee who is defaulted on the *scire facias* has been examined in the original suit, judgment in the *scire facias* shall be rendered upon the facts stated in that examination, or proved in the trial had thereon, for any part remaining in his hands, of the goods, effects, or credits for which he was originally chargeable as a trustee, or for so much thereof as then remains unsatisfied on the judgment against the defendant.

same subject.  
R. S. 109, § 40.

SECT. 42. If the trustee appears and answers to the *scire facias*, and if he had not been examined in the original suit, he shall be liable to be examined in the same manner as he might have been in that suit; and if he had been examined in the original suit, the court may require or permit him to be examined anew in the suit on the *scire facias*. In either case, he shall be permitted to answer and prove any matter that may be necessary or proper for his defence in the suit on the *scire facias*. Upon the whole matter appearing upon such examination and trial, the court shall render such judgment as law and justice require.

upon examination of trustee.  
R. S. 109, § 41.  
21 Pick. 109.  
1 Met. 426.  
4 Cush. 431.

SECT. 43. No writ of *scire facias* shall be maintained against a person adjudged trustee unless served upon him within two years after the rendition of judgment in the original suit; except that if the money or other thing is not payable when the judgment is rendered, said writ may be maintained if served within one year after payment becomes due.

Writ of *scire facias* to be served within two years after judgment, except, &c.  
1846, 40, § 1.  
4 Gray, 345.

DEATH OF PARTIES.

SECT. 44. If a person summoned as trustee in his own right dies before the judgment recovered by the plaintiff is fully satisfied, the goods, effects, and credits in his hands at the time of the attachment shall remain bound thereby, and his executors or administrators shall be liable therefor in like manner as if the writ had been originally served on them.

Upon death of trustee, his executor, &c., liable.  
R. S. 109, § 63.



Proceedings when trustee dies before judgment.  
R. S. 109, § 64.

SECT. 45. If he dies before judgment in the original suit, his executor or administrator may appear voluntarily, or may be cited to appear, as in other cases. The further proceedings shall then be conducted in the same manner as if the executor or administrator had been originally summoned as a trustee, except that the examination of the deceased, if any is filed, shall have the same effect as if he were living.

when executor, &c., does not appear.  
R. S. 109, § 65.

SECT. 46. If the executor or administrator does not appear, the plaintiff, instead of suggesting the death of the trustee, may take judgment against him by default or otherwise as if he were living, and the executor or administrator shall pay on the execution the amount which he would have been liable to pay to the defendant, and shall be thereby discharged for the amount so paid, in like manner as if the executor or administrator had been himself adjudged trustee.

*Scire facias* against executor, &c.  
R. S. 109, § 66.

SECT. 47. If, in the case last mentioned, the executor or administrator does not voluntarily pay the amount in his hands, the plaintiff may proceed against him by a writ of *scire facias*, as if the judgment in the first suit had been against him as trustee.

When trustee dies after judgment.  
R. S. 109, § 67.

SECT. 48. If the person summoned as trustee dies after judgment in the original action, the executor or administrator may pay on the execution the amount which the deceased would have been liable to pay if living, and he shall be discharged from all further demands on account thereof, in the manner before mentioned. If he refuses so to do, the plaintiff may proceed against him by a writ of *scire facias*, in the manner provided in the preceding section.

within thirty days after judgment.  
R. S. 109, § 68.

SECT. 49. If a person against whom execution issues as trustee is not living at the expiration of thirty days after final judgment in the trustee suit, the demand to be made for the purpose of holding the attachment may be made of the executor or administrator of the deceased person at any time within thirty days after his appointment, and shall have the same effect as if made within thirty days after the judgment.

Judgment against executor, &c., how enforced.  
R. S. 109, § 69.

SECT. 50. When an executor or administrator is adjudged trustee for or on account of goods, effects, or credits in his hands or possession merely as such executor or administrator, whether in a suit originally commenced against him as trustee, or against the deceased testator or intestate, and whether the judgment is in the original suit or on a writ of *scire facias*, the execution shall not be served on his own goods or estate, nor on his person, but he shall be liable for the amount in his hands, in like manner and to the same extent only as he would have been to the defendant, if there had been no trustee process.

Same subject.  
R. S. 109, § 70.

SECT. 51. If, after final judgment against an executor or administrator for a certain sum due from him as trustee, he neglects to pay the same, the original plaintiff in the trustee process shall have the same remedy for recovering the amount, either upon a suggestion of waste or by a suit on the administration bond, as the defendant in the trustee process would have had upon a judgment recovered by himself for the same demand against the executor or administrator.

#### PROCEEDINGS WHEN TRUSTEE HAS SPECIFIC GOODS.

Case of trustee having specific goods, &c.  
R. S. 109, § 22.  
7 Cnsh. 487.  
6 Gray, 320.

SECT. 52. When a person is charged as trustee by reason of goods or chattels, other than money, which he holds or is bound to deliver to the defendant, he shall deliver the same, or as much thereof as may be necessary, to the officer who holds the execution; and the goods shall be sold by the officer, and the proceeds applied and accounted for in the same manner as if they had been taken on an execution in common form.

Same subject.  
R. S. 109, § 23.

SECT. 53. The value of any goods so delivered shall be ascertained and fixed, as between the trustee and defendant, in like manner and



upon the same principles as if they had been delivered to the defendant. Upon the application of either party the court may, pending the original suit or upon the *scire facias*, determine the value, and make any other order in relation to such goods and the delivery thereof that may be necessary or proper to protect the rights of the trustee and defendant.

SECT. 54. When a person summoned as trustee is bound by contract to deliver specific goods to the defendant at a certain time and place within the state, he shall not be compelled by reason of the trustee process to deliver them at any other time or place; and he may, notwithstanding such process, tender or deliver them to the person entitled under the contract, at the time and place therein mentioned, unless he shall have been previously adjudged a trustee on account thereof.

Suit not to prevent trustee delivering them, unless, &c.  
R. S. 109, § 24.  
6 Mass. 60.

SECT. 55. When it appears that such goods in the hands of a person summoned as trustee are mortgaged or pledged, or in any way liable for the payment of a debt to him, the attaching creditor may be allowed, under an order of the court for that purpose, to pay or tender the amount due to the trustee; and he shall thereupon deliver the goods in the manner before provided to the officer who holds the execution.

Case of trustee having lien on the goods.  
R. S. 109, § 25.  
1 Met. 172.

SECT. 56. If the goods in such case are held for any purpose other than to secure the payment of money, and if the contract, condition, or other thing, to be performed, is such as can be performed by the attaching creditor without damage to the other parties, the court may make an order for the performance thereof by him. Upon such performance, or a tender, the trustee shall deliver the goods in the manner before provided to the officer who holds the execution.

Same subject.  
R. S. 109, § 26.

SECT. 57. All goods received by the officer under the two preceding sections, shall be sold and disposed of in the same manner as if they had been taken on an execution in common form; except that from the proceeds of the sale the officer shall repay to the attaching creditor the amount paid by him to the trustee for the redemption of the goods, with interest thereon, or shall indemnify the creditor for any other act or thing by him done or performed pursuant to the order of the court for the redemption of the goods.

Such goods, how disposed of.  
R. S. 109, § 27.

SECT. 58. Nothing contained in the preceding sections shall prevent the trustee from selling the goods in his hands for the payment of the demand for which they are mortgaged, pledged, or otherwise liable, at any time before the amount due to him is paid or tendered as before mentioned, if such sale would be authorized as between him and the defendant.

may be sold by trustee in case, &c.  
R. S. 109, § 28.

SECT. 59. If a trustee refuses or neglects to deliver any goods in his hands when thereunto lawfully required by the officer who serves the execution, he shall, after deducting the amount of any lien he has thereon, be liable to the plaintiff in the action for the value thereof, to be recovered as money is recovered when not paid on the first execution pursuant to the judgment against a trustee.

Trustee when liable for non-delivery of such goods.  
R. S. 109, § 29.

COSTS.

SECT. 60. If a person summoned as trustee appears and answers upon oath as herein provided, he shall be allowed his costs for travel and term fees, and such further sum for counsel fees and other necessary expenses as the court may deem reasonable. But if a trial is had between the plaintiff and alleged trustee upon any issue of fact, the court may award costs to either party as justice and equity require.

Costs and expenses of trustee.  
R. S. 109, § 49.  
1852, 312, § 81.  
19 Pick. 351.  
12 Met. 397.

SECT. 61. If he is adjudged trustee, his costs and charges shall be deducted and retained out of the goods, effects, and credits, in his hands,

Trustee to retain costs out of effects in his

hands, and recover balance of plaintiff.  
R. S. 109, § 50, 1845, 188.  
10 Met. 580.  
12 Cush. 131.

Costs when trustee is discharged.  
R. S. 109, § 51.  
3 Cush. 341.

when trustee is out of state.  
R. S. 109, § 52.  
10 Mass. 25.

when trustee does not dwell or have place of business in county.  
R. S. 109, § 53.  
1852, 287.

when trustee liable to pay.  
R. S. 109, § 54.  
1852, 312, § 81.  
1852, 287.

proceedings in such case.  
R. S. 109, § 55.

when several trustees are liable for.  
R. S. 109, § 56.

against trustee on *scire facias*.  
R. S. 109, § 57.

same subject.  
R. S. 109, § 58.

same subject.  
R. S. 109, § 59.  
1852, 312, §§ 58, 81.

execution for, against trustee.  
R. S. 109, § 60.  
1852, 312, § 81.

on *scire facias* against

and he shall be chargeable for the balance only to be paid on the execution. If such goods, effects, and credits, are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the sum disclosed, in the same manner as if he had been discharged.

SECT. 62. If he is discharged for any cause, his costs and charges shall be paid by the plaintiff, and he shall have judgment and execution therefor.

SECT. 63. If the person summoned as trustee is out of the state at the time of the service of the original writ on him, and appears and answers at the first term after his return, he shall be allowed for his costs and charges in the same manner as if he had appeared at the term when the action was entered.

SECT. 64. If the person so summoned does not dwell or have a usual place of business in the county in which the writ is returnable, he shall in all cases be allowed his costs and charges, which shall be retained or recovered as before provided, whether he appears at the first or at any other term, and whether in the original suit or upon a *scire facias* against him.

SECT. 65. If a person summoned as trustee who dwells or has his usual place of business in the county in which the writ is returnable, without any reason which the court deems sufficient, neglects to appear and answer within the time herein provided, he shall be liable if the plaintiff recovers judgment in the suit, and his costs are not otherwise recovered and received by him, for all costs for the plaintiff's travel and term fees, until he appears.

SECT. 66. If he does not pay the amount when demanded by the officer who serves the execution, the officer shall state the fact in his return, and if it also appears by the return that the costs have not been paid, the court shall award a new execution against him for the costs.

SECT. 67. If there are several persons summoned as trustees and liable for costs under the provisions of the two preceding sections, the second execution shall be awarded against them jointly, and if either pays more than his proportion, the others shall be bound to contribute equally to indemnify him for the excess.

SECT. 68. If a person summoned as trustee, who dwells or has his usual place of business in the county in which the writ is returnable, is defaulted in the original suit, and a writ of *scire facias* issues against him, he shall be liable for all costs on the *scire facias*, to be paid out of his own goods and estate, whether he is finally adjudged a trustee or not, except as hereinafter provided.

SECT. 69. If it appears that the person so defaulted had in his hands goods, effects, or credits, liable to the attachment, and that he has paid and delivered the whole amount thereof on the execution issued on the original judgment, he shall not be liable for costs on the *scire facias*, nor shall he be entitled to recover costs.

SECT. 70. If the person so defaulted was prevented from appearing in the original suit by his absence from the state, or for any other reason which the court deems sufficient, he shall not be liable for costs on the *scire facias*, but the court may, if it appears reasonable, allow him his costs and charges for travel and term fees, counsel fees and other necessary expenses, to be retained or recovered in like manner as if he had appeared in the original suit.

SECT. 71. If a person summoned as trustee is held liable to pay from his own estate the costs on the *scire facias* as before provided, and if he is at the same time liable for the costs for the plaintiff's travel and term fees in the original suit, one execution shall be issued against him for both sums.

SECT. 72. When there are several trustees liable to the writ of *scire*

*facias*, if the plaintiff, without reasons which the court deems sufficient, sues out two or more writs, when he might have joined all the trustees in one writ, he shall recover no more costs than if he had sued out only one writ, and the court may apportion the costs equally and proportionally among all the trustees liable therefor.

several trustees.  
R. S. 109, § 61.

SECT. 73. When an adverse claimant is admitted as a party, the court may award costs between him and the attaching creditor and supposed trustee, or either of them, as justice and equity require.

Costs for or against adverse claimant.  
R. S. 109, § 21.

SECT. 74. If the wages for the personal labor and services of a person are attached by the trustee process on a claim other than for necessities, and the plaintiff does not recover a sum amounting to five dollars as debt, he shall recover no costs of suit.

not for plaintiff if wages attached, &c.  
1857, 200, § 1.  
See Ch. 90, § 29.

TRUSTEE PROCESS BEFORE JUSTICES OF THE PEACE, &c.

SECT. 75. All personal actions but those excepted in section one, which are within the jurisdiction of, and may be brought by the ordinary process before, a justice of the peace, or police court, may be so brought by the trustee process.

Trustee process before police court, &c.  
R. S. 109, §§ 71, 76, 77.

SECT. 76. The foregoing provisions of this chapter shall, as far as applicable and except as is hereinafter provided, apply to such suits before police courts and justices of the peace.

Proceedings.  
R. S. 109, § 73.

SECT. 77. When a person is summoned as trustee who is liable to be charged as such, and the defendant resides in this state, but in a county other than that in which the writ is returnable, the writ may run into any county, and be served on the defendant fourteen days at least before its return day, in like manner as if issued from the superior court.

Writ may run into any county in certain cases.  
1837, 210, § 2.  
1838, 147, § 3.  
1852, 287.  
1856, 152, § 1.

SECT. 78. No person shall be held to answer as a trustee in an action before a justice of the peace, or police court, in any other county than that in which he dwells or has his usual place of business. If he is out of the county at the time of the service of the original writ on him, and does not return before the final judgment in the suit, he shall not be chargeable as trustee.

Trustee not liable out of county.  
R. S. 109, § 72.  
1852, 287.  
1856, 152, § 1.

SECT. 79. If the person summoned as trustee appears either in person or by attorney and declares in writing that he had not in his hands or possession, at the time when the writ was served on him, any goods, effects, or credits, of the defendant, and submits himself thereupon to examination upon his oath, and if the plaintiff declines to examine him, or if upon such examination his declaration appears to be true, he shall be discharged.

how may appear and answer.  
R. S. 109, § 11.  
2 Mass. 96.  
4 Mass. 85.  
11 Mass. 488.  
7 Pick. 194.  
8 Pick. 67.  
4 Cush. 314.

SECT. 80. Every such declaration may be signed by attorney, and if the plaintiff proceeds to examine the supposed trustee thereupon, he shall propose interrogatories in writing, which shall be answered in writing and signed and sworn to by the supposed trustee.

Same subject.  
R. S. 109, § 12.  
8 Pick. 25.

SECT. 81. If a person so summoned admits that he has in his hands any goods, effects, or credits, of the defendant, or wishes to refer that question to the justice or court upon the facts, he may make a written declaration on oath of such facts as are material. The plaintiff may then examine him on written interrogatories, the answers to which shall be sworn to, and in every case the declaration, interrogatories, and answers, shall be filed with the justice or court.

Same subject.  
R. S. 109, § 13.

SECT. 82. When a person summoned as a trustee is entitled to costs, his travel and attendance shall be taxed at the same rate as if he were a defendant, and he shall be allowed such further sum for his counsel fee and other necessary expenses as the justice or court deems reasonable.

Costs for trustee, and allowance for expenses.  
R. S. 109, § 74.

SECT. 83. When it becomes necessary to sue out a writ of *scire facias* against a person summoned as trustee, it may be issued by the

Justice may issue *scire facias*, although, &c.



R. S. 109, § 75.  
1852, 314.  
1859, 190.

justice of the peace by whom, or the police court by which, the judgment was rendered, although the amount of the debt and costs therein exceeds one hundred dollars, or if issued by the police court of the city of Boston, three hundred dollars.

## CHAPTER 143.

### OF REPLEVIN OF PROPERTY.

#### REPLEVIN OF CATTLE DISTRAINED.

##### SECTION

1. Writ of replevin for beasts distrained or impounded.
2. Proceedings thereon.
3. Plaintiff to give bond.
4. in double the value of property as appraised.
5. Return of writ, with bond, &c.
6. Judgment for defendant, how rendered.
7. Beasts returned, how disposed of.
8. Judgment for plaintiff.
9. Certain cases to be removed to superior court, &c.

#### REPLEVIN OF OTHER PROPERTY.

10. Replevin of goods.
11. Writ, how sued out, &c.

#### SECTION

12. Plaintiff to give bond.
13. Judgment for defendant.
14. Damages for delaying execution.
- 15, 16. Sums recovered on replevin bond, &c., how disposed of.
17. Judgment for plaintiff.

#### GENERAL PROVISIONS.

18. Goods attached held liable after return.
19. Damages, by whom assessed.
20. Form of writs of return and reprisal.
21. These proceedings not to bar action on bond, &c.
22. Writ of reprisal, when to be issued.
23. Limitation of suit against surety on replevin bond.

#### REPLEVIN OF CATTLE DISTRAINED.

Writ of replevin for beasts distrained or impounded.  
1789, 26.  
R. S. 113, § 17.  
2 Cush. 88.  
7 Cush. 355.  
See Ch. 25,  
§§ 21-38.

Proceedings thereon.  
R. S. 113, § 18.

Plaintiff to give bond.  
R. S. 113, § 19.  
1 Met. 508.  
10 Met. 291.  
12 Met. 516.  
8 Cush. 556.  
5 Gray, 27.  
6 Gray, 363.

in double the value of property as appraised.  
R. S. 113, § 20.

Return of writ, with bond, &c.  
R. S. 113, § 21.

SECTION 1. Any person whose beasts are distrained or impounded, in order to recover a penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for damages alleged to have been done by them, may maintain a writ of replevin therefor, to be sued out and prosecuted before a justice of the peace, or police court, for the county, in the same form substantially as heretofore established and used in such cases.

SECT. 2. The writ shall be sued out, served, returned, and the cause shall be heard and determined, in like manner as is provided in other civil actions before a justice of the peace, or police court, in all particulars in which a different course is not prescribed.

SECT. 3. The writ shall not be served, unless the plaintiff or some one in his behalf executes and delivers to the officer a bond to the defendant with sufficient sureties, to be approved by the officer, in a penalty double the value of the property to be replevied, with condition to prosecute the replevin to final judgment and to pay such damages and costs as the defendant shall recover against him, and also to return the property in case such shall be the final judgment.

SECT. 4. The writ shall require that the bond shall be given in double the value of the property to be replevied, but shall not express the sum or amount for which it shall be given. When the parties do not agree as to the value of the property, it shall be ascertained by three disinterested and discreet persons appointed and sworn by the officer, and the penalty of the bond shall be double the value ascertained by such persons, or any two of them.

SECT. 5. The officer shall return such bond with the writ, to be left with the justice or court for the use of the defendant; he shall also include in his return, indorsed on the writ, a certificate of the appointment of the three appraisers, the appraisal and the expenses thereof.

SECT. 6. If it appears upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found to be due from the plaintiff for the penalty or forfeiture, or for the damages for which the beasts were impounded, together with all the legal fees, costs, charges, and expenses, incurred by reason of the distress, and also the costs of the action of replevin; or instead thereof a judgment, for a return of the beasts to be held by the defendant irrepleviable by the plaintiff, and for his damages for the taking thereof by the replevin, and for his costs.

Judgment for defendant, how rendered.  
R. S. 113, § 22.

SECT. 7. When the beasts are returned to the defendant pursuant to such judgment, they shall be held and disposed of in like manner as if they had not been replevied.

Beasts returned, how disposed of.  
R. S. 113, § 23.

SECT. 8. If it appears upon the default of the defendant, or upon a trial or otherwise, that the beasts were taken or distrained without any sufficient or justifiable cause, the plaintiff shall have judgment for his damages caused by the unjust taking and detaining of the beasts, and for his costs of the suit.

Judgment for plaintiff.  
R. S. 113, § 24.

SECT. 9. When it appears that the sum demanded for the penalty, forfeiture, or damages, exceeds the sum of one hundred dollars, or that the property of the beasts is in question, and that their value exceeds one hundred dollars, or that the title to real estate is concerned or brought in question, the case shall at the request of either party be transferred to the superior court, and be there disposed of in like manner as is provided in chapter one hundred and twenty, with respect to actions brought before a justice of the peace, in which the title to real estate is concerned or brought in question.

Certain cases to be removed to superior court.  
R. S. 113, § 26.  
1852, 314, § 1.  
1859, 196.

REPLEVIN OF OTHER PROPERTY.

SECT. 10. When any goods exceeding in value twenty dollars, are unlawfully taken or detained from the owner or person entitled to the possession, or when any goods of that value attached on mesne process or taken on execution are claimed by a person other than the defendant in the suit in which they are so attached or taken, such owner or other person may cause them to be replevied.

Replevin of goods.  
R. S. 113, § 27.  
1 Mason, 319.  
1 Greul. 135.  
3 Greul. 183.  
4 Greul. 305.  
15 Mass. 359.  
16 Mass. 147.  
17 Mass. 610.

3 Pick. 255. 9 Met. 440. 2 Cush. 88. 3 Cush. 261.

SECT. 11. When the property alleged to be detained does not exceed in value one hundred dollars, the writ may be sued out from, and returnable to, a justice of the peace, or police court, for the county in which the goods are detained; and in all cases the writ may be sued out of the superior court, and shall in such case be returnable to the same court for the county in which the goods are detained. It shall be substantially in the form heretofore established and used, and in all particulars in which a different course is not prescribed, shall be sued out, served, and returned, like other writs in civil actions.

Writ, how sued out, &c.  
1789, 26.  
R. S. 90, § 2.  
R. S. 113, § 28.  
1852, 314, § 1.  
1859, 196.  
1 Mass. 153.  
6 Mass. 3.  
1 Met. 508.  
7 Met. 590.  
10 Met. 291.  
4 Cush. 369.  
8 Cush. 550.

SECT. 12. The officer, before serving the writ, shall take from the plaintiff, or some one in his behalf, a bond to the defendant, with sufficient sureties in double the value of the goods to be replevied, conditioned like the bond herein before described to be taken upon a writ of replevin for beasts distrained or impounded; and the officer shall proceed in the appraisal of the goods and the return of the writ, in the manner provided with respect to such action for beasts distrained or impounded; except that when the writ is returnable to the superior court the bond shall be left with the clerk of the court for the use of the defendant.

Plaintiff to give bond.  
R. S. 113, § 29.  
1859, 196.  
8 Mass. 153.  
11 Mass. 282.  
14 Mass. 313.  
5 Pick. 226.  
10 Met. 291.  
8 Cush. 556.  
5 Gray, 27.

SECT. 13. If it appears upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the defendant is entitled to a return of the goods, he shall have judgment therefor with damages for the taking by the replevin, and his costs.

Judgment for defendant.  
R. S. 113, § 30.

Damages for delaying execution.  
R. S. 113, § 31.  
4 Mass. 614.  
12 Mass. 406.  
11 Pick. 223.

SECT. 14. If the goods when replevied were taken on execution, or if they were then attached, and judgment is afterwards rendered for the attaching creditor, and if in either case the service of the execution is delayed by means of the replevin, the damages to be assessed for the defendant, in case of judgment for a return, shall not be less than at the rate of twelve per cent. a year, on the value of the goods, for so long as the service of the execution is so delayed.

Sums recovered on replevin bond, &c., how disposed of.  
R. S. 113, § 32.

SECT. 15. All sums recovered in an action of replevin by an officer for or on account of goods attached or taken on execution by him, or recovered in an action upon the bond given upon the replevin of such goods, shall be applied and disposed of, as far as they will go, in the following manner:—

First. To pay the lawful fees and charges of the officer, the reasonable expenses of the action of replevin, and the action on the bond, so far as they are not reimbursed by the costs recovered:

Second. To pay to the creditor at whose suit the goods were attached, or taken on execution, the sum recovered by him in that suit, or as much thereof as remains unpaid, with interest therefor at the rate of twelve per cent. a year, so long as the money has been withheld from the creditor, or the service of his execution delayed, by reason of the replevin: and

Third. If the attaching creditor in such case does not recover judgment in the suit in which the attachment was made, or if any balance remains of the money so recovered by the officer after paying what is due to the creditor, the same shall be applied and disposed of in the same manner as would and ought to have been done with the surplus, if any, of the proceeds of sale, in case the same goods had been sold on execution.

Same subject.  
R. S. 113, § 33.  
1847, 153.

SECT. 16. All sums received by such creditor from the proceeds of the sale of goods attached or taken on execution, and afterwards returned, or received for the value of any goods not returned, or recovered from the officer for the insufficiency of the sureties in the bond, shall be applied towards the discharge of the judgment recovered by the creditor; and all sums received as interest or damages for the delay of his execution, shall be applied, one half to the sole use of the creditor, and the other half in discharge of the judgment.

Judgment for plaintiff.  
R. S. 113, § 34.

SECT. 17. If it appears upon default or otherwise that the goods were unlawfully taken or attached, or unlawfully detained, by the defendant, the plaintiff shall have judgment for his damages caused thereby, and for his costs of the suit.

#### GENERAL PROVISIONS.

Goods attached held liable after return.  
R. S. 113, § 36.

SECT. 18. If the goods which are replevied had been attached, they shall, in case of judgment for a return, be held liable to the attachment until final judgment in the suit in which they were attached, and for thirty days thereafter, in order to their being taken on execution. If such final judgment is rendered before the return of the goods, or if the goods when replevied were seized and held on execution, they shall be held subject to the same attachment or seizure for thirty days after the return, in order that the execution may be served thereon, or the service thereof completed, in like manner as it might have been if the goods had not been replevied.

Damages, by whom assessed.  
R. S. 113, § 35.  
1852, 314, § 2.

SECT. 19. The damages in replevin, whether for the plaintiff or for the defendant, shall be assessed by the jury by which the cause is tried, if there is a trial by jury: otherwise they shall be assessed upon an inquiry by the court or justice, or by a jury empanelled for that purpose, as damages are assessed in other civil actions.

Form of writs

SECT. 20. The writ of return in all actions of replevin shall be



substantially in the same form that has been heretofore established and used in like cases, and the writ of reprisal shall be substantially in the same form with the writ heretofore called a writ of withernam.

of return and reprisal. 1789, 26. R. S. 113, § 38.

SECT. 21. The foregoing provisions shall not preclude the defendant from his remedy on the replevin bond, or against the officer for the insufficiency of the sureties in the bond, to recover the value of the goods together with the loss or damage caused by the replevin, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal, as before provided.

These proceedings not to bar action on bond, &c. R. S. 113, § 39. 8 Met. 205.

SECT. 22. If the officer to whom the writ of return is committed cannot find the beasts or other goods that were replevied, so as to deliver them to the defendant, he shall make a return of that fact upon the writ of return; and the defendant shall upon motion be entitled to a writ of reprisal, to take the beasts or goods of the plaintiff and deliver them to the defendant, to be held and disposed of according to law.

Writ of reprisal, when to be issued. R. S. 113, § 37.

SECT. 23. No action shall be maintained against any person as surety in a replevin bond, unless the writ is served on him within one year after the final judgment in the action of replevin; or if the action is not entered, within one year after the end of the term at which the action of replevin ought to have been entered.

Limitation of suit against surety on replevin bond. R. S. 113, § 40. 12 Mass. 270. 14 Mass. 443.

## CHAPTER 144.

### OF HABEAS CORPUS, PERSONAL REPLEVIN, AND PERSONAL LIBERTY.

#### HABEAS CORPUS.

##### SECTION

1. Writ of *habeas corpus*.
2. in what cases not issuable as of right.
3. by whom to be issued.
4. application therefor, how made.
5. to be issued and returned forthwith.
6. form of in certain cases.
7. how signed and served.
8. Officer, &c., how to be named or described.
9. Party, how to be named or described.
10. Costs of service to be advanced when party is in legal custody.
11. Writ, when to be returned.
12. Substance of return.
13. Return to be signed, &c.
14. Party to be produced with writ.
15. Proceedings when party is sick, &c.
16. Writ, how returned and proceeded on in certain cases.
17. Examination to proceed without delay.
18. Mode of examination and trial.
19. Trial by jury on demand of either party, in case of fugitive from service.
20. Summoning, &c., of jurors in such case.
21. Claimant to state in writing facts upon which he relies. Burden of proof and rules of evidence.
22. Notice, when to be given to other persons.
23. when to be given to attorney-general.
24. Custody of party, pending examination.
25. Party, when and how to be bailed.
26. how, when committed on mesne process.
27. when to be remanded.
28. when to be discharged.
29. when discharged, not to be imprisoned again, unless, &c.
30. *Habeas corpus* and bail when person is committed in criminal case, &c.

##### SECTION

31. S. J. C., &c., may issue writs of *habeas corpus* in other cases, &c.
32. Any court may issue writs of *habeas corpus* in certain cases.
33. Penalty on officer refusing copy of warrant.
34. Proceedings against one refusing to obey writ.
35. Proceedings against sheriff, &c., in such case.
36. New precept to issue to another officer, &c.
37. Penalty for refusing.
38. Persons disobeying, &c., writ, liable as for contempt.
39. Penalty for removing or concealing prisoner.
40. Penalties not to bar action by party.
41. Superior court not to discharge person held, &c., by S. J. C.

#### PERSONAL REPLEVIN.

42. Writ of personal replevin, when to issue as of right.
43. issuing and return thereof.
44. by whom served.
45. form of.
46. shall not deliver from restraint, unless bond given, &c.
47. Officer responsible for sureties.
48. Plaintiff to recover cost, if discharged.
49. Defendant when to recover costs, &c.
50. When defendant to have judgment for delivery of plaintiff.
51. *Capias* shall issue to take defendant in certain cases.
52. Defendant may deny the return, &c.
53. if guilty of secreting, to be committed to jail, &c.

SECTION

- 54. Proceedings when plaintiff's body is produced by defendant, after return of secretion, &c.
- 55. Either party may appeal to S. J. C.
- 56. Writ of personal replevin may be sued out, &c., in behalf of plaintiff, without express authority.
- 57. Description of parties if names are unknown.

PERSONAL LIBERTY.

- 58. Governor to appoint commissioners in each county to defend fugitives. Attorneys may act as counsel.
- 59. Commissioners to be paid by commonwealth.
- 60. Persons holding office under this state not to issue warrants to arrest fugitives, &c.

SECTION

- 61. State jails not to be used for detention of persons claimed as fugitives, &c.
- 62. Punishment and damages for removing, &c., or coming here with intention to remove, persons not held to service or labor.
- 63. Penalty on sheriffs, &c., arresting fugitives from labor.
- 64. on members of militia for acting in seizure of fugitives from service.
- 65. not to apply to acts of military obedience, &c.
- 66. Preceding sections not to apply to fugitives from justice.
- 67. United States judicial officers, &c., not to hold office under laws of this state, except, &c. Power of justice of the peace, while U. S. commissioner.

HABEAS CORPUS.

Writ of *habeas corpus*.  
 Const. ch. 6,  
 art. 7.  
 R. S. 111, § 1.  
 1853, 489, §§ 2,  
 20.  
 2 Mass. 553.

SECTION 1. Every person imprisoned or restrained of his liberty, except in the cases mentioned in the following section, may, as of right and of course, prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it proves to be unlawful.

in what cases  
 not issuable as  
 of right.  
 R. S. 111, § 2.

6 Mass. 273. 11 Mass. 63, 67, 83. 10 Pick. 434. 7 Cush. 285.  
 SECT. 2. The following persons shall not be entitled, as of right, to demand and prosecute said writ:—

2 Pick. 172.  
 2 Gray, 406.

First. Persons committed for treason or felony, or on suspicion thereof, or as accessories before the fact to a felony, when the cause is plainly and specially expressed in the warrant of commitment:

Second. Persons convicted, or in execution upon legal process, civil or criminal:

Third. Persons committed on mesne process in any civil action on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

by whom to  
 be issued.  
 R. S. 111,  
 §§ 7, 8.  
 1853, 489, § 3.  
 19 Pick. 339.  
 2 Gray, 406.

SECT. 3. The writ may be issued by the supreme judicial court, superior court, probate court, or police court, or by a judge of either of said courts, and by any justice of the peace if no magistrate above named is known to him to be within five miles of the place where the party is imprisoned or restrained. It may be issued by either of said judges or justices, whether the place of imprisonment is within or without the county for which he is appointed.

application  
 therefor, how  
 made.  
 R. S. 111, § 3.

SECT. 4. Application for the writ shall be made to the court or magistrate authorized to issue the same, by complaint in writing, signed by the party for whose relief it is intended, or by some person in his behalf, setting forth,—

First. The person by whom, and the place where, the party is imprisoned or restrained, naming the prisoner and the person detaining him if their names are known, and describing them if they are not known:

Second. The cause or pretence of such imprisonment or restraint, according to the knowledge and belief of the person applying: and,

Third. If the imprisonment or restraint is by virtue of a warrant or other process, a copy thereof shall be annexed, unless it is made to appear that such copy has been demanded and refused, or that by some sufficient reason a demand therefor could not be made.

The facts set forth in the complaint shall be verified by the oath of the person making the application, or some other credible witness.

1861 ch. 91  
 to be issued  
 and returned  
 forthwith.  
 1784, 72.  
 R. S. 111, § 4.

SECT. 5. The court or magistrate to whom the complaint is made, shall without delay award and issue a writ of *habeas corpus*, substantially in the form heretofore established and used in this state, returnable forthwith, either before the supreme judicial court, superior court, or

a justice of either of said courts, in term time or vacation, and whether the court is in session or not, and at such place as shall be designated in the writ.

1855, 189, § 3.  
1859, 291, § 1.

SECT. 6. In cases of imprisonment or restraint by a person not a sheriff, deputy-sheriff, coroner, or jailer, of this state, the writ shall be in the following form:—

Writ, form of in certain cases.  
R. S. 111, § 5.  
1859, 291, § 2.

COMMONWEALTH OF MASSACHUSETTS.

[SEAL.] To the sheriffs of our several counties, and their respective deputies,

Greeting,

We command you, that the body of \_\_\_\_\_ of \_\_\_\_\_ by \_\_\_\_\_ of \_\_\_\_\_, imprisoned and restrained of his liberty, as it is said, you take and have before \_\_\_\_\_ a justice of our supreme judicial court, (or superior court as the case may be,) at \_\_\_\_\_, immediately after receipt of this writ, to do and receive what our said justice shall then and there consider concerning him in this behalf; and summon said \_\_\_\_\_, then and there to appear before our said justice, to show the cause of the taking and detaining of said \_\_\_\_\_, and have you there this writ with your doings thereon. Witness \_\_\_\_\_ at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

SECT. 7. When the writ is issued by the court in session, it shall be signed by the clerk, otherwise by the magistrate issuing the same, and it may in either case be served in any county, by a sheriff or deputy-sheriff of the same or any other county.

how signed and served.  
R. S. 111, § 6.

SECT. 8. The person having the custody of the prisoner may be designated by his name of office, or his own name, or if such names are unknown or uncertain, he may be described by an assumed appellation, and any one upon whom the writ is served shall be deemed the person intended.

Officer, &c., how to be named or described.  
R. S. 111, § 10.

SECT. 9. The person to be produced shall be designated by his name, if known, and if that is unknown or uncertain, he may be described in any other way so as to make known who is intended.

Party, how to be named or described.  
R. S. 111, § 11.

SECT. 10. If the party is confined in a common jail, or in the custody of a civil officer, the court or magistrate granting the writ shall certify thereon the sum to be paid for the expense of bringing him from the place of imprisonment, and the officer shall not be bound to obey it unless that sum is paid or tendered to him.

Costs of service to be advanced when party is in legal custody.  
R. S. 111, § 12.

SECT. 11. Any person to whom the writ is directed shall receive it, and upon payment or tender of the charges, if any, demandable for the execution of it, shall make due return thereof, within five days after receiving it.

Writ, when to be returned.  
R. S. 111, § 13.

SECT. 12. The person in whose custody the prisoner is found shall state in writing to the court or justice before whom the writ is returnable, plainly and unequivocally,—

Substance of return.  
R. S. 111, § 14.

First. Whether he has or has not the party in his custody or power, or under restraint:

Second. If he has the party in his custody or power, or under restraint, the authority at large, and the true and whole cause of such imprisonment or restraint, with a copy of the writ, warrant, or other process, if any, upon which the party is detained: and,

Third. If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

SECT. 13. The return or statement shall be signed by the person making it, and shall be sworn to by him, unless he is a sworn public officer and makes the return in his official capacity.

Return to be signed, &c.  
R. S. 111, § 15.

SECT. 14. The person making the return or statement shall at the same time bring the body of the party, if in his custody or power, or under his restraint, according to the command of the writ, unless prevented by the sickness or infirmity of the party.

Party to be produced with writ.  
R. S. 111, § 16.

SECT. 15. When from the sickness or infirmity of the party he cannot without danger be brought to the place appointed for the return of

Proceedings when party is sick, &c.



R. S. 111, § 17. the writ, that fact shall be stated in the return; and if it is proved to the satisfaction of the judge, he may proceed to the jail or other place where the party is confined and there make his examination; or he may adjourn the same to another time, or make such other order in the case as law and justice require.

Writ, how returned and proceeded on in certain cases. R. S. 111, § 9.

SECT. 16. If the court to which the writ is returnable is adjourned before it is returned, the return shall be made before any one of the justices of the court; and if the writ is in any case returned before one judge at a time when the court is in session, he may adjourn the case into the court, to be there heard and determined in like manner as if the writ had been returned into court.

Examination to proceed without delay. R. S. 111, § 18.

SECT. 17. When the writ is returned, the court or judge shall without delay proceed to examine the causes of the imprisonment or restraint; but the examination may be adjourned from time to time as circumstances require.

Mode of examination and trial. R. S. 111, § 21.

SECT. 18. The party imprisoned or restrained may deny any of the facts set forth in the return or statement, and may allege any other facts that may be material in the case; and the court or judge shall, except as provided in the following section, proceed in a summary way to examine the causes of the imprisonment or restraint, hear the evidence produced by any person interested or authorized to appear both in support of such imprisonment or restraint and against it, and thereupon to dispose of the party as law and justice require.

Trial by jury on demand of either party, in case of fugitive from service. 1855, 489, § 4. See § 66. See Ch. 172, § 15.

SECT. 19. When it appears by the return of the officer or otherwise that the person whose restraint or imprisonment is in question is claimed to be held to service or labor in another state, and to have escaped from such service or labor, the court or justice shall, on the application of any party to the proceeding, order a trial by jury as to any facts stated in the return of the officer, or alleged, and may admit said person to bail in a sum not exceeding two thousand dollars. In such case, issue may be joined by a general denial of the facts alleged, the plea may be not guilty, and the jury shall have the right to return a general verdict, and the same discretion as juries have in the trial of criminal cases; and the finding of a verdict of not guilty shall be final and conclusive.

Summoning, &c., of jurors. 1855, 489, § 5. See § 66.

SECT. 20. When a trial by jury is ordered, the court or justice, unless a jury is already in attendance, shall by warrant command the sheriff or his deputy to summon a jury, in the manner provided in chapter forty-three, to attend at the time and place stated in the warrant; at which time and place they shall be empanelled, and having elected a foreman by ballot, the issue so framed shall be submitted to them for their determination. If one jury disagrees, the issue may be submitted to another jury or continued to the next term, at the discretion of the court. In every case of disagreement another jury may be summoned and qualified as above provided, forthwith or at a future day, in the discretion of the court or justice, until a verdict is finally rendered. If a person summoned as a juror fails to attend without sufficient cause, he shall pay a fine of fifty dollars. And if, by reason of challenges or otherwise, there is not a full jury of the persons summoned, the officer attending the hearing shall return some suitable person or persons to supply the deficiency. 1861 Ch. 91.

Claimant to state in writing facts upon which he relies. Burden of proof and rules of evidence. 1855, 489, § 6. See § 66.

SECT. 21. If a claimant appears to demand the custody or possession of the person for whose benefit the writ is sued out, he shall state in writing the facts on which he relies, with precision and certainty. Neither the claimant, nor the alleged fugitive, nor any person interested in his alleged obligation to service or labor, shall be permitted to testify at the trial of the issue; and no confessions, admissions, or declarations, of the alleged fugitive against himself shall be given in evidence. Upon every question of fact involved in the issue, the burden of proof shall be on the claimant; and the facts alleged and necessary to be established must

be proved by the testimony of at least two credible witnesses, or other legal evidence equivalent thereto, and by the rules of evidence known and secured by the common law, except as modified by the provisions of this section. No *ex parte* deposition or affidavit shall be received in proof in behalf of the claimant, and no presumption shall arise in his favor from proof that the alleged fugitive or any of his ancestors had been actually held as a slave, without proof that such holding was legal.

SECT. 22. When it appears from the return of the writ or otherwise, that the party is detained on any process under which another person has an interest in continuing his imprisonment or restraint, the party shall not be discharged until sufficient notice has been given to such other person or his attorney, if within the state, or within thirty miles of the place of examination, to appear and object to such discharge if he thinks fit.

Notice, when to be given to other persons. R. S. 111, § 19.

SECT. 23. When it appears from the return of the writ or otherwise, that the party is imprisoned on a criminal accusation, he shall not be discharged until sufficient notice has been given to the attorney-general or other attorney for the commonwealth, that he may appear and object to such discharge if he thinks fit.

when to be given to attorney-general. R. S. 111, § 20.

SECT. 24. Until judgment is given, the court or judge may remand the party, or may bail him to appear from day to day, or may commit him to the sheriff of the county, or place him under such other care and custody as the circumstances of the case may require.

Custody of party, pending examination. R. S. 111, § 26.

SECT. 25. If the party is detained for a cause or offence for which he is bailable, he shall be admitted to bail if sufficient bail is offered, and if not, he shall be remanded with an order of the court or judge expressing the sum in which he shall be held to bail, and the court at which he shall be required to appear; and any justice of the peace may, at any time before the sitting of said court, bail the party pursuant to such order.

Party, when and how to be bailed. R. S. 111, § 23.

SECT. 26. If the party is committed on mesne process in a civil action for want of bail, and if it appears that the sum for which bail is required is excessive and unreasonable, the court or judge shall decide what bail is reasonable, and shall order that on giving such bail the party shall be discharged.

how, when committed on mesne process. R. S. 111, § 24.

SECT. 27. If the party is lawfully imprisoned or restrained, and is not entitled to be enlarged on giving bail, he shall be remanded to the person from whose custody he was taken, or to such other person or officer as by law is authorized to detain him.

when to be remanded. R. S. 111, § 25.

SECT. 28. If no legal cause is shown for the imprisonment or restraint, the court or judge shall discharge the party therefrom.

when to be discharged. R. S. 111, § 22.

SECT. 29. No person who has been discharged upon a *habeas corpus* shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed for want of bail by some court of record having jurisdiction of the cause; or unless after a discharge for defect of proof, or for some material defect in the commitment in a criminal case, he is again arrested on sufficient proof, and committed by legal process.

when discharged, not to be imprisoned again, unless, &c. R. S. 111, § 34.

SECT. 30. When a person is committed to jail on a criminal accusation for want of bail, any justice of the superior court or of a police court, or any two justices of the peace and of the quorum, may admit him to bail in like manner as might have been done by the court or magistrate who committed him; and said justices, respectively, may issue a writ of *habeas corpus* and cause such prisoner to be brought before them when it is necessary for the purpose expressed in this section.

*Habeas corpus* and bail when person is committed in criminal case, &c. R. S. 87, § 3. R. S. 111, § 36. 1859, 196. 2 Gray, 406.

SECT. 31. Nothing contained in this chapter shall be construed to restrain the power of the supreme judicial court or superior court, or any

S.J.C., &c., may issue writs of *habeas corpus*



in other cases, &c.  
Const. ch. 1,  
§ 3, arts. 10, 11.  
R. S. 111, § 35.  
1859, 196.

justice of either of said courts, to issue a writ of *habeas corpus* at discretion, and thereupon to bail a person for whatever cause he is committed or restrained, or to discharge him, as law and justice require; except only persons committed by the governor and council, the senate, or the house of representatives, in the manner and for the causes mentioned in the constitution.

Any court may issue writs of *habeas corpus* in certain cases.  
R. S. 111, § 37.

SECT. 32. Nothing contained in this chapter shall be construed to restrain the power of any court or magistrate to issue a writ of *habeas corpus*, when necessary to bring before them a prisoner for trial in any criminal case lawfully pending in the same court or before such magistrate; or to bring in a prisoner to be examined as a witness in a suit or proceeding, civil, or criminal, pending in such court or before such magistrate, when the personal attendance and examination of the witness is deemed necessary for the attainment of justice.

Penalty on officer refusing copy of warrant.  
R. S. 111, § 27.  
1852, 312.

SECT. 33. An officer, who refuses or neglects for six hours to deliver a true copy of the warrant or process by which he detains a prisoner, to any person who demands such copy and tenders the fees therefor, shall forfeit and pay to such prisoner the sum of two hundred dollars, to be recovered in an action of tort.

Proceedings against one refusing to obey writ.  
R. S. 111, § 28.

SECT. 34. If a person to whom such writ of *habeas corpus* is directed refuses to receive the same, or neglects to obey and execute it according to the provisions of this chapter, and no sufficient excuse is shown for such refusal or neglect, the court or judge before whom the writ was returnable shall proceed forthwith by process of attachment, as for a contempt, to compel obedience to the writ and to punish the person guilty of the contempt.

Proceedings against one refusing, &c., in such case.  
R. S. 111, § 29.

SECT. 35. If such attachment is issued against a sheriff or his deputy, it may be directed to a coroner, or other person to be designated therein, who shall have full power to execute the same; and if the sheriff or his deputy is to be committed upon such process, he may be committed to the jail of any county other than his own.

New precept to issue to another officer, &c.  
R. S. 111, § 30.  
1852, 312.

SECT. 36. Upon such refusal or neglect of the person to whom the writ of *habeas corpus* is directed, the court or judge may also issue a precept to any officer or other person to be designated therein, commanding him to bring forthwith, before such court or judge, the person for whose benefit the writ of *habeas corpus* was issued, and the prisoner shall be thereupon discharged, bailed, or remanded, in like manner as if he had been brought in upon the writ of *habeas corpus*.

Penalty for refusing.  
R. S. 111, § 31.  
1852, 312.

SECT. 37. Every person guilty of such refusal or neglect to receive and execute a writ of *habeas corpus*, shall moreover forfeit to the party aggrieved thereby the sum of four hundred dollars, to be recovered in an action of tort.

Persons disobeying, &c., writ, liable as for contempt.  
1848, 254.

SECT. 38. Whoever resists the service of the writ of *habeas corpus*, or disobeys the same when served, shall be liable to attachment, as for a contempt of the court or judge before whom the writ is returnable.

Penalty for removing or concealing prisoner.  
R. S. 111, § 32.  
1852, 312.

SECT. 39. If any one who has in his custody, or under his power, a person entitled to a writ of *habeas corpus*, whether a writ has been issued or not, transfers such prisoner to the custody, or places him under the power or control of, another person, or conceals him, or changes the place of his confinement, with intent to elude the service of such writ or to avoid the effect thereof, the person so offending shall forfeit to the party aggrieved thereby the sum of four hundred dollars, to be recovered in an action of tort.

Penalties not to bar action by party.  
R. S. 111, § 33.

SECT. 40. The recovery of any penalty imposed by the foregoing provisions of this chapter shall not bar an action at common law for false imprisonment, or for a false return to the writ of *habeas*



corpus, or for any other injury or damage sustained by the aggrieved party.

SECT. 41. Nothing contained in this chapter shall be construed to authorize the superior court or any justice thereof to order the discharge of a person committed or held upon any process issued by the supreme judicial court or any justice thereof.

Superior court not to discharge person held, &c., by S. J. C.

PERSONAL REPLEVIN.

SECT. 42. If a person is imprisoned, restrained of his liberty, or held in duress, unless in the custody of some public officer of the law by force of a lawful warrant or process, civil or criminal, issued by competent authority, he shall be entitled, as of right, to the writ of personal replevin, and to be thereby delivered in the manner hereinafter provided.

Writ of personal replevin, when to issue as of right. 1837, 221, § 1. 8 Met. 102.

SECT. 43. The writ shall be issued from and returnable to the superior court in the county in which the plaintiff is confined, and shall be issued fourteen days at least before the return day.

issuing and return thereof. 1837, 221, § 2. 1855, 449.

SECT. 44. It shall be directed to the sheriff of the county, or his deputy, or to any of the coroners thereof, and shall be served without delay by either to whom it is delivered.

by whom served. 1837, 221, § 3.

SECT. 45. It shall be in the following form, viz. :—

form of. 1837, 221, § 4. 1859, 196.

COMMONWEALTH OF MASSACHUSETTS.

—, ss. To the sheriff of our county of \_\_\_\_\_ or his deputy, or either of the \_\_\_\_\_

[L. s.] coroners thereof,

Greeting.

We command you, that justly and without delay, you cause to be replevied C. D. who (as it is said) is taken and detained at \_\_\_\_\_, within our said county, by the duress of G. H., that said C. D. may appear at our superior court next to be holden at \_\_\_\_\_, within our county aforesaid, then and there in our said court to demand right and justice against said G. H., for the duress and imprisonment aforesaid, and to prosecute his replevin as the law directs :

Provided, said C. D. shall before his deliverance give bond to said G. H. in such sum as you shall judge reasonable, and with two sureties at least having sufficient within your county, with condition to appear at our said court to prosecute his replevin against said G. H., and to have his body there ready to be redelivered, if thereto ordered by the court; and to pay all such damages and costs as shall be then and there awarded against him. Then, and not otherwise, are you to deliver him. And if said C. D. is by you delivered at any day before the sitting of our said court, you are to summon said G. H. by serving him with an attested copy of this writ, that he may appear at our said court to answer to said C. D.

Witness, L. S., Esq., at B \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_ .  
A. B., Clerk.

SECT. 46. No person shall be delivered from his imprisonment or restraint by force of such writ, until he gives bond in the manner expressed in the preceding section. The bond shall be returned with the writ like a bail bond, and left in the clerk's office, to be delivered to the defendant upon demand.

shall not deliver from restraint, unless bond given, &c. 1837, 221, § 5.

SECT. 47. The officer who serves the writ shall be answerable for the insufficiency of the sureties in the bond, in like manner as he is answerable for taking insufficient bail in a civil action, and the bond may be approved in the same manner as a bail bond.

Officer reponsible for sureties. 1837, 221, § 6. 1857, 141, § 22.

SECT. 48. If it appears that the plaintiff was unlawfully imprisoned or restrained, he shall be discharged, and recover costs as well as damages for the imprisonment and detention.

Plaintiff to recover cost, if discharged. 1837, 221, § 7.

SECT. 49. If the plaintiff does not maintain his action, the defendant shall have judgment for costs and for any damages he has sustained by reason of the replevin.

Defendant when to recover costs, &c. 1837, 221, § 8.

SECT. 50. If it appears that the defendant is bail for the plaintiff, or is entitled to the custody of the plaintiff, as his child, ward, servant, apprentice, or otherwise, he shall have judgment for a redelivery of the body, to be held and disposed of according to law.

When defendant to have judgment for redelivery of plaintiff. 1837, 221, § 9.

Capias shall issue to take defendant in certain cases.  
1837, 221, § 10.

SECT. 51. If it appears from the return of the writ that the defendant has secreted or conveyed away the plaintiff's body, so that the officer cannot deliver him, the court shall on motion issue a capias to take the defendant's body, and him safely keep, so that he may be had at the then next term of the court, to traverse the return of the writ; but the defendant may give bail for his appearance as in a civil case, in such sum as the officer may judge reasonable.

Defendant may deny the return, &c.  
1837, 221, § 11.  
1852, 312.

SECT. 52. At the term at which the capias is returned, the defendant may deny by answer the return on the writ, and if it appears on the trial that he is not guilty of secreting or conveying away the plaintiff as set forth in the return, he shall be discharged and recover his costs.

Defendant, if guilty of secreting, to be committed to jail, &c.  
1837, 221, § 12.

SECT. 53. If the defendant does not traverse the return, or if upon a traverse the issue is found against him, an alias writ of capias shall be issued, and he shall thereupon be committed to the jail, there to remain in close custody until he produces the body of the plaintiff, or proves him to be dead. If the defendant suggests such death at any time after committal as aforesaid, the court shall at his expense empanel a jury to try the fact; and if the death is proved the defendant shall be discharged.

Proceedings when plaintiff's body is produced by defendant, after return of secretion, &c.  
1837, 221, § 13.

SECT. 54. If, at any time after such return of secretion and conveying away, the defendant produces the body of the plaintiff in the court to which the writ of personal replevin was returned, or in which the suit is pending, the court shall deliver the plaintiff from restraint, upon his giving bond agreeably to the condition of the writ; and for want of such bond the plaintiff shall be committed to abide the judgment on the replevin; and in either case the suit shall be proceeded in as if the plaintiff had been delivered on the writ of personal replevin.

Either party may appeal to S. J. C.  
1837, 222, § 14.  
1840, 87, §§ 4, 5.

SECT. 55. Either party may appeal from any judgment of the court founded upon matter of law apparent upon the record, to the supreme judicial court, as in civil actions; and upon such appeal the whole case shall be carried up, and be disposed of as it ought to have been if there had been no appeal.

Writ of personal replevin may be sued out, &c., in behalf of plaintiff, without express authority.  
1837, 221, § 15.

SECT. 56. The writ may be sued out by any person for and in behalf of the plaintiff, and may be prosecuted to final judgment without any express power for that purpose; but the person so appearing shall, when required during the pendency of the suit, give security in such manner as the court directs for the payment of all damages and costs awarded against the plaintiff.

Description of parties, if names are unknown.  
1837, 221, § 16.

SECT. 57. If the name of the defendant or person to be delivered is unknown or uncertain, he may be described and proceeded with in the writ of personal replevin or any process under the same, as is prescribed in relation to the writ of *habeas corpus* by sections eight and nine.

#### PERSONAL LIBERTY.

Governor to appoint commissioners in each county to defend fugitives. Attorneys may act as counsel.  
1855, 489, § 17.  
See § 66.

SECT. 58. The governor, by and with the advice and consent of the council, shall appoint in every county one or more commissioners learned in the law, who shall in their respective counties, when any person is arrested or seized, or in danger of being arrested or seized, as a fugitive from service or labor, on being informed thereof, diligently and faithfully use all lawful means to protect and defend such alleged fugitive, and secure to him a fair and impartial trial by jury, and the benefits of the provisions of this chapter; and any attorney whose services are desired by the alleged fugitive may also act as counsel.

Commissioners to be paid by commonwealth.  
1855, 489, § 18.  
See § 66.

SECT. 59. The commissioners shall defray all expenses of witnesses, clerks' fees, and officers' fees, and other expenses incurred in the protection and defence of any person so seized or arrested; and the same, together with the reasonable charges of the commissioners for their



services as attorneys and counsel, shall be reimbursed by the commonwealth.

SECT. 60. No person while holding any office of honor, trust, or emolument, under the laws of this state, shall, in any capacity, take cognizance of any case, issue any warrant or other process, or grant any certificate, under or by virtue of an act of congress approved the twelfth day of February in the year one thousand seven hundred and ninety-three, entitled "An Act respecting fugitives from justice and persons escaping from the service of their masters," or under or by virtue of an act of congress, approved the eighteenth day of September in the year one thousand eight hundred and fifty, entitled "An Act to amend, and supplementary to, 'An Act respecting fugitives from justice and persons escaping from the service of their masters,'" or shall, in any capacity, serve such warrant or other process. Any justice of the peace who offends against the provisions of this section, by directly or indirectly acting in such cases, shall forfeit a sum not exceeding one thousand dollars, or be imprisoned in jail not exceeding one year for each offence.

Persons holding office under this state not to issue warrants to arrest fugitives, &c. 1843, 69, §§ 1, 3. 1855, 489, §§ 1, 9. See § 66.

SECT. 61. No jail, prison, or other place of confinement, belonging to or used by the state or any county therein, shall be used for the detention or imprisonment of any person accused or convicted of an offence created by either of the acts of congress mentioned in the preceding section, or accused or convicted of obstructing or resisting any process, warrant, or order, issued under either of said acts, or of rescuing, or attempting to rescue, any person arrested or detained under any of the provisions of either of said acts, nor for the imprisonment of a person arrested on mesne process or execution in a suit for damages or penalties accruing, or claimed to accrue, in consequence of aid rendered to any fugitive escaping from service or labor.

State jails not to be used for detention of persons claimed as fugitives, &c. 1843, 69. 1855, 489, § 19. See § 66.

SECT. 62. Whoever removes from the limits of this state, or assists in removing therefrom, or comes into the state with the intention of removing or assisting in the removing therefrom, or procures or assists in procuring to be so removed, any person being in the peace thereof, who is not "held to service or labor" by the "party" making "claim," or who has not "escaped" from the "party" making "claim," or whose "service or labor" is not "due" to the "party" making "claim," within the meaning of those words in the constitution of the United States, on the pretence that such person is so held or has so escaped, or that his "service or labor" is so "due," or with the intent to subject him to such "service or labor," shall be punished by fine not less than one thousand, nor exceeding five thousand, dollars, and by imprisonment in the state prison not less than one, nor exceeding five, years. And any person sustaining wrong or injury by any proceeding punishable as aforesaid, may also maintain an action and recover damages therefor.

Punishment and damages for removing, &c., or coming here with intention to remove, persons not held to service or labor. 1855, 489, §§ 7, 8. See § 66.

SECT. 63. Any sheriff, deputy-sheriff, jailer, coroner, constable, or other officer, of this state, or of the police of any city or town, or any district, county, city, or town, officer, or any officer or other member of the volunteer militia of this state, who hereafter arrests, imprisons, detains, or returns, or aids in arresting, imprisoning, detaining, or returning any person for the reason that he is claimed or adjudged to be a fugitive from service or labor, shall be punished by fine not less than one thousand, and not exceeding two thousand, dollars, and by imprisonment in the state prison not less than one, nor exceeding two, years.

1861 Ch. 91. Penalty on sheriffs, &c., arresting fugitives from labor. 1843, 69, §§ 2, 3. 1855, 489, §§ 1, 15. See § 66.

SECT. 64. The volunteer militia shall not act in any manner in the seizure, detention, or rendition, of a person for the reason that he is claimed or adjudged to be a fugitive from service or labor. Any member thereof who offends against the provisions of this section shall be punished by fine not less than one thousand, and not exceeding two thousand, dollars, and by imprisonment in the state prison for not less than one, nor more than two, years.

on members of militia for acting in seizure of fugitives from service. 1855, 489, § 16. See § 66. See Ch. 164, § 5.



Penalties not to apply to acts of military obedience, &c. 1858, 175, § 2. Preceding sections not to apply to fugitives from justice. 1855, 439, § 21.

United States judicial officers, &c., not to hold office under laws of this state, except, &c. Power of justice of the peace when U. S. commissioner. 1858, 175, § 1.

SECT. 65. The penalties prescribed by the two preceding sections shall not apply to any act of military obedience and subordination performed by an officer or private of the militia.

SECT. 66. Nothing in the eight preceding sections, nor in sections nineteen, twenty, and twenty-one, shall be construed to apply to so much of the act of congress of the twelfth day of February in the year one thousand seven hundred and ninety-three, as relates to fugitives from justice.

SECT. 67. No person holding a judicial office under the laws of the United States, or the office of commissioner of the circuit court of the United States, shall hold any judicial office under the constitution and laws of this state, except that of justice of the peace. No justice of the peace, while holding the office of a commissioner of the United States circuit court, shall have authority to grant any warrant, or to issue any process, civil or criminal, other than summonses to witnesses, or hear and try any cause, civil or criminal, under the laws of this state.

CHAPTER 145.

OF AUDITA QUERELA, CERTIORARI, MANDAMUS, AND QUO WARRANTO.

AUDITA QUERELA.	MANDAMUS.
<p>SECTION</p> <ol style="list-style-type: none"> <li>1. <i>Audita querela</i>, how sued out, &amp;c.</li> <li>2. to what court returnable.</li> <li>3. Proceedings.</li> <li>4. Judgment.</li> <li>5. when for plaintiff, shall bar new action.</li> <li>6. Plaintiff, how discharged from prison.</li> <li>7. after surrender, to be held, &amp;c.</li> </ol> <p style="text-align: center;">CERTIORARI.</p> <ol style="list-style-type: none"> <li>8. Writs of <i>certiorari</i> to issue from S. J. C.</li> <li>9. Proceedings of other tribunals quashed or affirmed, &amp;c.</li> <li>10. Court may allow costs.</li> <li>11. Limitation of time within which writ may issue.</li> <li>12. Court may issue injunction after writs of <i>audita querela</i>, and <i>certiorari</i>, &amp;c.</li> </ol>	<p>SECTION</p> <ol style="list-style-type: none"> <li>13. Writ of <i>mandamus</i>, return, proceedings.</li> <li>14. Court may make rules before and after first writ, &amp;c. Admittance of third party.</li> <li>15. Proceedings not to abate on death, &amp;c., of third party.</li> </ol> <p style="text-align: center;">QUO WARRANTO.</p> <ol style="list-style-type: none"> <li>16. Application for <i>quo warranto</i>.</li> <li>17. when made and heard.</li> <li>18. to be heard summarily.</li> <li>19. where to be filed. Notice, &amp;c.</li> <li>20. Court may issue injunction.</li> <li>21. Attorney-general may appear, &amp;c.</li> <li>22. Judgment for complainant when attorney-general does not appear.</li> <li>23. for defendant. Costs.</li> <li>24. Other duties of attorney-general, and rights of others not affected.</li> </ol>

AUDITA QUERELA.

*Audita querela*, how sued out, &c. 1780, 47. R. S. 112, § 1. 5 Met. 228. 13 Gray, 1.

to what court returnable. R. S. 112, § 2. 1859, 196.

Proceedings. R. S. 112, §§ 3, 6, 1840, 87, §§ 4, 5. Judgment. R. S. 112, § 4. 4 Mass. 485. 10 Mass. 101. 12 Mass. 270. 14 Mass. 443.

SECTION 1. The writ of *audita querela* may be sued out and served like an original writ of attachment or summons, and the forms of process shall be substantially the same as heretofore established and used in this state.

SECT. 2. When the writ is brought to prevent, set aside, or annul, any proceedings upon a judgment or execution, it shall be sued out of and returnable to the court in which the judgment was rendered. In other cases it may be brought in the county in which any personal action might be brought between the same parties, and shall be sued out of and returnable to the superior court.

SECT. 3. The proceedings in relation to pleas, answer, appeal, and other matters, shall be the same as in other civil actions, so far as they are applicable.

SECT. 4. The court shall hear and determine the cause upon any issue of law or fact, or upon the nonsuit or default of either party, and shall render judgment as law and justice shall require.

SECT. 5. When the writ is brought to set aside or annul any proceedings under an execution, the plaintiff, if he prevails, shall recover recompense for the damages suffered by said proceedings, and the judgment on the *audita querela* shall be a bar to any other action thereafter brought for the same damages.

Judgment, when for plaintiff, shall bar new action.  
R. S. 112, § 5.

SECT. 6. If the plaintiff is imprisoned on the execution or other process complained of, the court in which the suit is pending may enlarge him upon his giving bond to the defendant in such sum as the court shall order, with two or more sureties having sufficient within the county and approved by the court, conditioned that if final judgment on the *audita querela* is rendered for the defendant, the plaintiff shall within thirty days thereafter surrender himself to the jailer or other officer by whom he was imprisoned, to be detained in custody under the former execution or process, or shall within that time pay the sum due on the former execution or process, together with such costs as may be recovered by the defendant.

Plaintiff, how discharged from prison.  
R. S. 112, §§ 7, 8.

SECT. 7. If the plaintiff thus surrenders himself, he shall be in custody under the execution or other process on which he was imprisoned, in like manner as if the writ of *audita querela* had not been brought.

after surrender, to be held, &c.  
R. S. 112, § 9.  
17 Mass. 153.

CERTIORARI.

SECT. 8. Writs of *certiorari* to correct errors in proceedings that are not according to the course of the common law, shall be issued from and returnable to the supreme judicial court according to the practice heretofore established, and subject to such further regulations as shall be made from time to time by the general rules of the court.

Writs of *certiorari* to issue from S. J. C.  
R. S. 112, § 21.  
8 Cush. 529.

SECT. 9. When the proceedings of any tribunal are brought up by a writ of *certiorari*, the court may quash or affirm such proceedings, or enter such judgment as the court below should have rendered, or make such order, judgment, or decree, in the premises, as law and justice require.

Proceedings of other tribunals quashed or affirmed, &c.  
1858, 109.

SECT. 10. Upon application for a *certiorari*, and also on the final adjudication when a *certiorari* is granted, the court may, in its discretion, award costs against any party who appears to maintain or object to the proceeding in question.

Court may allow costs.  
R. S. 112, § 22.  
4 Mass. 565.  
11 Mass. 465.

SECT. 11. No writ of *certiorari* shall be issued, unless application is made therefor within six years next after the proceeding complained of.

Limitation.  
R. S. 112, § 23.

SECT. 12. At any time after the issuing of a writ of *audita querela* or *certiorari*, or pending an application for a *certiorari*, the court may issue any writ of injunction which the nature of the case and justice and equity in their judgment require.

Court may issue injunction, &c.

MANDAMUS.

SECT. 13. When a writ of *mandamus* issues, the person required to make return thereto shall make his return to the first writ, and the person suing the writ may by an answer traverse any material facts contained in such return, or demur thereto. If the party suing the writ maintains the issue on his part, his damages shall be assessed, and a judgment rendered, that he recover the same with costs, and that a peremptory writ of *mandamus* be granted; otherwise the party making the return shall recover his costs. No action shall be maintained for a false return to a writ of *mandamus*.

Writ of *mandamus*; return; proceedings.  
1852, 312, §§ 38, 39.  
6 Mass. 464.

SECT. 14. The court may make rules, not only on a petition for the writ, but upon and after the issuing of the first writ, calling upon any person other than the party to whom the writ is prayed to be or has been directed, having or claiming any right or interest in the subject matter, to show cause against the issuing of the writ. If such person

Court may make rules before and after first writ, &c. Admittance of third party.  
1852, 312, § 40.  
20 Pick. 486.

appears he shall be heard in such manner as the court may direct, and in proper cases may be allowed to frame and sign the return to the first writ, and to stand as the real party in the proceedings.

Proceedings not to abate on death, &c., of third party. 1852, 312, § 41.

SECT. 15. If a third person is admitted as is provided in the preceding section, the proceedings shall not abate or be discontinued by the death, resignation, or removal from office by lapse of time, or otherwise, of the person to whom the writ was directed, and any peremptory writ shall be directed to his successor.

#### QUO WARRANTO.

Application for *quo warranto*. 1852, 312, § 42. 9 Cush. 596. 1 Gray, 370. 3 Gray, 116.

SECT. 16. Any person whose private right or interest has been injured, or is put in hazard by the exercise by any private corporation, or persons claiming to be a private corporation, of a franchise or privilege not conferred by law, whether such person is a member of such corporation or not, may apply to the supreme judicial court for leave to file an information in the nature of a *quo warranto*.

when made and heard. 1852, 312, § 43. to be heard summarily. 1852, 312, § 44.

SECT. 17. The application may be made and heard at a law or jury term in any county where the court is in session.

SECT. 18. The court shall take order for a summary hearing of the parties, and if there appears probable cause to believe that the party complained of has exercised a franchise or privilege not conferred by law, and that thereby the private right or interest of the complainant has been injured, or is put in hazard, leave shall be granted to file the information.

where to be filed. Notice, &c. 1852, 312, §§ 45, 49.

SECT. 19. The information shall be filed in the county where the defendant has its principal place of business. A copy of the information, with an order of notice returnable and to be served when and as the court may direct, shall be served on the defendant and on the attorney-general.

Court may issue injunction. 1852, 312, § 46.

SECT. 20. The court, when leave is given to file such information, or at any time before final judgment, may issue a writ of injunction restraining the defendant, and its managers, servants, and agents, from exercising the franchise or privilege in question, until the further order of the court.

Attorney-general may appear, &c. 1852, 312, § 49.

SECT. 21. The attorney-general, when he has good reason to believe there has been a usurpation of a franchise or privilege not conferred by law, may intervene and demand a judgment of fine and forfeiture. In such case he shall have the control of all future proceedings, and the court shall enter such judgment as the principles of the common law may require, but the complainant shall no longer be responsible for costs.

Judgment for complainant when attorney-general does not appear. 1852, 312, § 47.

SECT. 22. If the attorney-general has not intervened, and it is determined that the defendant has exercised a franchise or privilege not conferred by law, no judgment of forfeiture shall be entered; but the judgment shall be, that the corporation, or the persons claiming to be a corporation, be perpetually excluded from such franchise or privilege, and that the directors, managers, or agents, by whom the usurpation was made, pay the costs, to be recovered by the complainant.

for defendant. Costs. 1852, 312, § 48.

SECT. 23. If it is adjudged that the defendant has not exercised any franchise or privilege not conferred by law, the defendant shall recover against the complainant the same costs as are allowed in actions at law.

Other duties of attorney-general, and rights of others not affected. 1852, 312, § 50. 5 Mass. 230. 3 Gray, 124.

SECT. 24. Nothing herein contained shall affect the duty of the attorney-general to proceed *ex officio* in all cases in which he might have heretofore so proceeded by law, nor deprive any person of the right to file an information respecting the election or admission of an officer or member of a corporation.



CHAPTER 146.

OF WRITS OF ERROR AND REVIEW.

WRITS OF ERROR.

SECTION

1. Writs of error to issue from S. J. C.
2. Judgments of superior court may be revised on writ of error except, &c.
3. Judgments not to be reversed for certain defects, &c.
4. nor for mistake in venue.
5. nor unless writ is brought within six years after judgment.
6. or six years after new suit on judgment.
7. Bond required for stay of execution.
8. Sum and sureties, how determined.
9. Proceedings when bond is filed.
10. What costs for party prevailing.
11. Writ of error in criminal cases in superior court.
12. Writs may be brought at any time, and entered in any county, &c.
13. Writs of error in capital cases.
- 14, 15. in other criminal cases.
16. On reversal for error in sentence, court may render judgment anew, &c.
17. Costs when defendant discharged.
18. Proceedings upon writs of error.

WRITS OF REVIEW.

19. Review of civil actions.

SECTION

20. Writ of review allowed as of right to absent defendant, &c.
21. may be granted on petition in certain cases.
22. Where petition may be filed, and trial had. If not granted, costs.
23. Trial to be as court orders.
24. Superior court may grant reviews in certain cases, &c.
25. Writ of review, how sued out.
26. form of.
27. Plaintiff to produce copies.
28. Writ, how to be served.
29. Defendant's property may be attached thereon.
30. Cause to be tried on former issue, if any.
31. otherwise, upon pleadings on review. Evidenece.
32. Judgment.
33. Costs.
34. Judgment, when for reduced or greater sum.
35. Case of replevin and of set-off.
36. One of two or more defendants may review.
37. Writs, &c., when to be indorsed.
38. Defendants petitioning for a stay of execution, to give security, &c.

WRITS OF ERROR.

SECTION 1. Writs of error in civil and criminal cases may issue of course out of the supreme judicial court, in vacation as well as in term time, and shall be returnable to the same court.

Writs of error to issue from S. J. C. 7 Gray, 378. R. S. 112, § 10.

SECT. 2. Questions of law, (except upon pleas in abatement,) and final judgments in civil actions in the superior court, may be reëxamined upon a writ of error, and reversed or affirmed, in the supreme judicial court held for the same county, for any error in law or in fact, except as hereinafter provided. When the judgment is reversed, the court shall render such judgment as the superior court should have rendered.

Judgments of superior court may be revised on writ of error except, &c. R. S. 82, § 20. 1840, 87, § 4. 1859, 196. 7 Met. 590. 10 Met. 172. 5 Cush. 611.

SECT. 3. A judgment in a civil action shall not be reversed for any defect or imperfection in matter of form which might by law have been amended; nor because it is not in conformity with the allegations of the parties, if it is in conformity with the verdict; nor shall any error in law in a civil action in which the defendant appeared and a verdict was rendered, except such as occurs after verdict, be assigned in a writ of error. But nothing herein contained shall prevent either party from assigning any error affecting the jurisdiction of the court.

Judgments not to be reversed for certain defects, &c. R. S. 100, § 24. 1853, 312, § 77.

SECT. 4. Judgment shall not be arrested or reversed on a writ of error in a civil action, by reason of any mistake respecting the venue of the action, whether it is local on account of its subject matter or any or all of its parties.

nor for mistake in venue. 1852, 312, § 78.

SECT. 5. Judgment in a civil case shall not be reversed or avoided for any error or defect, unless the writ of error is sued out within six years after the entering of the judgment, except as provided in the following section.

nor unless writ is brought within six years after judgment. R. S. 112, § 19.

SECT. 6. If an action of contract or writ of *scire facias* is brought on a judgment, a writ of error to reverse the judgment may be sued

or six years after new suit on judgment.

R. S. 112, § 20.  
1852, 312.

Bond required for stay of execution.

R. S. 112, § 11.  
1 Mass. 156.

Sum and sureties, how determined.

R. S. 112, § 12.

Proceedings, when bond is filed.

R. S. 112, § 13.

What costs for party prevailing.

R. S. 112, § 14.  
1 Mass. 81, 208,  
342, 411, 443.  
4 Mass. 436.  
6 Mass. 4.

Writ of error in criminal cases in superior court.

R. S. 82, § 31.  
1840, 87, § 4.  
1842, 54.

Writs may be brought at any time, and entered in any county, &c.

1842, 54, §§ 1, 2.  
5 Met. 334.  
1 Cush. 306.

Writs of error in capital cases.

R. S. 112, § 16.  
5 Cush. 386.

in other criminal cases.

R. S. 112, § 17.

same subject.

R. S. 112, § 18.

On reversal for error in sentence, court may render judgment anew, &c. 1851, 87.

9 Cush. 279.

Costs when defendant is discharged.

1842, 54, § 3.  
1 Cush. 306.

Proceedings upon writs of error.

R. S. 112, § 15.  
8 Mass. 383.  
16 Mass. 384.  
5 Cush. 386.

out at any time within six years after the bringing of such action or writ.

SECT. 7. A writ of error shall not operate to stay or supersede the execution in a civil action, unless the plaintiff in error or some person in his behalf gives bond to the defendant, with one or more sufficient sureties, conditioned that the plaintiff shall prosecute his suit to effect, and pay and satisfy such judgment as may be rendered thereon.

SECT. 8. The sufficiency of the sureties and the amount of the bond shall be determined by any justice of the supreme judicial court or the clerk from whose office the writ is issued, according to such general rules as the court may from time to time establish.

SECT. 9. Such bond shall be filed in the clerk's office for the use of the defendant, and no execution shall be thereafter issued upon the judgment during the pendency of the writ of error. If execution has been already issued, the clerk shall make and sign a certificate of the issuing of the writ of error and the filing of the bond, and after notice of such certificate to the officer holding the execution, all further proceedings thereon shall be stayed.

SECT. 10. The party prevailing on a writ of error in a civil action shall be entitled to his costs against the adverse party, and if the judgment is affirmed, the court shall adjudge to the defendant in error damages for his delay, not less than at the rate of six per cent. and not exceeding twelve per cent. a year, on the amount recovered by the former judgment; and may in their discretion award to the defendant double costs.

SECT. 11. Questions of law (except upon pleas in abatement) and final judgments in all criminal cases in the superior court may be reëxamined and reversed or affirmed upon a writ of error in the supreme judicial court, for any error in law or in fact.

SECT. 12. Writs of error upon judgments in criminal cases may be brought at any time after judgment is rendered, and may be entered in any county. When the writ is returned, the court shall without delay proceed to examine the case; but the examination may be adjourned from time to time as circumstances may require.

SECT. 13. A writ of error upon a judgment for a capital offence shall not issue, unless allowed by one of the justices of the supreme judicial court after notice given to the attorney-general or other attorney for the commonwealth.

SECT. 14. Writs of error upon judgments in all other criminal cases shall issue of course, but they shall not stay or delay the execution of the judgment or sentence, unless they are allowed by one of the justices of the supreme judicial court, with an express order thereon for a stay of proceedings on the judgment or sentence.

SECT. 15. When a stay of proceedings is ordered as provided in the preceding section, the judge may at the same time make such order as the case requires, for the custody of the plaintiff in error, or for letting him to bail; or the party may upon a writ of *habeas corpus* procure his enlargement upon giving bail, if entitled thereto.

SECT. 16. When a final judgment in a criminal case is reversed by the supreme judicial court on account of error in the sentence, the court may render such judgment therein as should have been rendered, or may remand the case for that purpose to the court before which the conviction was had.

SECT. 17. If the defendant in a criminal case is discharged on a writ of error, the legal costs shall be borne by the commonwealth.

SECT. 18. The proceedings upon writs of error, as to the assignment of errors, the *scire facias*, pleadings, judgment, and all other matters not herein provided for, shall be according to the course of the common law, as modified by the practice and usage in this state and general rules made by the supreme judicial court.

WRITS OF REVIEW.

SECT. 19. Final judgments in civil actions may be reëxamined and tried anew upon writs of review, as provided in this chapter, and not otherwise.

Review of civil actions.  
R. S. 99, § 1.  
19 Pick. 64.

SECT. 20. When judgment is rendered as provided in chapter one hundred and twenty-six, upon the default of a defendant upon whom service has not been made by reason of his being out of the state or his residence being unknown, he may at any time within one year after the judgment as of right, without any petition therefor, sue out of the court in which the judgment was rendered a writ of review.

allowed as of right to absent defendant, &c.  
R. S. 92, § 4.  
R. S. 99, § 17.

SECT. 21. If judgment is rendered, either by the supreme judicial court, or superior court, in a civil action in any manner, the supreme judicial court, except when a review is prosecuted as of right, may on petition grant a review on such terms as it deems reasonable: *provided*, that if the judgment complained of was rendered in the absence of the petitioner, and without his knowledge, the petition for review shall be filed within one year after he first had notice of the judgment, otherwise within one year after the judgment was rendered.

may be granted on petition in certain cases.  
R. S. 92, § 5.  
R. S. 99, §§ 18, 19, 20.  
1859, 196.  
1 Met. 288.  
3 Gray, 420, 509.

SECT. 22. The petition may be presented to the court when sitting in any county, or in vacation to any justice thereof, and the order of notice issued thereon may be made returnable in such county as the court shall in the same order direct; but the review, if granted, shall be had in the county in which the former judgment was rendered, or in the county in which the original action would have been tried if it had been carried to the supreme judicial court by appeal or otherwise. If the review is not granted, the court may award to the respondent his reasonable costs.

Where petition may be filed, and trial had, if not granted, costs.  
R. S. 99, §§ 21, 24.  
4 Met. 376.

SECT. 23. Reviews granted by the supreme judicial court shall be tried as the court shall order, either in that or the superior court.

Trial to be as court orders.  
R. S. 99, § 25.

SECT. 24. The superior court may concurrently with the supreme judicial court grant reviews of its own judgments in all cases in which a review can be granted according to the provisions of this chapter; and may grant reviews of judgments rendered before a justice of the peace or police court, in any case in which a review might be granted if the judgment had been rendered in the superior court. The proceedings on the petitions for such reviews, and upon the trial thereof, if granted, shall be conducted in the same manner as is prescribed in like cases in the supreme judicial court.

Superior court may grant reviews in certain cases, &c.  
R. S. 99, §§ 26, 27, 28.  
1859, 196.  
2 Cush. 1.

SECT. 25. The writ shall be sued out of the clerk's office of the court in which the action is to be tried, and shall be in the form heretofore used, except as is hereinafter provided.

Writ, how sued out.  
R. S. 99, § 2.

SECT. 26. It shall not be necessary to recite at length the declaration and other proceedings in the original suit, but the writ of review may be substantially as follows, viz:—

form of.  
R. S. 99, § 3.  
1852, 312.  
1855, 449.

“summon A. to answer to B. in the review of an action of contract (or tort) brought by said A. against said B.” “in which action said A. by the consideration of the justices of our court, begun and held at C. within and for our said county of M. on the — day of —, recovered judgment against said B. for the sum of dollars debt,” or “damages, and dollars costs, which judgment said B. says is wrong and erroneous;”

or the former judgment may be briefly described in any manner deemed sufficiently certain according to such rules as the courts prescribe.

SECT. 27. The plaintiff in review shall produce and file in court certified copies of the writ, judgment, and all proceedings in the former suit, and the originals or copies of all depositions and other papers used and filed therein.

Plaintiff to produce copies.  
R. S. 99, § 4.

SECT. 28. The writ shall be served in the same manner as an

Writ of review.



how to be served.  
R. S. 99, § 5.

original writ, except that when the defendant is not an inhabitant of the state, or not found therein, the writ may be served on the person who appeared as his attorney in the original suit, and the court may continue the cause, to enable the absent party to appear and answer.

Defendant's property may be attached thereon.  
R. S. 99, §§ 6, 12.

SECT. 29. If the writ is sued out by the original plaintiff, he may cause the defendant's goods and estate to be attached as they might have been in the original action, and for this purpose the writ of review may be so framed as to require an attachment in the common form and that the defendant be summoned. No attachment made, or bail taken, in the original suit shall be liable to satisfy the judgment rendered on the review.

Cause to be tried on former issue, if any.  
R. S. 99, § 7.  
1 Mass. 242.  
5 Mass. 488.  
3 Gray, 420, 509.

SECT. 30. If an issue of fact was joined in the original suit, the cause shall be tried on the review upon the same issue, except that the court may allow amendments of the original declaration and other pleadings, as might have been done in the original suit; and if a different issue is joined in consequence of such amendment, the cause shall be tried upon such new issue.

otherwise, upon pleadings on review.  
Evidence.  
R. S. 99, §§ 8, 9.  
8 Cush. 209.

SECT. 31. If the former judgment was rendered without an issue, the parties shall plead or answer upon the review in like manner as they might have done in the original suit, and the cause shall be tried upon any issue of fact or law joined upon such pleadings, or answer; and each party may produce any legal evidence, whether produced in the former suit or not.

Judgment.  
R. S. 99, § 10.

SECT. 32. Judgment shall be given in like manner as if the parties had brought their several writs of review.

Costs.  
R. S. 99, § 11.  
4 Mass. 614.

SECT. 33. The prevailing party shall recover costs, unless the court in granting the review imposed on the petitioner terms respecting cost.

Judgment, when for reduced or greater sum.  
R. S. 99, §§ 13, 14.  
19 Pick. 66.  
11 Met. 266.

SECT. 34. If the sum recovered by the plaintiff in the original suit for debt or damages is reduced on the review, the original defendant shall have judgment and execution for the difference with costs; or, if the former judgment is not satisfied, one judgment may be set off against the other, and an execution issue for the balance. If the original plaintiff recovers a greater sum for debt or damages than was awarded to him in the original suit, he shall have judgment and execution for the excess.

Case of replevin and of set-off.  
R. S. 99, § 15.

SECT. 35. In actions of replevin and in actions in which a set-off is filed, the original defendant shall be considered, as to every thing contained in this chapter, like a plaintiff in other actions, so far as it respects any damages awarded to him, either in the original suit or upon the review.

One of two or more defendants may review.  
R. S. 99, § 16.

SECT. 36. If judgment is recovered against several defendants in the original action, any one or more of them may review in like manner as if he or they had been the only defendants; and if the sum recovered in the original suit for debt or damages is increased or reduced, the court shall take such order respecting the further proceedings as may be necessary to carry into effect the two judgments, according to the rights of all parties.

Writs, &c., when to be indorsed.  
R. S. 99, § 20.

SECT. 37. Writs and petitions for reviews shall be indorsed in the same manner as original writs; and all regulations concerning the indorsement of original writs shall apply to writs and petitions for review.

Defendants petitioning for a stay of execution, to give security, &c.  
R. S. 99, §§ 12, 22, 23.  
1856, 136.  
8 Cush. 302, 428.

SECT. 38. After the rendition of judgment in a civil action, if the execution has not been satisfied, the court or justice, upon the petition of the defendant, may order a stay or supersedeas of it, if the petitioner gives to the adverse party security to the satisfaction of the court or justice, with condition that he will forthwith prosecute a review to final judgment and satisfy such execution as may be issued against him on the review. The execution shall not otherwise be stayed or superseded by the writ of review.

CHAPTER 147.

OF REFERENCE TO ARBITRATION BY AGREEMENT BEFORE A JUSTICE OF THE PEACE.

SECTION

- 1. Controversies may be submitted.
- 2. Form of submission.
- 3. Submission of all demands, how construed.
- 4. varied according to agreement.
- 5. Time within which award shall be made.
- 6. Neither party to revoke submission.
- 7. Award by majority, when valid.

SECTION

- 8. Award to be delivered to the court.
- 9. at what term to be returned.
- 10. Jurisdiction of the court. Judgment.
- 11. Power of arbitrators as to costs.
- 12. No appeal allowed. Writ of error may be brought.
- 13. Fees of the justice, &c.

SECTION 1. All controversies which might be the subject of a personal action at law or suit in equity, may be submitted to the decision of one or more arbitrators, in the manner provided in this chapter.

Controversies may be submitted. R. S. 114, § 1. 5 Greenl. 38. 8 Mass. 1. 5 Cush. 611. 2 Gray, 407.

SECT. 2. The parties shall appear in person, or by their lawful agents or attorneys, before a justice of the peace, and there sign and acknowledge an agreement in substance as follows:—

Know all men, that \_\_\_\_\_, of \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, have agreed to submit the demand, a statement whereof is hereto annexed, (and all other demands between them, as the case may be,) to the determination of \_\_\_\_\_, and \_\_\_\_\_, the award of whom, or the greater part of whom, being made and reported within one year from this day to the superior court for the county of \_\_\_\_\_, the judgment thereon shall be final; and if either of the parties neglects to appear before the arbitrators, after due notice given them of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence. Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

Form of submission. R. S. 114, § 2. 1859, 196. 5 Mass. 489, 524. 6 Cush. 108. 10 Cush. 114.

The justice shall subjoin to the agreement his certificate, in substance as follows:—

\_\_\_\_\_, ss. \_\_\_\_\_, \_\_\_\_\_. Then the above named \_\_\_\_\_, and \_\_\_\_\_, personally appeared (or, the above named \_\_\_\_\_, personally, and said \_\_\_\_\_, by said \_\_\_\_\_, his attorney, appeared, as the case may be,) and acknowledged the above instrument by them signed to be their free act. Before me, \_\_\_\_\_, Justice of the Peace.

SECT. 3. An agreement to submit all demands shall include only such as might be the subject of a personal action at law or of a suit in equity.

Submission of all demands, how construed. R. S. 114, § 4. 5 Greenl. 38. 8 Mass. 1. 5 Cush. 611.

SECT. 4. If a specific demand is submitted to the exclusion of others, it shall be set forth in the statement annexed to the agreement; otherwise it shall not be necessary to annex any statement of a demand, and the submission may be of all demands between the parties, or of all demands which either has against the other. The submission may be varied in this respect in any other manner, according to the agreement of the parties.

varied according to agreement. R. S. 114, § 3.

SECT. 5. The time within which the award shall be made and reported may be varied according to the agreement of the parties, but no award made after that time shall have any legal effect or operation, unless made upon a recommitment by the court to which it is reported.

Time within which award shall be made. R. S. 114, § 6.

SECT. 6. Neither party shall have power to revoke the submission without the consent of the other; and if either neglects to appear after due notice, the arbitrators may proceed to hear and determine the cause.

Neither party to revoke submission. R. S. 114, § 5.

SECT. 7. All the arbitrators shall meet and hear the parties, but an award by a majority of them shall be valid, unless the concurrence of the whole is expressly required in the submission.

Award by majority, when valid. R. S. 114, § 11. 6 Mass. 496. 14 Mass. 148.

SECT. 8. The award shall be delivered by one of the arbitrators to the court designated in the agreement, or shall be enclosed and sealed

to be delivered to the court.

R. S. 114, § 7. by them, and transmitted to the court, and shall remain sealed until opened by the clerk.

**Award, at what term to be returned.**  
 R. S. 114, § 10.  
 5 Mass. 489, 524.  
 14 Mass. 148.  
 7 Met. 316.

SECT. 9. It may be returned at any term or session of the court held within the time limited in the submission, and the parties shall attend without any express notice for that purpose; but the court may require actual notice to be given to either party, before it proceeds to act upon the award.

**Jurisdiction of the court. Judgment.**  
 R. S. 114, §§ 8, 9.  
 Cush. 389.

SECT. 10. The court shall have cognizance of it in the same manner, and may proceed thereon, as if it had been made by referees appointed by a rule of court; and may accept or reject it, or recommit it to the same arbitrators for a rehearing. When accepted and confirmed by the court, judgment shall be rendered thereon as upon a like award by referees.

**Power of arbitrators as to costs.**  
 R. S. 114, § 12.  
 6 Greenl. 247.  
 2 Mass. 164.

SECT. 11. If there is no provision in the submission concerning costs and expenses, the arbitrators may make such award respecting them, as they judge reasonable, including a compensation for their own services; but the court may reduce the sum charged for compensation, if it appears unreasonable.

**Appeal and writ of error.**  
 R. S. 114, § 13.  
 1840, 87, §§ 4, 5.  
 1859, 196.  
 5 Met. 287.  
 6 Met. 280.  
 5 Cush. 611.

SECT. 12. An appeal shall be allowed from any order or judgment of the superior court, founded on matter of law apparent upon the record, on any award made under this chapter; or a party aggrieved may bring a writ of error for any error in law or fact as in other cases. The supreme judicial court shall thereupon render such judgment as the court below ought to have rendered.

**Fees of the justice, &c.**  
 R. S. 114, § 14.

SECT. 13. The fees of the justice for the agreement of submission and acknowledgment shall be forty cents, and the fees in court the same as for like services with respect to an award made under a rule of court.

## CHAPTER 148.

### OF IMPROVING MEADOWS AND SWAMPS.

#### SECTION

1. Improvement of meadows, &c., by proprietors.
2. Petition to superior court, and notice thereon.
3. Commissioners may be appointed. Power and duty of.
4. may cause dams and dikes to be erected, &c.
5. may employ persons to perform the work.
6. may apportion expense among proprietors.
7. may appoint a collector thereof.
8. Penalty on collector for withholding money.
9. Compensation of commissioners and collector.
10. Return by commissioners.
11. Apportionment of expense.
12. Provision in case of mortgage.
13. Commissioners may make or open dams on land of other persons.

#### SECTION

14. Damages, how ascertained and paid.
15. Persons aggrieved may appeal.
16. Proceedings thereon.
17. Notice to persons who are not parties.
18. Appeal. Exceptions.

#### CONSTRUCTION OF ROADS, &C., TO SWAMPS, &C.

19. Towns, &c., owning swamps, &c., authorized to construct roads, &c., to.
20. Petition for improvements, to commissioners.
21. notice of.
22. proceedings on.
23. Appeal.
24. Repairs of improvements.
25. Petition may be made to selectmen, &c.
26. to be filed and recorded with decree.
27. Fees of selectmen, &c.
28. Appeal to county commissioners.

**Improvement of meadows, &c., by proprietors.**

SECTION 1. When any meadow, swamp, marsh, beach, or other low land is held by several proprietors, and it is necessary or useful to drain or flow the same, or remove obstructions in rivers or streams leading



therefrom, such improvements may be effected under the direction of commissioners in the manner herein provided.

SECT. 2. Such proprietors, or the greater part of them in interest, may apply by petition to the superior court for the county where the lands or any part of them lie, setting forth the proposed improvements and the reasons therefor; and the court shall cause notice of the petition to be given in such manner as it may judge proper, to any proprietors who have not joined in the petition, that they may appear and object thereto.

SECT. 3. If upon hearing the parties it appears that the improvements proposed will be for the general advantage of the proprietors, the court may appoint three, five, or seven suitable persons, as commissioners, who shall be sworn to the faithful discharge of their duties; shall view the premises, notify parties concerned, hear them as to the best manner of making the improvements, and prescribe the measures to be adopted for that purpose.

SECT. 4. They shall, according to the tenor of the petition and the order of court, cause dams or dikes to be erected on the premises at such places and in such manner as they shall direct; may order the land to be flowed thereby for such periods of each year as they shall deem most beneficial; and cause ditches to be opened on the premises, and obstructions in any rivers or streams leading therefrom to be removed; and they shall meet from time to time as may be necessary to cause the work to be completed according to their directions.

SECT. 5. They may employ suitable persons to erect the dams or dikes, or perform the other work, under their direction, for such reasonable wages as they may agree upon; unless the proprietors themselves do the same in such time and manner as the commissioners shall direct.

SECT. 6. They shall apportion the whole charge and expense of the improvements, and of executing the commission, among the proprietors of the lands, having regard to the quantity, quality, and situation, of each person's part thereof, and to the benefit that he will derive from the improvements; and shall assess the same upon the proprietors.

SECT. 7. They may appoint a collector of the moneys assessed, and shall give him a warrant to collect, pay over, and account for, the same, to such person as they may appoint. The collector shall have the same power and proceed in like manner in collecting the assessments, as provided for collecting town taxes.

SECT. 8. If the collector neglects for twenty days after being thereto required by the commissioners to account for and pay over the money he has collected, he shall be liable to pay to the commissioners the whole amount committed to him for collection, to be recovered by them in an action of contract; and the money so recovered, after deducting the expenses of recovery, shall be applied and accounted for by the commissioners as if it had been collected and paid over by the collector pursuant to his warrant.

SECT. 9. The collector shall be allowed such compensation for his services as may be agreed upon between him and the commissioners; and the commissioners shall be allowed such compensation for their services as may be ordered by the court.

SECT. 10. The commissioners shall, as soon as may be after the completion of the business, make a return to the court of their doings under the commission, including an account of all money assessed and collected by their order, and of the disbursement thereof.

SECT. 11. When it appears to the commissioners that part of the land is held by a tenant for life or years, they shall determine how much of the sum apportioned on that part of the premises shall be paid by such tenant, and how much by the landlord or reversioner; and shall assess the same accordingly, unless the parties concerned agree on an appor-

R. S. 115, § 1.  
22 Pick. 422.  
11 Met. 325.  
Petition to superior court, and notice thereon.  
R. S. 115, § 2.  
1859, 196.  
14 Mass. 387.  
11 Met. 325.

Commissioners may be appointed.  
Power and duty of.  
R. S. 115, §§ 3, 4.

may cause dams and dikes to be erected, &c.  
R. S. 115, § 5.

may employ persons to perform the work.  
R. S. 115, § 6.

may apportion expense among proprietors.  
R. S. 115, § 7.

may appoint a collector thereof.  
R. S. 115, § 8.  
5 Met. 360.  
4 Gray, 150.

Penalty on collector for withholding money.  
R. S. 115, § 9.  
1852, 312.

Compensation of commissioners and collector.  
R. S. 115, § 10.

Return by commissioners.  
R. S. 115, § 11.  
7 Pick. 207.

Apportionment of expense.  
R. S. 115, § 12.

tionment; and every such tenant, landlord, and reversioner, shall be considered a proprietor.

SECT. 12. If any part of the land is mortgaged, the mortgagor or mortgagee, in possession, shall be considered as the proprietor; and all sums paid by the mortgagee by order of the commissioners, shall be allowed to him as sums paid by him for improvements are by law to be allowed.

SECT. 13. When the commissioners find it necessary or expedient to reduce or raise the waters for the purpose of obtaining a view of the premises, or for the more convenient or expeditious removal of obstructions, they may open the flood-gates of any mill, or make other needful passages through or around the dam thereof, or erect a temporary dam, on the land of any person not a party to the proceedings; and may maintain such dam or passages for the water as long as may be necessary for the purposes aforesaid.

SECT. 14. All damages thus occasioned shall be estimated and determined by the commissioners, unless agreed on between them and the parties concerned; and shall be paid by the commissioners out of the money to be assessed and collected by them as before provided.

SECT. 15. If a person, whether a party to the proceedings or otherwise interested therein or affected thereby, is aggrieved by any doings of the commissioners, he may appeal to the court at any time after their appointment and before the end of the term next following that at which the return is made.

SECT. 16. The court upon such appeal may affirm, reverse, or alter, any adjudication or order of the commissioners, and make such order therein as law and justice require. All questions of fact arising upon the hearing of the appeal, shall on motion of either party be tried by a jury in such manner as the court shall direct.

SECT. 17. The commissioners before proceeding to open flood-gates or make other passages for water through or around any dam, or to erect a dam on the land of any person not a party to the proceedings, shall give him reasonable notice in writing of their intention, to enable him to appear before them and object thereto; and if he appeals from their determination, and gives notice in writing of his appeal to the commissioners or any of them, they shall suspend all proceedings upon his land until the appeal is determined: *provided*, that the appeal be entered at the court held next after the expiration of seven days from the time of claiming the same.

SECT. 18. An appeal shall be allowed from any order or judgment of the court founded on matter of law apparent on the record, in any proceedings under this chapter; and any person aggrieved by any opinion, direction, or judgment, of the court, in any matter of law, may allege exceptions thereto, which shall be reduced to writing and allowed and signed by the presiding judge, and thereupon the case shall be removed into the supreme judicial court as provided in chapters one hundred and fourteen and one hundred and fifteen.

#### CONSTRUCTION OF ROADS, &C., TO SWAMPS, &C.

SECT. 19. Any town, city, person, company, or body corporate, having the ownership of low lands, lakes, swamps, quarries, mines, or mineral deposits, that on account of adjacent lands belonging to other persons or occupied as a highway, cannot be approached, worked, drained, or used, in the ordinary manner, without crossing such lands or highway, may be authorized to establish roads, drains, ditches, tunnels, and railway, to such places, in the manner hereinafter provided.

SECT. 20. The party desiring to make such improvements shall file a petition therefor with the county commissioners within whose juris-

Provision in case of mortgage.  
R. S. 115, § 13.

Commissioners may make or open dams on land of other persons.  
R. S. 115, § 14.  
11 Met. 321.

Damages, how ascertained and paid.  
R. S. 115, § 15.  
11 Met. 325.

Persons aggrieved may appeal.  
R. S. 115, § 16.  
5 Met. 363.

Proceedings thereon.  
R. S. 115, § 17.  
5 Met. 363.

Notice to persons who are not parties.  
R. S. 115, § 18.

Appeal. Exceptions.  
R. S. 115, § 19.  
1840, 87, §§ 4, 7.  
1859, 196.  
5 Met. 363.

Towns, &c., owning swamps, &c., authorized to construct roads, &c., to.  
See § 25.

Petition for improvements,



diction the premises are situated, setting forth the names of the persons interested, if known to the petitioner, and also, in detail, the nature of the proposed improvement and the situation of the adjoining lands; which petition shall be accompanied with a bond, satisfactory to said commissioners, for the payment of expenses incurred in the prosecution of the application.

to commissioners.  
1855, 104, § 2.

SECT. 21. The commissioners at their first meeting after the filing of the petition and bond, shall give at least three weeks' public notice of the time and place of meeting to consider the petition, in some newspaper printed in the county; and if there is no such paper, in a newspaper printed in an adjacent county; they shall further give notice to the mayor of any city and the clerk of any town in which the premises are situated.

Petition for improvements, notice of.  
1855, 104, § 3.

SECT. 22. They shall meet at the time and place appointed, and after examination, inspection, and the hearing of evidence, shall determine whether the improvement prayed for is necessary, and if so, shall proceed to lay out and establish the same in such manner as shall do as little injury as practicable; and shall assess the amount of damages which in their opinion the proprietor of the adjacent lands will sustain. They shall apportion the damages equitably among all parties to be benefited, having regard to the benefits each will receive; and such award shall be deemed conclusive upon each of the parties charged with such payment, unless an appeal is taken within the period of one year.

proceedings on.  
1855, 104, § 4.

SECT. 23. Any party aggrieved by the award may appeal therefrom, and thereupon like proceedings shall be had as are provided in chapter forty-three, for persons aggrieved in the laying out of highways.

Appeal.  
1855, 104, § 6.

SECT. 24. When it is necessary to repair any improvement thus constructed, a majority of the persons benefited by it may cause such repairs to be made, and compel contributions from each person benefited, on the basis of the award.

Repairs of improvements.  
1855, 104, § 5.

SECT. 25. When the premises mentioned in section nineteen are situated entirely in one town or city, the petition may be made to the selectmen or mayor and aldermen thereof, who shall proceed thereon in all respects as above provided for county commissioners upon such petitions, except that they need not give notice to their town or city.

Petition may be made to selectmen, &c.  
1857, 292, § 1.

SECT. 26. The petition under the preceding section shall be filed in the office of the town or city clerk before proceedings are had thereon; and together with the order or award thereon shall be recorded in said office within two months after the same is made.

to be filed and recorded with decree.  
1857, 292, § 3.

SECT. 27. The selectmen or mayor and aldermen shall each receive for services upon such petitions two dollars a day, and the clerk shall receive for recording petitions and orders the same fees as for mortgages of personal property.

Fees of selectmen, &c.  
1857, 292, §§ 3, 4.

SECT. 28. A party aggrieved by any order, award, or refusal of the selectmen or mayor and aldermen herein, may complain to the county commissioners at any meeting held within one year thereafter; and the commissioners may thereupon proceed in all respects as though the petition were originally made to them.

Appeal to county commissioners.  
1857, 292, § 2.



## CHAPTER 149.

## OF THE SUPPORT AND REGULATION OF MILLS.

## ERECTION AND REGULATION OF MILLS.

## SECTION

1. Mills and dams on streams not navigable.
2. Not allowed to injury of existing mill or mill-sites.
3. Height of dam.
4. Damages recovered on complaint.
5. Substance of complaint.
6. Notice to mill owner.
7. by whom served.
8. Answer of respondent.
9. Further pleadings and trial.
10. Judgment for respondent. Costs.
11. for complainant. Jury.
12. Appeal and proceedings.
13. Warrant for jury. Jurors, how drawn, &c.
14. Proceedings.
15. Trial may be in court if parties so agree, &c.
16. Damages, how estimated.
17. Verdict for respondent.
18. for complainant.
19. Jury to establish height of dam, &c.
20. to assess annual damages, and also a sum in gross.
21. Complainant may elect to take the sum in gross.
22. If not paid, respondent to have no benefit, until, &c.
23. Complainant may take annual damages, instead, &c.
24. shall have lien therefor on mill, &c.
25. Action therefor, against whom to be brought.
26. Premises may be sold on execution.
27. Sale, how far effectual.
28. Right of redemption.
29. Existing mills and dams not affected, except, &c.
30. New trial.
31. Action at common law.
32. Costs.
33. Compensation for services at trial, &c.
34. New complaint by either party, but gross damages assessed only once in ten years.
35. who may maintain.
36. when to be brought. Tender.
37. Mill owners may tender greater compensation, &c.
38. Land owner may offer to accept less, &c.
39. Offer, by or to whom made, &c.

## SECTION

40. Effect of agreement, if signed and recorded.
41. Verdict not to bar new complaint, &c.
42. Respondent may make tender in court. Costs.
43. Judgment upon acceptance of tender. Acceptance may be for past or future damages.
44. Separate and joint owners of lands may join in complaint and have separate damages.
45. Pleas in abatement. New defendants.
46. Complaint not to abate by death of parties. Remedy for abatement or reversal of judgment.

## REGULATION OF DAMS.

47. County commissioners to view, &c., on notice.
48. may direct alterations, &c. To record result of examination. Record to be evidence.
49. Upon neglect of owner to repair, &c., commissioners to remove. Dam not to be rebuilt, except, &c.
50. If dam cannot be removed, commissioners to raise, &c.
51. Costs, &c., by whom paid.
52. Jurisdiction of S. J. C. to compel alterations, &c.

## REPAIRING AND REBUILDING MILLS.

53. Repair of mills owned by several persons.
54. Meeting of proprietors, how called.
55. Notice thereof, how served and returned.
56. Majority in interest may decide.
57. Each proprietor liable.
58. Remedy by lien on rents, or action.
59. Guardian of proprietor may act for him.
60. Apportionment between tenant and reversioner.
61. Case of a mortgagee in possession.
62. tenant in tail.
63. How suits between proprietors brought.
64. Chapter not to affect agreements, &c.

## DUTIES AND COMPENSATION OF MILLERS.

65. Millers to keep scales, &c., and weigh grain, if required, under penalty.
66. What toll allowed.

## ERECTION AND REGULATION OF MILLS.

SECTION 1. Any person may erect and maintain a water mill, and a dam to raise water for working it, upon and across any stream not navigable, upon the terms and conditions, and subject to the regulations, hereinafter expressed.

11 Met. 570. 12 Met. 149. 6 Cush. 305. 8 Cush. 115, 553. 2 Gray, 407.

SECT. 2. No such dam shall be erected to the injury of any mill lawfully existing, either above or below it, on the same stream, nor to the injury of any mill-site on the same stream, on which a mill or mill-dam has been lawfully erected and used, unless the right to maintain a mill on such last-mentioned site has been lost or defeated by abandonment or otherwise; nor shall any mill-dam be hereafter erected or raised to the injury of any such mill-site which has been occupied as such by the owner thereof: *provided*, that such owner within a reasonable time after

Mills and dams on streams not navigable.  
R. S. 116, § 1.  
5 Pick. 292.  
22 Pick. 312.  
23 Pick. 219.

Not allowed to injury of existing mill or mill-sites.  
R. S. 116, § 2.  
1841, 18, § 1.  
11 Mass. 533.  
17 Mass. 289.  
10 Pick. 357.  
22 Pick. 312.  
12 Met. 149.  
8 Cush. 117.

commencing such occupation completes and puts in operation a mill for the working of which the water of such stream shall be applied; nor shall any mill or dam be placed on the land of any person, without such grant, conveyance, or authority, from the owner, as would be necessary by the common law if no provision relating to mills had been made by statute.

SECT. 3. The height to which the water may be raised, and the length of time, or period, for which it may be kept up in each year, shall be liable to be restricted and regulated by the verdict of a jury. 7 Gray, 296.

SECT. 4. A person whose land is overflowed or otherwise injured by such dam, may obtain compensation therefor upon his complaint before the superior court for the county where the land or any part thereof lies: *provided*, that no compensation shall be awarded for damage sustained more than three years before the institution of the complaint.

12 Met. 182, 188. 4 Cush. 152, 161. 6 Cush. 170, 303. 7 Gray, 296.  
 2 Cush. 341. 5 Cush. 537. 4 Gray, 581. 13 Gray, 148.

SECT. 5. The complaint shall contain such description of the land alleged to be flowed or injured, and such statement of the damage, that the record of the case will show with sufficient certainty the matter heard and determined therein.

SECT. 6. The complaint may be filed in the court in term time, or in the clerk's office in vacation, and in either case notice thereof shall be given to the owner or occupant of the mill, by delivering to him, or leaving at his dwelling house, an attested copy of the complaint; or if he is not found within the state and has no dwelling house therein, by leaving such copy at the mill in question fourteen days at least before the complaint is to be heard; or the complainant may fourteen days at least before the sitting of the court to which his complaint is brought, cause the owner or occupant of such mill or dam to be served with an attested copy of the complaint, by delivering or leaving such copy in like manner as when the complaint is filed as aforesaid.

SECT. 7. The notice shall be served by any officer authorized to serve any other civil process between the same parties.

SECT. 8. The respondent may answer in bar, that the complainant has no estate or interest in the land alleged to be flowed or injured, or that the respondent has a right to maintain his dam for an agreed price, or without any compensation, or any other matter which may show that the complainant cannot maintain the suit; but he shall not answer that the land described is not injured by the dam.

SECT. 9. If any plea or answer is filed by the respondent, the replication and other pleadings, and the trial of the issue, whether of law or of fact, shall be conducted in like manner as in actions at the common law.

SECT. 10. If an issue is decided in favor of the respondent, or if the complainant becomes nonsuit or discontinues, the respondent shall be entitled to his costs, to be taxed as in civil actions.

SECT. 11. If the owner or occupant of the mill or dam after due notice is defaulted, or offers no legal objection, or an issue is decided in favor of the complainant, the court shall issue a warrant for a jury to hear and determine the matter of the complaint.

SECT. 12. Either party may appeal as in other civil actions, but if the judgment of the supreme judicial court is in favor of the complainant, the cause shall be remitted and the court shall proceed therein in like manner as if the judgment had been rendered in that court.

SECT. 13. The warrant shall be directed and served, and the jurors shall be drawn, summoned, and returned, in the manner provided in chapter forty-three with respect to a jury returned on the complaint of a person aggrieved by the laying out of a highway, and the jurors shall be required to attend under a like penalty.

Height of dam.  
 R. S. 116, § 3.  
 12 Met. 142, 149.  
 4 Cush. 549.  
 8 Cush. 118.  
 Damages, how recovered.  
 R. S. 116, § 4.  
 1840, 87, § 2.  
 22 Pick. 312.  
 2 Met. 507.  
 3 Met. 359.  
 4 Met. 426.  
 10 Met. 207.  
 11 Met. 570.

Substance of complaint.  
 R. S. 116, § 5.  
 9 Pick. 62.

Notice to mill owner.  
 R. S. 116, §§ 6, 7.  
 6 Cush. 171.

by whom served.  
 R. S. 116, § 7.

Answer of respondent.  
 R. S. 116, § 8.  
 4 Greenl. 322.  
 3 Mass. 184.  
 6 Mass. 398.  
 17 Mass. 76.  
 10 Met. 37.  
 4 Gray, 581.

Further pleadings and trial.  
 R. S. 116, § 9.  
 10 Met. 37.

Judgment for respondent.  
 Costs.  
 R. S. 116, § 10.

for complainant. Jury.  
 R. S. 116, § 11.  
 See § 15.

Appeal and proceedings.  
 R. S. 116, § 12.  
 1840, 87, §§ 4, 5.  
 6 Mass. 398.

Warrant for jury. Jurors, how drawn, &c.  
 R. S. 116, § 13.  
 2 Cush. 346.  
 4 Gray, 581.



Proceedings.  
R. S. 116, § 14.  
2 Cush. 346.  
4 Gray, 581.

Trial may be in  
court, &c.

Damages, how  
estimated.  
R. S. 116, § 15.  
2 Cush. 346.

Verdict for re-  
spondent.  
R. S. 116, § 16.  
10 Met. 39, 207.

for complain-  
ant.  
R. S. 116, § 17.  
4 Gray, 581.

Jury to fix  
height of dam,  
&c.  
R. S. 116, § 18.  
12 Met. 142, 149.  
7 Gray, 296.

to assess an-  
nual damages,  
and also a sum  
in gross.  
R. S. 116, § 19.  
17 Pick. 191.  
4 Met. 605.  
10 Met. 207.  
2 Gray, 407.  
7 Gray, 296.

Complainant  
may elect to  
take the sum  
in gross.  
R. S. 116, § 20.  
24 Pick. 296.  
2 Met. 507.

If not paid, re-  
spondent to  
have no benefit,  
until, &c.  
R. S. 116, § 21.  
12 Met. 149.  
4 Cush. 245.

Complainant  
may take annual  
damages, in-  
stead, &c.  
R. S. 116, § 22.  
7 Gray, 296.

shall have  
lien therefor on  
mill, &c.  
R. S. 116, § 23.  
2 Gray, 407.

SECT. 14. All the proceedings for supplying a deficiency of jurors, and all other proceedings in the case, shall be substantially the same as are provided in said chapter forty-three.

SECT. 15. If the parties so agree by writing filed in the case, the trial may be in the court before a jury as in other civil actions, and in such case, if either party requires it, the jury shall view the premises alleged to be injured, subject to such regulations and terms as the court may prescribe.

SECT. 16. The jury, in estimating the damage to the land of the complainant, shall take into consideration any damage occasioned to the other land by the dam, as well as the damage occasioned to the land overflowed; and they shall also allow by way of set-off any benefit occasioned by such dam to the complainant, in relation to his lands.

SECT. 17. If the jury find by their verdict that the complainant is not entitled to recover any damages, and it is allowed and recorded, judgment shall be rendered for the respondent.

SECT. 18. If they find that the complainant is entitled to recover damages, they shall assess the amount of damages sustained within three years next preceding the institution of the complaint, and to the time of rendering the verdict; and if the verdict is allowed and recorded, the complainant shall have judgment and execution.

SECT. 19. If it is alleged in the complaint, that the dam is raised to an unreasonable height, or that it ought not to be kept up and closed during the whole year, the jury shall decide how much, if any, the dam shall be lowered, and also whether it shall be left open any part of the year, and if any, what part, and shall state such decision as a part of their verdict.

SECT. 20. They shall also ascertain and determine, by their verdict, what sum, if any, to be paid annually to the complainant, would be a just and reasonable compensation for the damages that may be thereafter occasioned by the dam, so long as it is used in conformity with the verdict; and also what sum in gross would be a just and reasonable compensation for all damages thereafter occasioned by such use of the dam, and for the right of maintaining and using the same forever in manner aforesaid.

SECT. 21. The complainant in such case, at any time within three months after the verdict is allowed and recorded, may elect to take the sum so awarded in gross for the right to maintain and use the dam forever, instead of receiving the annual compensation therefor; and if he makes such election, he shall within said three months cause the same to be entered on the record of the case in the clerk's office.

SECT. 22. The owner or occupant of the mill or dam shall, within three months after such election is thus entered, pay to the complainant, or secure to his satisfaction, said sum with interest from the time of the verdict. After the expiration of said three months, such owner or occupant shall lose all benefit of the provisions contained in this chapter, until payment of said damages and interest.

SECT. 23. If the complainant does not within said three months cause such entry of his election to be made on the record, he and all persons claiming under him shall be entitled to demand and receive from whoever shall be the owner or occupant of the mill, the annual compensation so established by the jury, so long as the dam is kept up and maintained; unless the sum is increased or diminished upon a new complaint as hereinafter provided.

SECT. 24. The person entitled to receive said annual compensation or gross damages shall have a lien therefor from the time of the institution of the original complaint, on the mill and mill-dam with their appurtenances, and the land under and adjoining the same and used therewith: *provided*, that such lien shall not extend to any sum



due more than three years before the commencement of an action therefor.

SECT. 25. Such person may maintain an action of contract therefor in the superior court, against the person who owns or occupies the mill when the action is brought; and shall therein recover the whole sum due and unpaid for the three years then last past, whoever has owned or occupied the mill during that time; and he shall be entitled to full costs, although the sum recovered does not amount to twenty dollars.

Action therefor, against whom to be brought.  
R. S. 116, § 24.  
2 Met. 505.  
4 Met. 426.  
10 Met. 359.  
13 Met. 172.  
4 Cush. 245.

6 Cush. 170, 303. 2 Gray, 407.

SECT. 26. The execution issued on such judgment may at any time within thirty days after judgment be levied on the premises so subject to the lien; and the officer may thereupon proceed to sell the same, or so much thereof as is necessary to satisfy the execution and all charges of levying it; and he shall proceed in making such sale in like manner in all respects as is provided with regard to the sale on execution of a right to redeem real estate mortgaged.

Premises may be sold on execution.  
R. S. 116, § 25.

SECT. 27. Such sale shall be valid and effectual against all persons claiming the premises by any title that has accrued within the time covered by the lien.

Sale, how far effectual.  
R. S. 116, § 26.

SECT. 28. Any person entitled to the premises so sold may redeem the same at any time within one year after the sale, upon paying to the purchaser or the person holding under him the sum paid therefor, with interest at the rate of twelve per cent. a year.

Right of redemption.  
R. S. 116, § 27.

SECT. 29. The provisions of this chapter shall not affect the right to keep up, maintain, and use, any water-mill and mill-dam, now lawfully existing, except as is herein expressly provided: but when the owner or occupant of a mill or dam makes any material change by raising the dam, or altering the machinery, or the manner of using the water, so as to cause additional damage to the land of another, it shall be considered as a new mill or dam, in respect to such additional damage, and the remedy and proceedings to recover compensation therefor shall be substantially such as are provided in this chapter respecting a new dam.

Existing mills and dams not affected except, &c.  
R. S. 116, § 28.  
17 Mass. 76.  
3 Met. 357.  
12 Met. 76.

SECT. 30. The court to which a verdict is returned may set it aside for any sufficient cause, and grant a new trial to be had upon a new warrant or otherwise as the case may require.

New trial.  
R. S. 116, § 29.

SECT. 31. No action shall be sustained at common law for the recovery of damages for the erecting, maintaining, or using, any mill or mill-dam, except as is provided in this chapter.

Action at common law.  
R. S. 116, § 30.  
11 Mass. 364.

SECT. 32. The party prevailing in any suit under this chapter shall be entitled to his full costs, unless where it is otherwise expressly provided.

Costs.  
R. S. 116, § 31.  
2 Met. 505.  
2 Gray, 497.

SECT. 33. The court shall award a reasonable compensation to the person who presides at the trial, and to the officer who executes the warrant; which with the pay of the jurors and other like charges shall be advanced by the complainant, and taxed and allowed in the bill of costs.

Compensation for services at trial, &c.  
R. S. 116, § 32.

SECT. 34. When either party is dissatisfied with the annual compensation established by a jury, either under the provisions of this chapter or of the laws heretofore in force, a new complaint may be brought for the increase or diminution thereof, or for ascertaining the gross amount of the damages; and all the proceedings shall be conducted substantially in the manner before provided in the case of an original complaint: *provided*, that when a complainant has declined to accept gross damages awarded him, no jury shall again determine the amount of gross damages until the expiration of ten years thereafter.

New complaint by either party; but gross damages assessed only once in ten years.  
R. S. 116, § 33.  
9 Mass. 203.  
17 Mass. 79.  
2 Met. 508.  
12 Cush. 200

SECT. 35. Such new complaint may be maintained by and against either of the parties to the original suit, or by and against any person lawfully holding under either of them.

who may maintain.  
R. S. 116, § 34.

SECT. 36. No such new complaint shall be brought until the expiration of one month after the payment of the then last year has fallen due;

when to be brought.

Tender.  
R. S. 116, § 35.  
2 Met. 508.

Mill owners  
may tender  
greater compen-  
sation, &c.  
R. S. 116, § 36.  
2 Met. 508.  
7 Gray, 297.

Land owner  
may offer to ac-  
cept less, &c.  
R. S. 116, § 37.  
2 Met. 508.  
7 Gray, 297.

Offer, by or to  
whom made,  
&c.  
R. S. 116, § 38.

Effect of agree-  
ment, if signed  
and recorded.  
R. S. 116, § 39.

Verdict not to  
bar new com-  
plaint, &c.  
R. S. 116, § 40.  
10 Mass. 72.

Respondent  
may make ten-  
der in court,  
&c. Costs.  
R. S. 116, § 41.  
7 Gray, 186, 297.

Judgment upon  
acceptance of  
tender. Ac-  
ceptance may  
be for past or  
future damages.  
R. S. 116, § 42.

Separate and  
joint owners of  
lands may join  
in complaint  
and have sepa-  
rate damages.  
1841, 86.

and either party may within the said month make an offer or tender to the other as hereinafter provided.

SECT. 37. The owner of the mill or dam may within said month offer in writing to the owner of the land any increase of said annual compensation; and if the owner of the land does not agree to accept the same, but brings a new complaint to obtain an increase thereof, he shall pay the costs, unless he obtains a verdict for a greater annual compensation than was so offered to him.

SECT. 38. The owner of the land may within said month offer in writing to the owner of the mill or dam, to accept any smaller sum than that established as said annual compensation; and if the owner of the mill or dam does not agree to pay such reduced compensation, but brings a new complaint to obtain a diminution thereof, he shall pay the costs, unless the annual compensation is reduced by the verdict to a sum less than that so offered to him.

SECT. 39. Such offer may be made by or to the respective tenants or occupants of the land, and of the mill or dam, in like manner and with like effect as if made by or to the respective owners; except that no agreement founded thereon shall bind said owners unless made with their consent.

SECT. 40. If the offer so made by either party is agreed to and accepted by the other, it shall establish the annual compensation to be thereafter paid, in like manner as if it had been established by a verdict and judgment upon a new complaint: *provided*, that a memorandum of such offer and acceptance, and of the agreement, is made and signed by the respective parties, or by persons duly authorized by them, and filed and recorded in the clerk's office of the court in which the former judgment was rendered, with a note of reference on the record of the former judgment to the book where the agreement is recorded.

SECT. 41. If upon a complaint by the owner of the land the jury decide that he is not entitled to any annual compensation, the judgment thereon shall be no bar to a new complaint for damages alleged to have arisen after the former verdict, and for compensation for damages thereafter sustained.

SECT. 42. In every original complaint brought by the owner of land alleged to be injured by a mill-dam, the respondent may bring into court and there tender any sum that he deems proper to be paid to the complainant for the damages incurred up to the time of such tender; and may also offer to pay any certain annual compensation for the damage that may be thereafter occasioned by the dam in question; and if the complainant does not accept the same, with his costs up to that time, but proceeds in the suit to recover greater damages or compensation, he shall, unless he recovers greater damages or greater annual compensation than was so offered, be entitled to his costs up to the time of the tender, and the respondent shall be entitled to recover his costs afterwards.

SECT. 43. If the complainant in the case mentioned in the preceding section consents to accept the amount so offered for the past damage and future annual compensation, he shall have judgment accordingly, and also for his costs up to that time, and the judgment shall have the same effect as if it had been rendered upon the verdict of a jury; or the complainant may accept either the sum tendered for past damages, or the offer for future annual compensation, and proceed to trial on the residue of the complaint under the same liability for costs.

SECT. 44. Two or more persons suffering damage from a mill-dam, whether jointly or separately interested in the lands injured, may join in a complaint under this chapter; and their cases may be heard before the same jury, which may assess joint or several damages as the interest and title of the complainants may require; and judg-



ment and execution for costs and damages shall be had in conformity thereto.

SECT. 45. The provisions of chapter one hundred and twenty-nine, in respect to pleas in abatement, shall be applicable to complaints under this chapter; and when new defendants are summoned in pursuance of said provisions, the plaintiff may have a verdict against such of the defendants as he proves to be liable, although he fails as to the rest.

Pleas in abatement. New defendants. 1839, 151, § 5.

SECT. 46. No complaint for flowing shall be abated by reason of the death of any party, but the same may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased; and if any such complaint is abated or otherwise defeated for any matter of form, or if after verdict for the complainant the judgment is reversed for error, upon a *certiorari* or otherwise, the complainant or any person claiming from, by, or under, him, may bring a new complaint for the same cause, at any time within one year after the abatement or other determination of the original complaint, or after the reversal of the judgment; and may upon the new complaint recover all damages sustained during the three years before the institution of the first complaint, or at any time afterwards.

Complaint not to abate by death of parties. Remedy for abatement or reversal of judgment. R. S. 116, § 43.

REGULATION OF DAMS.

SECT. 47. The county commissioners, on application made to them in writing by any persons owning mill or other property liable to destruction or damage by the breaking of a mill or reservoir dam, or on application of the mayor and aldermen or selectmen of any city or town on account of the liability of damage to any roads or bridges therein from the same cause, shall, after notice to the adverse party of the time and place, view and thoroughly examine such dam.

County commissioners to view &c., on notice. 1854, 327, § 1.

SECT. 48. If, in the judgment of the commissioners, the dam is not sufficiently strong and substantial to resist the action of the water under any circumstances which may reasonably be supposed to exist, they shall determine and direct what alterations or additions are required to make it permanent and secure; and shall give a written direction to the owner thereof to make such alterations or repairs within a reasonable time; and they shall record the result of such examination, which, if the owner of the dam had an opportunity to be heard before them, shall be admissible evidence in the trial of any issue involving his liability.

may direct alterations, &c. To record result of examination. Record to be evidence. 1854, 327, § 1.

SECT. 49. If the owner of a dam thus examined and adjudged to be unsafe, refuses or neglects to make such alterations, additions, or repairs, as the commissioners order, they shall, on being notified of such neglect or refusal by the party making application, cause such dam, or such parts thereof as they may deem necessary for the safety of property, roads, or bridges on the stream below, to be removed; and after such removal, no structure shall be erected except in compliance with the requirements of the commissioners.

Upon neglect of owner to repair, &c., commissioners to remove. Dam not to be rebuilt, except, &c. 1854, 327, § 2.

SECT. 50. If, when a dam is adjudged to be unsafe under the provisions of the three preceding sections, the pond caused by the dam is so filled with water that the dam cannot be removed without danger to mill and other property, and, upon notice, the owner neglects to raise or otherwise alter and make it safe, the commissioners shall cause it to be forthwith raised, or otherwise altered and made safe, at his expense.

If dam cannot be removed, commissioners to raise, &c. 1854, 327, § 3.

SECT. 51. If the commissioners order no alteration of or addition to a dam, the cost or expense of an examination under section forty-seven shall be paid by the party making the application; otherwise the expense shall be paid by the owner; but in all cases where the party making application is the owner of the dam, the expense shall be paid by him.

Costs, &c., by whom paid. 1854, 327, § 4.



Jurisdiction of S. J. C. to compel alterations, &c.  
1857, 163.

SECT. 52. The supreme judicial court shall have jurisdiction in equity, and may compel the owner of any dam to make all alterations, additions, and repairs, ordered under the five preceding sections, and may make all judgments and decrees necessary to carry such orders into effect.

REPAIRING AND REBUILDING MILLS.

Repair of mills owned by several persons.  
R. S. 116, § 44.  
4 Mass. 539.  
11 Mass. 325.

SECT. 53. When a mill owned by several persons as joint tenants or tenants in common, or the dam or appurtenances of such mill, need to be repaired or rebuilt in whole or in part, and the proprietors do not all agree to join in repairing or rebuilding the same, the greater part in interest of the proprietors may cause the work to be done at the expense of the whole, in proportion to their respective interests.

Meeting of proprietors, how called.  
R. S. 116, § 45.

SECT. 54. One or more of the proprietors may call a meeting of the whole of them, to be held at the mill, to consult and agree upon the measures to be taken for repairing or rebuilding the same, by a written notice signed by the persons who call it and addressed to each of the other proprietors, setting forth that the mill in question needs to be repaired or rebuilt, and that a meeting of the proprietors thereof will be held at the mill on a certain day and hour mentioned in the notice, to consult and agree upon the measures to be taken for that purpose, and requesting the attendance of the proprietor at such meeting.

Notice thereof, how served and returned.  
R. S. 116, §§ 46, 47.

SECT. 55. The notice shall be served by any officer authorized to serve civil process between the same parties, by delivering an attested copy thereof to the person to whom it is addressed, or by leaving such copy at his dwelling-house or last and usual place of abode, not more than thirty nor less than seven days before the day appointed for the meeting, and his return, specifying the persons on whom he served it and the time and manner of the service on each, shall be deemed sufficient evidence thereof.

Majority in interest may decide.  
R. S. 116, § 48.

SECT. 56. At the meeting so called, or any adjournment thereof, the greater part in interest of all the proprietors of the mill may take measures to cause the mill, or the dam or appurtenances thereof, to be repaired or rebuilt, as they shall judge most for the interest of all concerned therein.

Each proprietor liable.  
R. S. 116, § 49.

SECT. 57. Each proprietor shall, upon demand after the work is completed, pay to the proprietors by whom it has been advanced, with interest from the time of the advance, his just and equal part of the charge and expense of such repair or rebuilding, in proportion to his share or interest in the mill.

Remedy by lien on rents, or action.  
R. S. 116, § 50.

SECT. 58. The proprietors who advance the money so expended shall have a lien therefor on the rents and profits of the mill, and may retain so much thereof as belongs to any proprietor indebted to them for such advance, to be applied to the payment of his debt; or they may maintain a suit for the debt, or for as much of it as shall not be paid out of the rents and profits.

Guardian of proprietor may act for him.  
R. S. 116, § 51.

SECT. 59. When a proprietor is under guardianship, as a minor or otherwise, his guardian may act for him in calling and attending a meeting of the proprietors, and may there vote and do all such other acts in the premises as the ward could do if competent to act for himself; all which shall be binding on the ward and his estate.

Apportionment between tenant and reversioner.  
R. S. 116, § 53.

SECT. 60. When part of the mill is held by one person as tenant for life or years, with remainder or reversion to another, the sum due for the repairs and other expenses on that part of the mill shall be apportioned on the tenant for life or years and the remainder-man or reversioner, in proportion to the value of their respective interests in the premises; and the party to whom the money is due from such remainder-man or reversioner, shall have a lien on the rents and profits belong-

ing to him after his estate comes into possession, if not sooner paid, notwithstanding any limitation by lapse of time.

SECT. 61. Every mortgagee in possession shall be considered as a proprietor for all the purposes of this chapter; but the mortgagor, if the action is brought against him before his right of redemption is foreclosed, shall also be liable for all sums so due on account of his share of the mill, so far as the same are not recovered from the mortgagee. All sums paid on this account by the mortgagee shall be considered and allowed, between him and the mortgagor, as so much paid for repairs or improvements of the mortgaged premises.

Case of a mortgagee in possession.  
R. S. 116, § 54.

SECT. 62. Every tenant in tail of any part of a mill shall for all the purposes of this chapter be considered as the proprietor thereof in fee simple.

tenant in tail.  
R. S. 116, § 55.

SECT. 63. All sums due from one proprietor to another for moneys advanced by force of this chapter, may be recovered in an action of contract; and when two or more proprietors are so indebted, the creditor or creditors may maintain a suit in equity in the supreme judicial court against any two or more of them, in which suit the court shall determine what amount is due from each of the debtors severally, and shall award judgment and execution against each of them accordingly; and may make all such orders, decrees, and judgments, and issue such process as may be necessary and proper to carry into effect the provisions of this chapter. The court shall apportion the amount so recovered among the plaintiffs in the suit, if more than one, according to their respective rights.

How suits between proprietors brought.  
R. S. 116, § 56.  
1852, 312.

SECT. 64. Nothing contained in this chapter shall in any way affect any contract or agreement by or between the proprietors of any mill as to the repair or rebuilding thereof.

Chapter not to affect agreements, &c.  
R. S. 116, § 58.

DUTIES AND COMPENSATION OF MILLERS.

SECT. 65. Every miller occupying and using a grist mill shall be provided with scales and weights, or a vibrating steelyard, to weigh corn, grain, and meal, to and from the mill, if required; and if he neglects to keep himself so provided, or refuses so to weigh corn, grain, or meal, when required, he shall for every such neglect or refusal forfeit and pay to any person who sues therefor a sum not exceeding five dollars, to be recovered in an action of tort.

Millers to keep scales, &c., and weigh grain, if required, under penalty.  
R. S. 116, § 59.  
1852, 312.

SECT. 66. The toll for grinding any sort of grain shall not exceed one-sixteenth part thereof.

What toll allowed.  
R. S. 116, § 60.

CHAPTER 150.

OF LIENS ON BUILDINGS AND LAND.

SECTION

1. Party furnishing labor and materials to have lien on building, &c., except, &c.
2. Lien for material not to attach without notice to owner of land if, &c.
3. not of force against existing mortgage.
4. not to attach if owner of building, &c., gives notice.
5. dissolved unless party file statement of account, &c., with city or town clerk in thirty days. Record.
6. Inaccuracy in statement not to invalidate, unless, &c.

64\*

SECTION

7. Lien dissolved unless suit commenced in ninety days.
8. may be enforced by petition to superior court.
9. before police court and justices, &c., if claim does not exceed \$100.
10. Petition may be inserted in writ.
11. to contain brief statement of contract, &c.
12. Parties may amend.
13. Any number who have labored on same building may join in petition.
14. Notice to owner, and to other creditors.
15. to absent parties, &c.

## SECTION

16. Further notice.
17. Claims may be proved and contested.
18. Facts may be tried by jury.
19. Claims not payable may be allowed.
20. for part performance of contract.
21. Sale of premises, when ordered.
22. Part may be sold, if sufficient.
23. Notice of sale.
24. Right of redemption.
25. Proceeds of sale, how distributed.
26. may be brought into court, &c.
27. surplus, how disposed of. Successive orders of distribution.
28. Prior attaching creditor preferred. Proportion of proceeds held, &c.
29. Such proportion to be applied on execution.
30. Subsequent attachment to be satisfied after lien.

## SECTION

31. Attachment intervening between two liens.
32. Rights of attaching creditors and of persons having liens, as between themselves.
33. Debtor having an estate less than fee simple, &c., lien to bind his interest.
34. Lien may be enforced against heirs or assigns.
35. by executors or administrators.
36. Appeal allowed to S. J. C.
37. Suits commenced by one creditor may be prosecuted by another when, &c.
38. commenced prematurely, may be prosecuted, &c. Costs.
39. Costs in other cases.
40. Action at law not barred.
41. Discharge of lien, how executed.
42. Petition to be indorsed.

Party furnishing labor and materials to have lien on building, &c. 1852, 307, § 1. 1855, 431, § 1. 20 Pick. 542. 13 Met. 153. 4 Cush. 536. 5 Cush. 119, 122. 11 Cush. 238, 308. 1 Gray, 576. 3 Gray, 226. 4 Gray, 289. 6 Gray, 533. 7 Gray, 429.

Lien for material not to attach without notice. 1855, 431, § 1.

not of force against existing mortgage. 1852, 307, § 1. 5 Cush. 134.

not to attach if owner of building, &c., gives notice. 1855, 431, § 4.

dissolved unless party file statement of account, &c., with city or town clerk in thirty days. Record. 1855, 431, § 2. 6 Gray, 531. 13 Gray, 100.

Inaccuracy in statement not to invalidate, unless, &c. 1855, 431, § 3.

Lien dissolved

SECTION 1. Any person to whom a debt is due for labor performed or furnished, or for materials furnished and actually used, in the erection, alteration, or repair, of any building or structure upon real estate, by virtue of an agreement with, or by consent of, the owner of such building or structure, or any person having authority from, or rightfully acting for, such owner in procuring or furnishing such labor or materials, shall have a lien upon such building or structure, and upon the interest of the owner thereof in the lot of land upon which the same is situated, to secure the payment of the debt so due to him, and the costs which may arise in enforcing such lien under this chapter; except as is provided in the following sections.

SECT. 2. Such lien for materials furnished shall not attach unless the person furnishing the same before so doing gives notice to the owner of the property to be affected by the lien, if such owner is not the purchaser, that he intends to claim such lien.

SECT. 3. Such lien shall not avail or be of force against any mortgage actually existing and duly recorded prior to the date of the contract under which the lien is claimed.

SECT. 4. The owner of any such building or structure in process of erection or being altered or repaired, other than the party by whom or in whose behalf a contract for labor and materials has been made, may prevent the attaching of any lien for labor thereon not at the time performed, or materials not then furnished, by giving notice in writing to the person performing or furnishing such labor, or furnishing such materials, that he will not be responsible therefor.

SECT. 5. Such lien shall be dissolved unless the person desiring to avail himself thereof, within thirty days after he ceases to labor on, or furnish labor or materials for, such building or structure, files in the office of the clerk of the city or town in which the same is situated, a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate for identification, with the name of the owner or owners of the property, if known; which certificate shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and shall be recorded in a book kept for the purpose by the clerk of such city or town, who shall be entitled to the same fees therefor as for recording mortgages of equal length.

SECT. 6. No inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor or materials, shall invalidate the proceedings, unless it appears that the person filing the certificate has wilfully and knowingly claimed more than is his due.

SECT. 7. Unless a suit for enforcing the lien is commenced within



ninety days after the person desiring to avail himself thereof ceases to labor on, or furnish labor or materials for, such building or structure, the lien shall be dissolved.

unless suit commenced in ninety days.  
1855, 55, § 1.

SECT. 8. The lien may be enforced by petition to the superior court in the county where the building or structure is situated. The petition may be filed in term, or in the clerk's office in vacation, and the date of the filing shall be deemed the commencement of the suit.

Lien, how enforced.  
R. S. 117, § 5.  
1851, 343, § 4.  
1855, 431, § 5.

SECT. 9. When the amount of the claim does not exceed one hundred dollars, the lien may be enforced by petition to a justice of the peace, or police court; and such justices and courts shall have like power and authority within their jurisdiction as are herein conferred upon the superior court, with like rights of appeal to the parties as exist in other civil cases.

before police courts, &c., if claim does not exceed \$100.  
1855, 431, § 5.

SECT. 10. The petition may be inserted in a writ of original summons, and be served, returned, and entered, as other civil cases.

Petition may be inserted in writ.  
1855, 431, § 5.

SECT. 11. Whether filed as a petition, or inserted in such summons, the petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises subject to the lien, and all other material facts and circumstances; and shall pray that the premises may be sold, and the proceeds of the sale be applied to the discharge of the demand.

to contain brief statement of contract, &c.  
R. S. 117, § 6.  
11 Cush. 308.

SECT. 12. The court may at any time allow either party to amend his pleadings as in actions at common law.

Parties may amend.  
1855, 431, § 6.

SECT. 13. Any number of persons who have actually performed labor or furnished labor or materials on one or more buildings or structures upon different lots of land, where the labor was performed for the same owner, contractor, or other person, may join in the same petition for their respective liens; and the same proceedings shall be had in regard to the rights of each petitioner, and the respondent may defend as to each petitioner in the same manner as if he had severally petitioned for his individual lien.

Any number who have labored on same building may join in petition.  
1852, 307, § 2.  
1855, 431.

SECT. 14. The court in which the petition is entered shall order notice to be given to the owner of the building or structure, that he may appear and answer thereto at a certain day in the same term, or at the next term, by serving him with an attested copy of the petition, with the order of the court thereon, fourteen days at least before the time assigned for the hearing; and the court shall also order notice of the filing of the petition to be given to all other creditors who have a lien of the same kind upon the same estate, by serving them with a copy of the last-mentioned order in like manner.

Notice to owner, and to other creditors.  
R. S. 117, § 7.  
1855, 431, § 1.  
5 Cush. 122, 123.

SECT. 15. If it appears to the court that any of the parties entitled to notice are absent or that they cannot probably be found to be served with the notice, the court may, instead of the personal notice before mentioned, or in addition thereto, order notice to all persons interested, by publishing in some newspaper the substance of the petition, with the order of the court thereon, assigning the time and place for a hearing, or may order such other notice to be given, as may under the circumstances of the case be considered most proper and effectual.

to absent parties, &c.  
R. S. 117, § 8.  
5 Cush. 124.

SECT. 16. If at the time assigned for the hearing it appears to the court that any of the persons interested have not had sufficient notice of the suit, the court may order further notice to them, in such manner as may be considered most proper and effectual.

Further notice.  
R. S. 117, § 9.  
5 Cush. 124.

SECT. 17. At the time assigned for the hearing, or within such further time as the court allows for that purpose, every creditor having a lien of the kind before mentioned upon the same property, may appear and prove his claim, and the owner and each of the creditors may contest the several claims of every other creditor, and the court shall hear and determine them in a summary manner, either with or without a jury, as the case may require.

Claims may be proved and contested.  
R. S. 117, § 10.  
5 Cush. 122.

Facts may be tried by jury.  
R. S. 117, § 11.  
1852, 314, § 2.

SECT. 18. Every material question of fact arising in the case shall be submitted to a jury, if required by either party or thought proper by the court; and the trial shall be had upon a question stated, or an issue framed, or otherwise, as the court may order. A jury shall be had before a justice of the peace, or police court, only as in other civil cases.

Claims not payable may be allowed.  
R. S. 117, § 12.

SECT. 19. The court shall ascertain and determine the amount due to each creditor who has a lien of the kind before mentioned upon the property in question; and every such claim due absolutely and without any condition, although not then payable, shall be allowed, with a rebate of interest to the time when it would become payable.

for part performance of contract.  
R. S. 117, § 13.  
5 Cush. 122.  
11 Cush. 240.

SECT. 20. When the owner fails to perform his part of the contract, and by reason thereof the other party without his own default is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed, in proportion to the price stipulated for the whole, and the court shall adjust his claim accordingly.

Sale of premises, when ordered.  
R. S. 117, § 14.

SECT. 21. If the lien is established in favor of any of the creditors whose claims are presented, the court shall order a sale of the property to be made by any officer authorized to serve civil process between the same parties.

Part may be sold if sufficient.  
R. S. 117, § 15.

SECT. 22. If part of the property can be separated from the residue and sold without damage to the whole, and if the value thereof is sufficient to satisfy all debts proved in the case, the court may order a sale of that part, if it appears to be most for the interest of all parties concerned.

Notice of sale.  
R. S. 117, § 16.  
See Ch. 103, § 41.

SECT. 23. The officer who makes the sale shall give notice of the time and place in the manner prescribed in relation to the sale on execution of a right of redeeming mortgaged lands, unless the court orders a different notice to be given.

Right of redemption.  
R. S. 117, § 17.  
See Ch. 103.

SECT. 24. Any interest in real estate so sold may be redeemed in the manner provided in the case of a sale on execution of the right of redeeming mortgaged lands.

Proceeds of sale, how distributed.  
R. S. 117, § 18.

SECT. 25. If all the claims against the property covered by the lien are ascertained at the time of ordering the sale, the court may order the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors, to the amount of their respective debts if there is sufficient therefor; and if there is not sufficient, then to divide and distribute the same among the creditors in proportion to the amount due to each of them.

may be brought into court, &c.  
Successive orders of distribution.  
R. S. 117, § 19.

SECT. 26. If all the claims are not ascertained when the sale is ordered, or if for any other reason the court finds it necessary or proper to postpone the order of distribution, it may direct the officer to bring the proceeds of the sale into court, there to be disposed of according to the decree of the court; and if by reason of the claims of attaching creditors, or for any other cause, the whole cannot be conveniently distributed at once, the court may make two or more successive orders of distribution, as the circumstances may require.

surplus, how disposed of.  
R. S. 117, § 20.  
1855, 431, § 1.  
13 Met. 153.  
5 Cush. 122.

SECT. 27. If there is any surplus of the proceeds of the sale after making all the payments before mentioned, it shall be forthwith paid over to the owner of the property; but such surplus before it is so paid over shall be liable to be attached or taken on execution, in like manner as if it proceeded from a sale made by the officer on an execution.

1861 Ch. 131  
Prior attaching creditor preferred. Proportion of proceeds held, &c.  
R. S. 117, § 21.  
1855, 431, § 1.

SECT. 28. If the interest of the owner in the building, structure, or land, is under attachment at the time of filing and recording the statement of the account, the attaching creditor shall be preferred to the extent of the value of the buildings and land as they were when the statement was recorded; and the court shall ascertain by a jury or otherwise, as the case may require, what proportion of the proceeds of



the sale shall be held subject to the attachment, as derived from the value of the property when the statement was recorded.

SECT. 29. If the attaching creditor recovers judgment he shall be entitled to receive on his execution the proportion of the proceeds held subject to his attachment, or as much thereof as may be necessary to satisfy his execution, and the residue of the proceeds shall be applied in the same manner as if there had been no such attachment.

Such proportion to be applied on execution.  
R. S. 117, § 22.

SECT. 30. If the interest of the owner of the property is attached after the recording of the statement, the proceeds, after discharging all prior liens and claims, shall be applied to satisfy the execution of such attaching creditor, in like manner as is provided in chapter one hundred and thirty-three, in the case of two or more successive attachments or seizures in execution of a right of redemption.

Subsequent attachment to be satisfied after lien.  
R. S. 117, § 23.

SECT. 31. If an attachment is made after the recording of such statement, and if after the attachment another like statement is recorded, the creditor in the latter statement shall be entitled to be paid only out of the residue of the proceeds remaining after paying all that is due on the demands, a statement of which is recorded before the attachment, and satisfying the attaching creditor.

Attachment intervening between two liens.  
R. S. 117, § 24.

SECT. 32. When there are several attaching creditors, they shall as between themselves be entitled to be paid according to the order of their attachments; but when several creditors who are entitled to the lien provided for in this chapter have equal rights as between themselves, and the fund is insufficient to pay the whole, they shall share it equally in proportion to their respective debts.

Rights of attaching creditors and of persons having liens, as between themselves.  
R. S. 117, § 25.

SECT. 33. If the person for whom the work is done, or materials are furnished, has an estate for life, or any other estate less than a fee simple, in the land, or if the property at the time of recording the statement is mortgaged, or under any other encumbrance, the lien before provided for shall bind his whole estate and interest therein, in like manner as a mortgage would have done; and the creditor may cause the right of redemption, or whatever other right or estate the owner had in the property, to be sold and applied to the discharge of his debt according to the provisions of this chapter.

Debtor having an estate less than fee simple, &c., lien to bind his interest.  
R. S. 117, § 26.  
1855, 431.  
13 Met. 155.  
5 Cush. 122.  
3 Gray, 235.

SECT. 34. If the person indebted dies or conveys away his estate or interest before the commencement of a suit on the contract, the suit may be commenced and prosecuted against his heirs, or whoever holds the estate or interest which he had in the premises at the time the labor or materials were performed or furnished; or if a suit is commenced in his lifetime, it may be prosecuted against his executors, administrators, heirs, or assigns, in like manner as if the estate or interest had been mortgaged to secure the debt.

Lien may be enforced against heirs or assigns.  
R. S. 117, § 27.  
1855, 431.  
5 Cush. 123.

SECT. 35. If the creditor dies before the commencement of a suit, the suit may be commenced and prosecuted by his executors or administrators; or if commenced in his lifetime, it may be prosecuted by them as it might have been by the deceased if living.

by executors or administrators.  
R. S. 117, § 28.

SECT. 36. Any party interested in a suit brought under this chapter may appeal to the supreme judicial court, from the final decree or judgment of the superior court, as is prescribed in relation to other civil cases, and the cause shall be thereupon heard and determined in the supreme judicial court, according to the provisions of this chapter.

Appeal allowed to S. J. C.  
R. S. 117, § 29.  
1840, 87.

SECT. 37. If it appears in any stage of the proceedings that the suit was commenced by the petitioning creditor before his right of action accrued or after it was barred, or if he becomes nonsuit, or fails to establish his claim, the suit may be prosecuted by any other creditor having such lien, in the same manner as if it had been originally commenced by him, if the circumstances of the case are such that he might then, or at any time after the commencement of the original suit, have commenced a like suit on his own claim.

Suits commenced by one creditor may be prosecuted by another when, &c.  
R. S. 117, § 30.



Suits commenced prematurely may be prosecuted, &c. Costs. R. S. 117, § 31.

Costs in other cases. R. S. 117, § 32.

Action at law not barred. R. S. 117, § 33.

Discharge of lien, how executed. R. S. 117, § 35.

Petition to be indorsed. R. S. 117, § 36. See Ch. 123, § 20. Ch. 129, §§ 29-33.

SECT. 38. If the suit is commenced by the petitioning creditor before his right of action accrues, his claim may nevertheless be allowed, if the suit is carried on by any other creditor as provided in the preceding section; but he shall not in such case be entitled to costs, and he may be required to pay the costs incurred by the debtor, or a part thereof, as the court may deem reasonable.

SECT. 39. The costs in all other respects shall be subject to the discretion of the court, and shall be paid from the proceeds of the sale, or by any of the parties in the suit, as justice and equity require.

SECT. 40. Nothing contained in this chapter shall be construed to prevent a creditor in such contract from maintaining an action thereon at the common law, in like manner as if he had no such lien for the security of his debt.

SECT. 41. When a debt secured by such lien is fully paid, the creditor, at the expense of the debtor, shall enter on the margin of the registry where the statement is recorded, a discharge of his lien, or shall execute a release thereof, which may be recorded where the statement is recorded.

SECT. 42. All the regulations concerning the indorsement of original writs shall apply to the indorsement of petitions filed under this chapter.

## CHAPTER 151.

### OF MORTGAGES, PLEDGES, AND LIENS UPON PERSONAL PROPERTY.

#### SECTION

1. Mortgages of personal property to be recorded where, &c.
2. Transfers, &c., of vessels, and of goods at sea, &c., need not be recorded.
3. Town clerk to record mortgages.
4. When mortgaged property redeemable.
5. Proceedings for its redemption and recovery.
6. Notice of foreclosure, how to be given.
7. to be recorded with mortgage, &c.
8. Right to redeem sixty days after notice.

#### PLEDGES.

9. Holder of pledge may give notice, &c., to be served and recorded.
10. If debt not paid in sixty days, pledge may be sold.
11. Contracts not affected nor rights of pledges limited.

#### LIENS ON SHIPS AND VESSELS.

12. Lien on ships and vessels for labor performed and materials furnished.
13. to be dissolved unless sworn statement of demand, &c., is filed for record, &c.

#### SECTION

14. When ship is built in two places, &c. Inaccuracy in description, &c., not to affect, &c.
15. Lien, how enforced.
16. Petition, what to contain.
17. Amendments.
18. Several claimants may join in the same petition.
19. Claims in such case to be marshalled and proceeds to be distributed. Proviso.
20. Liens on foreign vessels not affected.

#### OTHER LIENS.

21. Party having lien may after demand petition a justice of the peace, &c., for sale, &c.
22. Justice, &c., shall issue notice to show cause. Service. Return.
23. Petition, if owner unknown.
24. Publication of notice, &c.
25. Order of sale. Disposition of proceeds.
26. Amount due, &c.
27. Appeal. Recognizance.
28. Costs.
29. Boarding-house keepers to have lien on baggage, &c.
30. Rights of lien not restricted.

SECTION 1. Mortgages of personal property shall be recorded on the records of the city or town where the mortgagor resides when the mortgage is made, and on the records of the city or town in which he then principally transacts his business, or follows his trade or calling. If the mortgagor resides without the state, his mortgage of personal property within the state when the mortgage is made shall be recorded on the records of the city or town where the property then is. Unless a mortgage is so recorded, or the property mortgaged is delivered to and

*Allen 373* Mortgages of personal property to be recorded, &c. R. S. 74, § 5. 1843, 72, § 2. 18 Pick. 432. 1 Met. 436. 10 Met. 493. 13 Met. 200, 304. 6 Cnsh. 217, 298. 12 Cush. 109.

retained by the mortgagee, it shall not be valid against any person other than the parties thereto, except as is provided in the following section.

See Ch. 161, §§ 61, 62.

SECT. 2. Such record shall not be necessary to the validity of a mortgage, contract of bottomry, or respondentia, or any transfer, assignment, or hypothecation, of a ship or vessel. Nor shall a record be necessary to the validity of any transfer in mortgage of goods at sea or abroad, if the mortgagee takes possession of such goods as soon as may be after their arrival in this state.

Transfers, &c., of vessels, and of goods at sea, &c., need not be recorded.  
R. S. 74, § 6.  
1851, 57.

SECT. 3. City and town clerks, upon payment of their fees, shall record all mortgages of personal property delivered to them, in books kept for the purpose, noting therein, and on each mortgage, the time it is received; and such mortgages shall be considered as recorded at the time when left for the purpose in the clerk's office. The fees for recording, and all other services relating thereto, shall be the same as are allowed to registers of deeds for like services.

Town clerk to record mortgages.  
R. S. 74, § 7.

SECT. 4. When the condition of a mortgage of personal property is broken, the mortgagor, or any person lawfully claiming or holding under him, may redeem the same at any time before the property is sold in pursuance of the contract between the parties, or the right of redemption is foreclosed as hereinafter provided.

When mortgaged property redeemable.  
R. S. 107, § 40.

SECT. 5. The person entitled to redeem shall pay or tender to the mortgagee or person holding under him the sum due on the mortgage, or perform or offer performance of the thing to be done, and shall pay all reasonable and lawful charges and expenses incurred in the care and custody of the property, or otherwise arising from the mortgage; and if upon such payment or performance or tender thereof the property is not forthwith restored, the person entitled to redeem may recover it in an action of replevin, or may recover such damages as he may have sustained by the withholding thereof, in any action adapted to the circumstances of the case.

Proceedings for its redemption and recovery.  
R. S. 107, § 41.  
4 Gray, 330.

SECT. 6. The mortgagee or his assigns, after condition broken, may give to the mortgagor, or the person in possession of the property, claiming the same, written notice of his intention to foreclose the mortgage for breach of the condition thereof, which notice shall be served by leaving a copy with the mortgagor, or person in possession of the property, claiming the same, or by publishing it at least once a week for three successive weeks in one of the principal newspapers published in the town or city where the mortgage is properly recorded, or where the property is situated, or if there is no such paper, in one of the principal newspapers published in such county.

Notice of foreclosure, how to be given.  
1843, 72, § 1.  
1856, 174.  
12 Met. 308.  
10 Cush. 119.  
2 Gray, 203.

SECT. 7. The notice with an affidavit of service shall be recorded wherever the mortgage is recorded, and, when so recorded, the same, or a copy of the record, shall be admitted as evidence of the giving of such notice.

to be recorded with mortgage, &c.  
1858, 3.

SECT. 8. If the money to be paid, or other thing to be done, is not paid or performed, or tender thereof made, within sixty days after such notice is so recorded, the right to redeem shall be foreclosed.

Right to redeem for sixty days after notice.  
1843, 72, § 1.

PLEDGES.

SECT. 9. The holder of personal property in pledge for the payment of money or the performance of any other thing, may, after failure to pay or perform, give written notice to the pledger that he intends to enforce payment or performance by a sale of the pledge, and such notice shall be served, and together with an affidavit of service be recorded in the clerk's office of the city or town where the pledger resides, in the manner and with like effect as provided in sections six and seven for notices of foreclosure.

Holder of pledge may give notice, &c., to be served and recorded.

SECT. 10. If the money to be paid or other thing to be done is not

If debt not paid

in sixty days, pledge may be sold, &c.

paid or performed, or tender thereof made, within sixty days after such notice is so recorded, the pledgee may sell the pledge at public auction and apply the proceeds to the satisfaction of the debt or demand, and the expenses of the notice and sale, and any surplus shall be paid to the party entitled thereto, on demand.

Contracts not affected nor rights of pledgees limited. 1855, Ch. 161, §§ 63, 64.

SECT. 11. The preceding sections shall not authorize the pledgee to dispose of the pledge contrary to the terms of the contract under which it is held, nor limit his right to dispose of it in any other manner allowed by the contract or the rules of law.

#### LIENS ON SHIPS AND VESSELS.

Lien on ships and vessels for labor performed and materials furnished. 1855, 231, § 1. 13 Gray, 129, 134.

SECT. 12. When, by virtue of a contract, expressed or implied, with the owners of a ship or vessel, or with the agents, contractors, or subcontractors, of such owners, or any of them, or with any person having been employed to construct, repair, or launch, such ship or vessel, or to assist them, money is due to any person for labor performed, materials used, or labor and materials furnished, in the construction, launching, or repairs of, or for constructing the launching ways for, or for provisions, stores, or other articles, furnished for or on account of, such ship or vessel, in this state, such person shall have a lien upon the ship or vessel, her tackle, apparel, and furniture, to secure the payment of such debt; which lien shall be preferred to all others thereon except mariners' wages, and shall continue until the debt is satisfied.

to be dissolved unless sworn statement of demand, &c., is filed for record, &c. 1855, 231, § 2.

SECT. 13. Such lien shall be dissolved unless the person claiming the same files, within four days from the time the ship or vessel departs from the port at which she was when the debt was contracted, in the office of the clerk of the city or town within which the ship or vessel was at the time the debt was contracted, a statement, subscribed and sworn to by himself or some person in his behalf, giving a just and true account of the demand claimed to be due to him, with all just credits, and also the name of the person with whom the contract was made, the name of the owner of the ship or vessel, if known, and the name of the ship or vessel, or a description thereof sufficient for identification; which statement shall be recorded by the clerk of such city or town in a book kept by him for that purpose, for which he shall receive the same fees as for recording mortgages of equal length.

When ship is built in two places, &c. Inaccuracy in description, &c., not to affect, &c.

SECT. 14. If the ship or vessel is partly constructed in one place and partly in another, either place shall be deemed the port at which she was when the debt was contracted within the meaning of this chapter; and no inaccuracy in the description of the ship or vessel, if she can be recognized thereby, or in stating the amount due for labor or materials, shall invalidate the proceedings, unless it appears that the person filing the certificate has wilfully and knowingly claimed more than is due.

Lien, how enforced. 1855, 231, § 3. 1859, 196. 20 How. U. S. R. 393.

SECT. 15. Such lien may be enforced by petition to the superior court for the county where the vessel was at the time the debt was contracted or in which she is at the time of instituting proceedings. The petition may be entered in court or filed in the clerk's office in vacation, or may be inserted in a writ of original summons, with an order of attachment, and served, returned, and entered as other civil actions, and the subsequent proceedings for enforcing the lien shall, except as hereinafter provided, be as prescribed in chapter one hundred and fifty for enforcing liens on buildings and land, so far as the same are applicable. At the time of entering or filing the petition, a process of attachment against such ship or vessel, her tackle, apparel, and furniture, shall issue and continue in force, or may be dissolved like attachments in civil cases, but such dissolution shall not dissolve the lien.

Petition, what to contain.

SECT. 16. The petition shall contain a brief statement of the labor, materials, or work done or furnished, or the stores, provisions, or other



articles furnished, and the amount due therefor, with a description of the ship or vessel subject to the lien, and all other material facts and circumstances, and shall pray that the ship or vessel may be sold and the proceeds of the sale applied to the discharge of the demand.

SECT. 17. The court may at any time allow either party to amend his pleadings as in actions at common law. Amendments.

SECT. 18. Any number of persons having such liens upon the same ship or vessel may join in the same petition to enforce the same; and the same proceedings shall be had in regard to the respective rights of each petitioner, and the respondent may defend as to each petitioner, in the same manner as if they had severally petitioned for their individual liens. Several claimants may join in the same petition. 1855, 231, § 4.

SECT. 19. When there is money due to more than one person holding a lien upon a ship or vessel under the provisions of this chapter, all parties interested having been cited to appear and answer, the claims of all shall be marshalled, and the court shall make such order or decree as may be necessary to prevent the enforcement of a double lien for the same labor, materials, stores, provisions, or other articles, and to secure the just rights of all. And the proceeds arising from the sale of such ship or vessel, after deducting all proper costs and expenses, shall be distributed among the several claimants to the amount of their respective debts: *provided*, that when such proceeds are insufficient to satisfy the liens of all, those having liens for labor shall receive a percentage on their respective claims one-third greater, as near as may be, than those having liens for materials, stores, or other articles. Claims in such case to be marshalled and proceeds distributed. Proviso. 1855, 231, § 5.

SECT. 20. The eight preceding sections shall not affect the lien as now existing on foreign ships and vessels. Liens on foreign vessels not affected. 1855, 231, § 6.

OTHER LIENS.

SECT. 21. Whoever has a lien, other than those described in chapter one hundred and fifty and in the nine preceding sections, for money due to him on account of work and labor, care and diligence, or for money expended, on or about personal property, by reason of any contract express or implied, if the money is not paid within sixty days after a demand in writing delivered to the debtor or left at his usual place of abode if within this state, or made by letter addressed to him at his usual place of abode without the state and deposited in the post-office to be sent to him, may apply by petition to a justice of the peace or police court in the county where the petitioner resides, for an order for the sale of the property in satisfaction of the debt. Party having lien may after demand petition a justice of the peace, &c., for sale, &c.

SECT. 22. The justice or court shall thereupon issue a notice to the owner of the property to appear at a time and place designated, to show cause why the prayer of the petition should not be granted; which notice shall be served by delivering to the owner, or leaving at his usual place of abode if within the state, a copy thereof, fourteen days before the day of hearing, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person with an affidavit to the truth of the return. Justice, &c., shall issue notice to show cause. Service. Return.

SECT. 23. If the owner is unknown, the application may be made sixty days after the money becomes due, and a notice may issue "to the unknown owner," describing the property. Petition if owner unknown.

SECT. 24. If the owner resides out of the state, or is unknown, notice may be given by a publication of the order in the manner prescribed for the publication of notices in section six. Publication of notice, &c.

SECT. 25. If the owner makes default at the time appointed, or if upon a hearing of the parties it appears that a lien exists upon the property, and that the same ought to be sold for the satisfaction of the debt, the justice or court may make an order for that purpose, and if

Order of sale. Disposition of proceeds.

no appeal is taken, the property may be sold in conformity therewith. Any surplus of the proceeds of sale, after satisfying the debt and all costs and charges, shall be paid to the owner upon demand.

Amount due, &c.

SECT. 26. The justice or court may ascertain the amount due up to the time of the entering of the order, and make a record thereof.

Appeal. Recognizance.

SECT. 27. Either party may appeal from the final order of the justice or court in the same manner as in other civil cases, and the case shall be heard and determined in the court above, and such order made as justice shall require. If the respondent appeals, he shall recognize for the prosecution of his appeal and the payment of any balance of the debt with costs which may remain unsatisfied after a sale of the property, if judgment is rendered against him.

Costs.

SECT. 28. The prevailing party shall recover his costs, and the justice or court may issue execution therefor.

Boarding-house keepers to have lien on baggage, &c. 1859, 229. See Ch. 52, § 26. Rights of persons having lien not restricted.

SECT. 29. Boarding-house keepers shall have a lien on the baggage and effects brought to their houses belonging to their guests or boarders, except mariners, for all proper charges due for fare and board, and the lien may be enforced as provided in the eight preceding sections.

SECT. 30. The preceding sections shall not limit or restrict the right of any party having a lien upon property to hold and dispose of the same in any other manner authorized by law.

## CHAPTER 152.

### OF RECOGNIZANCES FOR DEBTS.

#### SECTION

1. Recognizance, debtor may bind himself by.
2. to be taken before superior court, &c., or clerk. Form of.
3. interest upon.
4. to be recorded. Conusor must be known.
5. Execution may be issued.
6. proceedings for obtaining. Form, &c.
7. Recognizance may be taken before a justice of the peace, &c. Execution.
8. Executions, where to run.

#### SECTION

9. Executions, how taken out by an executor or administrator.
10. Proceedings in case of death of conusor.
11. Limitation as to issuing of execution.
12. Alias, &c., executions may issue.
13. Death of one of several conusors or conusees.
14. *Audita querela*, &c., as in case of a judgment.
15. Fees.

Recognizance, debtor may bind himself by. R. S. 118, § 1.

to be taken before superior court, or clerk. R. S. 118, § 2. 1859, 196.

form of.

SECTION 1. Any person by law capable of binding himself by a common bond, may enter into a recognizance in the manner hereinafter mentioned, for the payment of a debt; and may thereby subject his person, goods, and estate, to be taken on execution.

SECT. 2. The recognizance may be taken before the superior court in any county in term time, or before the clerk of the court in vacation, and shall be substantially as follows:—

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ personally appeared before the superior court \_\_\_\_\_, now held at \_\_\_\_\_ within and for the county of \_\_\_\_\_ (or, before \_\_\_\_\_ the clerk of the superior court \_\_\_\_\_ for the county of \_\_\_\_\_) and acknowledged himself to be indebted to \_\_\_\_\_ of \_\_\_\_\_ in the sum of \_\_\_\_\_ to be paid to said \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ (or, in \_\_\_\_\_ years \_\_\_\_\_ or in \_\_\_\_\_ months, from this day) with interest from this day; and if not then paid, to be levied upon his goods and chattels, lands and tenements, and for want thereof, upon his body. In witness whereof said \_\_\_\_\_ hath hereto set his hand.

\_\_\_\_\_, Clerk of the Superior Court for the County of \_\_\_\_\_.

interest upon. R. S. 118, § 3.

SECT. 3. The clause as to the payment of interest may be altered or wholly omitted according to the agreement of the parties; but interest

shall always be allowed for any delay after the time of payment, unless the recognizance contains an express agreement to the contrary.

SECT. 4. The recognizance shall be attested by the clerk, whether taken in term time or vacation, and shall be recorded at length by him among the records of the court, and the original shall then be delivered to the conusee. It shall not be taken unless the judge or clerk who takes it knows, or has satisfactory evidence, that the person offering to enter into such recognizance is the person he represents himself to be, and who is described as the conusor.

Recognizance to be recorded. Conusor must be known. R. S. 118, §§ 4, 5.

SECT. 5. If the debt is not paid at the time appointed in the recognizance, the conusee shall be entitled to an execution for the sum due, to be sued out of the clerk's office in which the recognizance is recorded, and to be directed, served, and returned, in like manner as an execution issued upon a judgment of the same court.

Execution may be issued. R. S. 118, § 6.

SECT. 6. Before such execution issues, the original recognizance shall be filed with the clerk, who shall compute the amount, deducting any payments indorsed; he shall then issue execution, which shall recite the recognizance, state the amount then due, and otherwise be in the usual form of an execution on a judgment for debt. It may be issued by the clerk without any special order of the court.

proceedings for obtaining Form, &c. R. S. 118, §§ 7, 8. 8 Mass. 79.

SECT. 7. A recognizance for debt may be taken before a justice of the peace, or police court, in any case where it might be taken before the clerk of the court. It shall be substantially in the same form, recorded in a book kept for the purpose, and delivered to the conusee; and execution may be issued thereon by the justice or court. Such executions shall have the same effect as executions issued by the clerk, except that where the recognizance is for twenty dollars or less, the execution shall not run against the lands of the conusee.

Recognizance may be taken before a justice of the peace, &c. Execution. R. S. 118, §§ 9, 10, 11. 1853, 269, § 1.

SECT. 8. Executions issued under this chapter may be executed and shall be obeyed in every county to which they are directed.

Executions, where to run. R. S. 118, § 12.

SECT. 9. If the conusee dies before the debt is paid, his executor or administrator may sue out execution in the same manner as the conusee might have done, upon exhibiting to the clerk or justice his letters testamentary or of administration; and the form of the execution shall be altered accordingly.

how taken out by an executor or administrator. R. S. 118, § 13.

SECT. 10. If the conusor dies before the debt is fully paid, no execution therefor shall be issued as of course, but the estate of the conusor in the hands of his executors, administrators, heirs, or devisees, shall be liable for the debt in like manner as if judgment therefor had been recovered against him in his lifetime; and the conusee, his executors, or administrators, may have a *scire facias*, or an action of contract, to recover the same against the executors, administrators, heirs, or devisees, of the conusor, in like manner as they might have had upon such a judgment.

Proceedings in case of death of conusor. R. S. 118, § 14. 1852, 312.

SECT. 11. No original execution shall be issued as of course upon such a recognizance after the expiration of three years from the time therein set for payment of the debt, or three years from the time of the last payment indorsed thereon; but the conusee or his executors or administrators may after that time have a *scire facias*, or an action of contract on it against the party liable, in like manner and with the same effect as upon a judgment.

Limitation as to issuing of execution. R. S. 118, § 15. 1852, 312. 4 Mass. 641. 13 Mass. 493.

SECT. 12. The creditor shall be entitled to an alias and other successive executions, as allowed in executions on a judgment in civil actions.

Alias, &c., executions may issue. R. S. 118, § 16.

SECT. 13. If there are several conusors or conusees, and one or more of them dies before the debt is fully satisfied, the right and interest of the surviving conusees, and the obligation of the surviving conusors, and all the proceedings for the recovery of the debt, shall be substantially the same as in the case of the death of one or more joint creditors or debtors in a judgment at common law.

Death of one of several conusors or conusees. R. S. 118, § 17.



*Audita querela*, &c., as in case of a judgment.  
R. S. 118, § 18.

SECT. 14. If a person is injured by the wrongful suing out or executing of any execution under the provisions of this chapter, he shall have his remedy by a writ of *audita querela*, or otherwise, as if the execution had been issued upon a judgment; and in all cases not otherwise specially provided for, the parties to such recognizance, and their respective representatives, shall be entitled and liable to the remedies provided for creditors and debtors by a judgment.

Fees.  
R. S. 118, § 19.

SECT. 15. The fee for taking and recording a recognizance shall be fifty cents; and for all other services under the provisions of this chapter, the same fees shall be paid as for like services in other cases.

## CHAPTER 153.

### OF SEIZING AND LIBELLING FORFEITED GOODS.

#### SECTION

1. Goods forfeited to be seized.
2. Libel, when to be filed, and form thereof.
3. before whom to be filed.
4. Duties of the clerk of the court when libel is filed. Notice to be published.
5. Proceedings when there is no claimant.
6. when a claimant appears.
7. Decree of forfeiture, or restitution.
8. Disposition of the proceeds on sale under a decree.
9. Damages for seizure without reasonable cause.
10. Costs.
11. Executions and other processes.

#### SECTION

12. Either party may appeal to S. J. C.
13. Proceedings on a libel before a justice, &c.
14. Notice, trial, and adjudication.
15. Either party may appeal to superior court, &c.
16. Depositions may be taken, &c.
17. Goods to be delivered to claimant, on his giving bond.
18. Goods to be appraised.
19. Same subject.
20. Appraisement conclusive as to jurisdiction.
21. Goods may be sold, if perishable.
22. for other sufficient cause.

Goods forfeited to be seized.  
R. S. 118, § 20.  
See Ch. 49,  
§§ 23, 26, 55, 77,  
101, 124, 154, 164,  
194; Ch. 50, § 7.

SECTION 1. When goods are forfeited for any offence, and no special provision is made for the mode of their recovery, any person entitled to recover them, and when provision is not otherwise made, any police officer or constable of the city or town where the goods so forfeited are found, may seize and keep them safely until they are disposed of as is hereinafter provided.

Libel, when to be filed, and form thereof.  
R. S. 118, § 21.

SECT. 2. The person making the seizure shall within fourteen days thereafter file a libel in the clerk's office of the superior court for the county where the offence was committed, or before any justice of the peace, or police court, as the case requires, stating briefly the cause of the seizure, without setting forth all the special matter, and praying for a decree of forfeiture according to the provisions of the statute on which the seizure is founded, referring to it in the following form: "according to the provisions of the law concerning the packing and stamping of paper," or, "the inspection of lime," (as the case may require,) and mentioning the number of the chapter of the statute referred to, or referring thereto in some other general terms.

before whom to be filed.  
R. S. 118, §§ 22,  
34,  
1852, 314.  
1855, 449.

SECT. 3. If the value of the goods seized exceeds twenty dollars, the libel may, and if such value exceeds one hundred dollars, shall, be filed in the clerk's office; otherwise it shall be filed before a justice of the peace, or police court, in the county where the offence is committed, and the value for this purpose shall be ascertained by an appraisal as hereinafter provided for.

Duties of clerk. Notice to be published.  
R. S. 118, § 23.

SECT. 4. Upon filing the libel in the clerk's office, he shall make out an advertisement setting forth briefly the substance of the libel, and giving notice to all persons interested to appear at the term of the court to be held next after the expiration of twenty-one days from the

time of filing the libel, and show cause why the goods should not be decreed forfeited; which notice the libellant shall cause to be published twice at least in some newspaper printed in the county, if there is any, otherwise in a newspaper printed in the nearest county, the first publication to be not less than fourteen days before the beginning of the term.

SECT. 5. The libel shall be entered like civil actions; and if after proclamation made no claimant appears, the court shall hear and determine the cause, and decree a forfeiture, restoration, or other disposition of the goods, as law and justice require.

SECT. 6. If a claimant appears, he may allege and answer any matter that may be necessary or proper for his defence; and the further proceedings shall be conducted in the mode usual in courts that proceed according to the course of the civil law, except that all questions of fact shall be tried and determined by a jury.

SECT. 7. If upon the trial the libellant maintains his suit, the court shall decree a forfeiture and sale of the goods, and a distribution of the proceeds, or such other disposition thereof as law and justice require. If he fails to maintain it, the court shall decree a restitution of the goods to the claimant.

SECT. 8. When goods are sold under such decree, the proceeds shall be applied, under the direction of the court, to the payment of the expenses of the seizure, prosecution, and sale; and in default of any other provision for the disposition of the residue, it shall be paid to the party who made the seizure.

SECT. 9. If the jury find that the seizure was groundless and without probable cause, they shall assess reasonable damages for the claimant, and the court shall render judgment for such damages with costs.

SECT. 10. In all other cases the court shall award costs to the prevailing party, or may order the costs and charges of keeping and selling the goods, or any part thereof, to be paid out of the proceeds of the goods.

SECT. 11. They may issue execution in common form for all costs and damages awarded to either party, and such warrants and other processes as may be necessary or proper to carry into effect any other parts of their decree or judgment.

SECT. 12. Either party aggrieved by a decree of the court founded upon matter of law apparent on the record, may appeal therefrom to the supreme judicial court, and such appeal shall be claimed, prosecuted, and determined, as provided for appeals in other civil cases.

SECT. 13. If the libel is filed before a justice of the peace, or a police court, the justice or court shall make out an advertisement or notice like that before required to be made by the clerk, mentioning the time and place appointed for hearing the cause.

SECT. 14. The libellant shall cause the notice to be posted up in some public place in the county not less than seven days before the time appointed for hearing the cause, when any claimant may appear and answer to the suit; and it shall be heard and determined in all respects as herein prescribed for a trial in the superior court; but a jury shall be allowed only upon the same terms as in other civil cases.

SECT. 15. Either party aggrieved by any decree of such justice or court may appeal therefrom to the superior court, and the appeal shall be conducted in all respects like appeals in other civil cases, and the cause shall be heard and determined in the court appealed to, according to the provisions of this chapter.

SECT. 16. Depositions may be taken and used in like manner as in trials of actions at the common law.

SECT. 17. At any time after the seizure of goods alleged to be forfeited, the owner, or any person entitled or authorized to claim the same, may have them delivered to him, upon giving bond to the person who

Proceedings when there is no claimant.  
R. S. 118, § 24.

when a claimant appears.  
R. S. 118, § 25.

Decrees of forfeiture, or restitution.  
R. S. 118, § 26.

Disposition of the proceeds on sale under a decree.

Damages for seizure without reasonable cause.  
R. S. 118, § 27.  
Costs.  
R. S. 118, § 28.

Executions and other processes.  
R. S. 118, § 29.

Either party may appeal to S. J. C.  
R. S. 118, § 30.  
1840, 87.

Proceedings on a libel before a justice, &c.  
R. S. 118, §§ 31, 34.

Notice, trial, and adjudication.  
R. S. 118, § 32.  
1852, 314.

Either party may appeal to superior court, &c.  
R. S. 118, §§ 33, 34.

Depositions may be taken, &c.  
R. S. 118, § 35.

Goods to be delivered to claimant on his giving bond.

R. S. 118, § 36. made the seizure, with sufficient surety in double the value of the goods, conditioned to restore them or pay the appraised value thereof if they are decreed forfeited, and to abide by and perform the final order, decree, or judgment, of the court relating thereto.

Goods to be appraised. R. S. 118, § 37. SECT. 18. The value of the goods in such case shall be appraised and determined by three disinterested men, to be agreed on by the parties or appointed by any justice of the peace to whom the claimant applies for that purpose, and to be sworn; or if the appraisement is made after the libel is filed, the appraisers shall be appointed by the court or justice before whom the suit is pending.

Same subject. R. S. 118, § 38. SECT. 19. The person making the seizure, as soon as may be thereafter, unless an application for an appraisement is in the mean time made by a claimant, shall apply to a justice of the peace, who shall appoint three disinterested men to make an inventory and appraisement of the goods seized. Such appraisers shall be sworn, and shall return their inventory and appraisement to the court or justice before whom the suit is brought.

Appraisement conclusive as to jurisdiction. R. S. 118, § 39. SECT. 20. The appraisement thus made on the application of the person who made the seizure, shall be conclusive as to the jurisdiction of the court before which the suit is to be brought, unless before filing the libel a different appraisement is made upon the application of a claimant in the manner before provided; in which case such last-mentioned appraisement shall be conclusive in that respect.

Goods may be sold if perishable. R. S. 118, § 40. SECT. 21. When goods so seized are perishable and liable to depreciate in value by keeping, and the fact is certified by the appraisers appointed on the application of the person making the seizure, any justice of the peace, or police court, may by an order indorsed on the inventory, authorize a sale by auction of such perishable goods, which sale shall be made at such time and with such notice as shall be directed in the order.

for other sufficient cause. R. S. 118, § 41. SECT. 22. The preceding section shall not control or affect the power of the court in which the suit is pending to order a sale of the goods for any sufficient cause at any time during the pendency of the suit.

## TITLE V.

### OF THE LIMITATION OF ACTIONS.

CHAPTER 154. — Of the Limitation of Real Actions and Rights of Entry.

CHAPTER 155. — Of the Limitation of Personal Actions.

## CHAPTER 154.

### OF THE LIMITATION OF REAL ACTIONS AND RIGHTS OF ENTRY.

SECTION	SECTION
1. No action, &c., after twenty years, except, &c.	3. Time when the limitation begins to run.
2. Right first accruing to an ancestor, how computed, &c.	4. Limitation after disseisin of a sole corporation.
	5. Exceptions for certain disabilities.



SECTION

- 6. Death of persons under disabilities.
- 7. No allowance for second disability.
- 8. Entry on land, when effectual.
- 9, 10. Estates tail barred like estates in fee.
- 11. When limitations to take effect.
- 12. Suits by commonwealth limited.

SECTION

- 13. Descent, &c., not to bar right.
- 14. Notice to prevent an easement to be deemed disturbance thereof.
- 15. On reversal or arrest of judgment, &c., new action may be brought.

SECTION 1. No person shall commence an action for the recovery of lands, nor make an entry thereon, unless within twenty years after the right to bring such action or make such entry first accrued, or within twenty years after he, or those from, by, or under whom he claims, have been seised or possessed of the premises, except as is hereinafter provided.

Actions within twenty years. R. S. 119, § 1. 7 Pick. 153. 7 Met. 24. 8 Met. 90. See Ch. 90, § 6. Ch. 103, § 48.

SECT. 2. If such right or title first accrued to an ancestor or predecessor of the person who brings the action or makes the entry, or to any other person from, by, or under whom he claims, the twenty years shall be computed from the time when the right or title so first accrued.

Right first accruing to an ancestor, how computed, &c. R. S. 119, § 2.

SECT. 3. In the construction of this chapter, the right to make an entry or bring an action to recover land shall be deemed to have first accrued at the times respectively hereinafter mentioned, that is to say, —

Time when the limitation begins to run. R. S. 119, § 3.

First. When any person is disseised, his right of entry or of action shall be deemed to have accrued at the time of such disseisin :

Second. When he claims as heir or devisee of one who died seised, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy by the curtesy or other estate intervening after the death of such ancestor or devisor; in which case, his right shall be deemed to accrue when such intermediate estate expires, or when it would have expired by its own limitation :

Third. When there is such an intermediate estate, and in all other cases when the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time :

9 Mass. 508. 15 Mass. 471.

Fourth. The preceding clause shall not prevent a person from entering when entitled to do so by reason of any forfeiture or breach of condition; but if he claims under such a title, his right shall be deemed to have accrued when the forfeiture was incurred or the condition was broken :

Fifth. In all cases not otherwise specially provided for, the right shall be deemed to have accrued when the claimant or the person under whom he claims first became entitled to the possession of the premises under the title upon which the entry or the action is founded.

8 Met. 90.

SECT. 4. If any minister or other sole corporation is disseised, any of his successors may enter upon the premises, or bring an action for the recovery thereof, at any time within five years after the death, resignation, or removal of the person so disseised, notwithstanding the twenty years after such disseisin have expired.

Limitation after disseisin of a sole corporation. R. S. 119, § 4.

SECT. 5. If at the time when such right of entry or of action upon or for lands first accrues, the person entitled to such entry or action is within the age of twenty-one years, or disabled by marriage, insane, imprisoned, or absent from the United States, such person, or any one claiming from, by, or under, him, may make the entry or bring the action at any time within ten years after such disability is removed, notwithstanding the twenty years before limited in that behalf have expired.

Exceptions for certain disabilities. R. S. 119, § 5.

SECT. 6. If the person first entitled to make such entry or bring such action dies during the continuance of any of the disabilities mentioned

Death of persons under disabilities.

R. S. 119, § 6.

in the preceding section, and no determination or judgment has been had of or upon the title, right, or action, which accrued to him, the entry may be made or the action brought by his heirs, or any other person claiming from, by, or under, him, at any time within ten years after his death, notwithstanding said twenty years have expired.

No allowance for second disability.

R. S. 119, § 7.  
6 East, 80.  
6 Mass. 328.

SECT. 7. If, at the time when such right of entry or action first accrues, the person entitled thereto is under any of the disabilities before mentioned, and dies without having recovered the premises, no further time for making such entry or bringing such action, beyond what is herein before prescribed, shall be allowed by reason of the disability of any other person.

Entry on land, when effectual.  
R. S. 119, § 8.  
2 Met. 583.  
8 Met. 604.

SECT. 8. No person shall be deemed to have been in possession of any lands within the meaning of this chapter merely by reason of having made an entry thereon, unless he has continued in open and peaceable possession of the premises for one year next after such entry, or unless an action is commenced upon such entry and seisin within one year after he is ousted or dispossessed.

Estates tail barred like estates in fee.  
R. S. 119, § 9.

SECT. 9. When the right of entry or action of a tenant in tail, or person entitled to a remainder in tail, is barred by force of this chapter, the estate tail, and all remainders and reversions expectant thereon, shall be also barred, as fully as they might have been by a conveyance made by the tenant in tail in the manner provided in chapter eighty-nine.

Same subject.  
R. S. 119, § 10.

SECT. 10. When a person entitled to recover land as a tenant in tail, or remainder-man, dies before the expiration of the period herein before limited for making an entry or bringing an action therefor, no person claiming any estate which the tenant in tail or remainder-man might have barred, shall make an entry or bring an action to recover such land, except within the period during which the tenant in tail or remainder-man, if he had so long lived, might have made such entry or brought such action.

When limitations to take effect.

R. S. 119, § 11.

SECT. 11. The limitations herein before prescribed as to the time within which an action may be brought to recover land, take effect from and after the thirty-first day of December in the year of our Lord eighteen hundred and thirty-nine; and if any person then entitled to bring any real action abolished after that day was then within the age of twenty-one years, a married woman, insane, imprisoned, or without the limits of the United States, the action may be brought at any time within five years after the disability ceased, or after the death of the person so disabled: *provided*, that no such action shall be maintained after it would have been barred by this chapter and by the statutes of limitation in force on the last day of April one thousand eight hundred and thirty-six.

Suits by commonwealth limited.

R. S. 119, § 12.  
1852, 253, § 2.  
1854, 261, § 9.  
4 Mass. 528.  
9 Met. 157.  
1 Cush. 427.

SECT. 12. No suit for the recovery of lands shall be commenced by or in behalf of the commonwealth, unless within twenty years after the right or title of the commonwealth thereto first accrued, or within twenty years after the commonwealth or those from or through whom it claims have been seised or possessed of the premises; but the provisions of this section shall not apply to any of the Province lands in the town of Provincetown, nor to the lands owned by the state in the basins of Back Bay mentioned in section one, chapter two hundred and fifty-three, of the statutes of eighteen hundred and fifty-two.

Descent, &c., not to bar right.  
R. S. 119, § 13.

SECT. 13. No descent or discontinuance shall take away or defeat any right of entry or action for the recovery of real estate.

Notice to prevent an easement to be deemed disturbance thereof.  
R. S. 119, § 14.  
1852, 312.

SECT. 14. When notice is given to prevent the acquisition of a right or privilege of way or any other easement, as provided in chapter ninety, such notice shall be considered so far a disturbance of the right in question, as to enable the party claiming such right to bring an action of tort as for a nuisance or disturbance, for the purpose of trying the

right; and if the plaintiff in such action prevails, he shall be entitled to full costs, although he recovers only nominal damages.

SECT. 15. If an action of which the commencement is limited by this chapter, is abated by the death of any party thereto, or if after verdict for the demandant or plaintiff the judgment is arrested, or if judgment in any such action is given for the demandant or plaintiff and the judgment is reversed for error therein, the demandant or plaintiff; or any person claiming from, by, or under, him, may bring a new action for the same cause, at any time within one year after the determination of the original action, or after the reversal of the judgment therein.

On reversal or arrest of judgment, &c., new action may be brought.  
R. S. 119, § 15.

CHAPTER 155.

OF THE LIMITATION OF PERSONAL ACTIONS.

SECTION

1. Certain actions to be brought within six years.
2. within two years.
3. within four years.
4. Exceptions as to certain notes, &c.
5. as to suits on mutual accounts current.
6. for certain disabilities.
7. Limitation of twenty years.
8. Suits by aliens.
9. Defendants out of state.
10. Time extended upon the death of either party.
11. in case of reversal, arrest of judgment, &c.

SECTION

12. Time extended in case of fraudulent concealment by defendant.
13. New promise, &c., to be in writing.
14. Promise by one of several debtors.
15. Proceedings in action against such debtors.
16. in abatement.
17. Effect of part payment; of indorsements.
18. Limitation of demands filed in set-off.
19. Suits by commonwealth limited.
20. Limitation of suits for penalties, by private persons.
21. of such suits by commonwealth.
22. of suits by other statutes.
23. Presumption of payment of judgment.

SECTION 1. The following actions shall be commenced within six years next after the cause of action accrues, and not afterwards: —

First. Actions of contract founded upon any contract or liability not under seal, express or implied, except such as are brought upon a judgment or decree of some court of record of the United States, or of this or some other of the United States:

Second. Actions for arrears of rent, except upon leases under seal:

Third. Actions of replevin, and all other actions for taking, detaining, or injuring, goods or chattels:

Fourth. All actions of tort except those hereafter mentioned.

See Ch. 65, §§ 10, 16. Ch. 129, § 78. Ch. 145, § 11. Ch. 146, § 5.

SECT. 2. Actions for assault and battery, and for false imprisonment, and actions for slanderous words and for libels, shall be commenced within two years next after the cause of action accrues, and not afterwards.

Actions within six years.  
R. S. 120, § 1.  
2 Gallis, 477.  
1 Mason, 243.  
2 Mason, 311.  
7 Pick. 153.  
22 Pick. 430.  
4 Met. 164.  
7 Met. 227.  
9 Met. 182, 197.  
11 Met. 210.  
13 Met. 251.  
1 Cush. 467.  
4 Gray, 393.  
6 Gray, 515.

within two years. 1861 Ch. 177.  
R. S. 120, § 2.  
4 Gray, 296.  
See Ch. 70, § 12.

SECT. 3. Actions against sheriffs for the misconduct or negligence of their deputies shall be commenced within four years next after the cause of action accrues, and not afterwards.

within four years.  
R. S. 14, § 78.  
R. S. 120, § 3.

SECT. 4. None of the foregoing provisions shall apply to any action brought upon a promissory note signed in the presence of an attesting witness, if the action is brought by the original payee or his executor or administrator; nor to an action brought upon bills, notes, or other evidences of debt, issued by a bank.

Exception as to certain notes, &c.  
R. S. 120, § 4.  
16 Mass. 290, 314.  
4 Pick. 382.  
8 Pick. 244.  
23 H. K. 82.  
1 Met. 21.

4 Met. 219, 587. 13 Met. 128. 4 Cush. 176. 6 Cush. 139, 172.  
7 Met. 227. 1 Cush. 276. 5 Cush. 442. 1 Gray, 251.

SECT. 5. In actions of contract brought to recover the balance due upon a mutual and open account current, the cause of action shall be

as to suits on mutual accounts current.



R. S. 120, § 5.  
4 Greenl. 337.  
6 Greenl. 308.  
2 Mass. 217.

Exception for certain disabilities.

R. S. 120, § 6.  
10 Mass. 29.  
14 Mass. 203.  
17 Mass. 180.  
20 Pick. 304.  
11 Met. 210.

Limitation of twenty years.

R. S. 120, § 7.  
23 Pick. 282.  
3 Met. 390.

Suits by aliens.

R. S. 120, § 8.  
3 Cranch, 454.

Defendants out of state.

R. S. 120, § 9.  
3 Mass. 271.  
7 Mass. 515.  
17 Mass. 55.  
1 Pick. 263.  
18 Pick. 532.  
5 Met. 400.  
7 Met. 435.  
12 Met. 208.  
1 Cush. 508.

Time extended upon the death of either party.

R. S. 120, § 10.  
11 Met. 445.  
1 Cush. 467.  
7 Gray, 384.

in case of reversal, arrest of judgment, &c.

R. S. 120, § 11.  
2 Pick. 605.  
12 Met. 15.  
6 Cush. 417.  
1 Gray, 580.  
7 Gray, 165

in case of fraudulent concealment by defendant.

R. S. 120, § 12.  
20 Johns. R. 33.  
3 Mass. 291.  
1 Pick. 435.  
3 Pick. 74.

New promise, &c., to be in writing.

R. S. 120, § 13.  
1 Met. 394.  
2 Met. 173.  
5 Met. 171.  
6 Met. 553.  
8 Met. 432.  
9 Met. 485.

deemed to have accrued at the time of the last item proved in the account.

3 Pick. 90. 6 Pick. 302. 8 Pick. 187. 3 Met. 216. 11 Cush. 253.

SECT. 6. If a person entitled to bring any of the actions before mentioned in this chapter is at the time the cause of action accrues within the age of twenty-one years, disabled by marriage, insane, imprisoned, or absent from the United States, he may bring the action within the times in this chapter respectively limited, after the disability is removed.

SECT. 7. Personal actions on contracts not limited by the foregoing sections, or by any other law of this state, shall be brought within twenty years after the cause of action accrues.

11 Met. 210. 6 Cush. 493. 8 Cush. 366.

SECT. 8. When a person is disabled to prosecute an action, by reason of his being an alien subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed part of the respective periods herein limited for the commencement of any of the actions before mentioned.

SECT. 9. If, at the time when any cause of action mentioned in this chapter accrues against a person, he is out of the state, the action may be commenced within the time herein limited therefor, after he comes into the state; and if, after a cause of action has accrued, the person against whom it has accrued is absent from and resides out of the state, the time of his absence shall not be taken as part of the time limited for the commencement of the action.

9 Cush. 527. 5 Gray, 397. 6 Gray, 427, 517.

SECT. 10. If a person entitled to bring or liable to any action before mentioned, dies before the expiration of the time herein limited, or within thirty days after the expiration of said time, and the cause of action by law survives, the action may be commenced by or against the executor or administrator of the deceased person, at any time within two years after the grant of letters testamentary or of administration, and not afterwards if otherwise barred by the provisions of this chapter.

SECT. 11. If in any action duly commenced within the time limited and allowed in this and the preceding chapter, the writ fails of a sufficient service or return by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the writ is abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff the judgment is arrested, or if a judgment for the plaintiff is reversed on a writ of error, the plaintiff may commence a new action for the same cause at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment; and if the cause of action by law survives, his executor or administrator may commence such new action within said one year.

SECT. 12. If a person liable to any of the actions mentioned in this chapter fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within six years after the person entitled to bring the same discovers that he has such cause of action, and not afterwards.

4 Cush. 208. 6 Cush. 418.

SECT. 13. In actions of contract, no acknowledgment or promise shall be evidence of a new or continuing contract whereby to take a case out of the operation of the provisions of this chapter, or to deprive a party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing signed by the party chargeable thereby.

11 Met. 210. 3 Cush. 355. 6 Cush. 151.

SECT. 14. If there are two or more joint contractors, or joint executors or administrators of a contractor, no one of them shall lose the benefit of the provisions of this chapter so as to be chargeable by reason only of an acknowledgment or promise made or signed or by a payment made by any other or others of them.

4 Pick. 382. 5 Met. 168. 6 Met. 564. 6 Cush. 360.

Promise by one of several debtors.  
R. S. 120, §§ 14, 18.  
7 Greenl. 26.  
2 Pick. 581.  
3 Pick. 291.

SECT. 15. In actions commenced against two or more joint contractors, or joint executors or administrators of a contractor, if it appears on the trial or otherwise that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any other or others of them by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to the defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

Proceedings in action against such debtors.  
R. S. 120, § 15.

SECT. 16. If in an action of contract the defendant pleads or answers in abatement that any other person ought to have been jointly sued, and issue is joined thereon, and if it appears that the action was by reason of the provisions of this chapter barred against the person so named, the issue shall be found for the plaintiff.

in abatement.  
R. S. 120, § 16.

SECT. 17. Nothing contained in the four preceding sections shall alter, take away, or lessen, the effect of a payment of any principal or interest made by any person; but no indorsement or memorandum of any such payment written or made upon a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment is made, or purports to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the provisions of this chapter.

Effect of part payment; of indorsements.  
R. S. 120, § 17.  
2 Met. 168.  
6 Met. 559, 564.  
8 Met. 354.  
9 Met. 485.  
6 Cush. 173.  
7 Gray, 274.

SECT. 18. The provisions of this chapter shall apply to the case of any debt founded on contract, alleged by way of set-off on the part of a defendant; and the time of limitation of such debt shall be computed in like manner as if an action had been commenced therefor at the time when the plaintiff's action was commenced.

Limitation of demands filed in set-off.  
R. S. 120, § 19.  
18 Pick. 521.

SECT. 19. The limitations herein before prescribed shall apply to actions brought by the commonwealth, or for its benefit.

R. S. 120, § 20.

Suits by commonwealth limited.

SECT. 20. All actions and suits for a penalty or forfeiture on a penal statute, brought by any person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year next after the offence is committed, and not afterwards.

3 Gray, 135. 6 Gray, 338.

Limitation of suits for penalties by private persons.  
R. S. 120, § 21.  
11 Cush. 512.

SECT. 21. If the penalty or forfeiture is given in whole or in part to the commonwealth, a suit therefor may be commenced by or in behalf of the commonwealth at any time within two years after the offence is committed, and not afterwards.

of such suits by commonwealth.  
R. S. 120, § 22.

SECT. 22. The provisions of this chapter shall not apply to any action otherwise specially limited by law.

See Ch. 123, §§ 20, 85. Ch. 124, § 46. Ch. 143, § 23.

of suits by other statutes.  
R. S. 120, §§ 4, 23.

SECT. 23. Every judgment and decree in any court of record of the United States, or of this or any other state, shall be presumed to be paid and satisfied at the expiration of twenty years after the judgment or decree was rendered.

Presumption of payment of judgment.  
R. S. 120, § 24.  
22 Pick. 533.

## TITLE VI.

## OF COSTS AND THE FEES OF CERTAIN OFFICERS.

CHAPTER 156. — Of Costs in Civil Actions.

CHAPTER 157. — Of the Fees of Certain Officers.

## CHAPTER 156.

## OF COSTS IN CIVIL ACTIONS.

## SECTION

1. Prevailing party entitled to costs.
2. except when action discontinued, &c., by discharge in insolvency.
3. after joinder of issue upon discharge in insolvency, &c.
4. Costs on appeal from a justice of the peace, &c.
5. in actions commenced in S. J. C., &c., when plaintiff recovers only \$20, &c.
6. when plaintiff's claim is reduced by set-off.
7. when plaintiff does not recover \$300 damage, &c., to recover no costs.
8. when defendant brings money into court.
9. in real actions, replevin, &c.
10. in actions which might have been joined.
11. of trial on different counts.
12. Proceedings stayed, &c., till costs of former suit paid.
13. Double costs, how taxed.

## SECTION

14. Costs on petition for *certiorari*, &c.
15. in suits in equity in certain cases.
16. in suits in equity, &c., when no provision is made.
17. in civil suits by commonwealth.
18. when brought in name of state for use of a person.
19. against commonwealth, how paid.
20. for commonwealth, how taxed.
21. power of arbitrators, &c., as to, and of courts in case of amendments, &c., not affected.
22. by whom taxed; notice of taxation.
23. Appeal from taxation by clerk.
24. how conducted.
25. Appellee may take execution in certain cases before appeal is settled.
26. Costs of appeal.
27. Allowance to parties recovering costs.
28. Costs of travel for a corporation.

Prevailing party entitled to costs.  
R. S. 121, § 1.

except when action discontinued, &c., by insolvency.  
1843, 55.  
4 Cush. 502.

after joinder of issue upon discharge in insolvency, &c.  
1841, 124, § 4.  
1848, 267.

Costs on appeal from a justice of the peace, &c.  
R. S. 121, § 2.

in actions commenced in S. J. C., &c., when plaintiff recovers only \$20, &c.  
R. S. 121, § 3.

SECTION 1. In all civil actions, the prevailing party shall recover his costs, except in those cases in which a different provision is made by law.

7 Met. 590. 11 Met. 288. 4 Gray, 56, 205.

SECT. 2. If the defendant answers in defence that he is discharged in bankruptcy or insolvency, and the action is discontinued or the plaintiff nonsuited solely in consequence of such answer, the defendant shall recover no costs.

SECT. 3. If a defence is made to rest upon a discharge in bankruptcy or insolvency alone, and an issue is so made up in writing and found for the defendant, he shall recover his costs after, but not before, the joinder of such issue.

SECT. 4. In civil actions before a justice of the peace, or a police court, if the plaintiff appeals from a judgment in his favor, and does not recover in the court above a greater sum for debt or damages than he recovered by the first judgment, he shall not be entitled for his costs of the whole suit to more than one-quarter part of the sum finally recovered for debt or damages.

SECT. 5. In personal actions brought originally in the supreme judicial court, or the superior court, except actions of replevin, if the plaintiff finally recovers a sum not exceeding twenty dollars for debt or damages, he shall be entitled to no costs, except as is provided in the following section.

1859, 196. 8 Cush. 281. 1 Gray, 625. 2 Gray, 214. See Ch. 149, § 25.



SECT. 6. If the plaintiff's claim as established on the trial exceeds twenty dollars, and is reduced to that amount or less, or overbalanced, by set-offs which could not have been proved in payment, it shall be considered for the purposes of the preceding section as having exceeded twenty dollars, and the party who finally recovers judgment in the suit shall be entitled to his full costs.

Costs, when plaintiff's claim is reduced by set-off.  
R. S. 121, § 11.  
8 Mass. 535.  
12 Mass. 206.  
2 Cush. 325.

SECT. 7. In actions at law brought originally in the supreme judicial court, or removed by consent thereto, if the plaintiff does not recover, either in value of the property claimed or estate in controversy, or in damages, an amount equal to three hundred dollars, to be assessed by the jury who try the cause, or by an assessor agreed upon by the parties, or by an award of arbitrators, he shall recover no costs.

when plaintiff does not recover \$300 damage, &c., to recover no costs.  
1859, 196, § 30.

SECT. 8. When a defendant brings money into court and offers the same in satisfaction of the damages, the plaintiff shall be entitled to the costs which had previously accrued, though he may not recover a larger sum than is so brought into court.

when defendant brings money into court.  
R. S. 121, § 14.  
12 Pick. 345.

SECT. 9. In real actions and actions of replevin, the party finally prevailing shall recover his full costs without regard to the amount of damages recovered in the action.

in real actions, replevin, &c.  
R. S. 121, § 13.  
1852, 312.  
7 Mass. 476.

10 Mass. 448. 4 Pick. 169. 10 Pick. 473. 13 Met. 144.

SECT. 10. When a plaintiff at the same court brings several actions against the same defendant, upon demands which might have been joined in one, he shall recover costs in one action only, unless it appears to the court that the actions affect different rights or interests, or that for other sufficient reasons they ought not to have been joined.

in actions which might have been joined.  
R. S. 121, § 15.  
5 Mass. 318.  
6 Mass. 18.  
10 Mass. 175.  
10 Cush. 303.

SECT. 11. When there are two or more counts on several and distinct causes of action, and a verdict is rendered for the plaintiff on one or more of them, and for the defendant on any other or others, each party shall recover his costs paid for the travel and attendance of witnesses, and for depositions and other evidence produced, examined, or used, on the trial of the counts upon which the verdict is in his favor, and shall recover nothing for the like charges incurred on the trial of the other counts.

of trial on different counts.  
R. S. 121, § 16.  
1 Met. 291.  
2 Met. 509.  
13 Met. 436.  
2 Cush. 189.  
4 Cush. 148.

SECT. 12. When, after a judgment for costs upon a nonsuit or discontinuance, a second suit for the same cause is brought by the original plaintiff, his executor, or administrator, before the costs of the former suit are paid, the court in which the second suit is pending may order proceedings therein to be stayed until such costs are paid, and may further order that the suit be dismissed unless the costs are paid within the time expressed in the order.

Proceedings stayed, &c., till costs of former suit paid.  
R. S. 121, § 17.

SECT. 13. In cases in which a party is entitled to recover double costs, the sums paid as fees to witnesses, and for the costs of taking depositions and procuring evidence, and for copies, and all court dues, shall be taxed and recovered singly, and the remainder only of the taxable costs shall be doubled. The same rule shall apply when treble costs are recovered.

Double costs, how taxed.  
R. S. 121, § 18.

SECT. 14. In cases where application is made at the suit or in behalf of a private person for a writ of *certiorari*, *mandamus*, *quo warranto*, or other like process, the court may in its discretion allow costs to any person who appears and objects thereto, and may award judgment and execution against the person by whom, or in whose behalf, the application is made.

Costs on petition for *certiorari*, &c.  
R. S. 121, § 19.

SECT. 15. In suits in equity in which as to one or more of the defendants the plaintiff seeks merely for a discovery of facts material to his rights and interests in a pending or anticipated suit, and not for a decree against them, the court shall allow such defendants all reasonable costs, expenditures, and charges, by them made or sustained, according to the usual course of proceeding in equity in like cases. Such allowance shall be made notwithstanding any prayer in the plaintiff's

in suits in equity in certain cases.  
1841, 129.  
1 Met. 237.

suit for a decree against the defendants, if the court is satisfied that such prayer is either frivolous, a mere pretence, or not essentially connected with the subject matter of the discovery.

Costs in suits in equity, &c., when no provision is made. R. S. 121, § 20. 9 Met. 320.

SECT. 16. In suits in equity and in other civil suits and proceedings in which no provision is expressly made by law, the costs shall be wholly in the discretion of the court, but no greater sum shall be taxed than is allowed for similar charges in suits at common law.

in civil suits by commonwealth. R. S. 121, § 22. 4 Met. 42. 4 Gray, 26.

SECT. 17. In civil suits and proceedings duly instituted by or in the name of the commonwealth, and not on the relation, or in behalf, or for the use, of a private person, the commonwealth shall be liable for costs in like manner and to the same extent as a citizen is liable.

when brought in name of state for use of a person. R. S. 121, § 23.

SECT. 18. When a suit or proceeding is instituted in the name of the commonwealth, on the relation, or in behalf, or for the use, of a private person, such person shall be liable for the costs in like manner, and to the same extent, as if the suit or proceeding had been instituted in his own name, and judgment may be rendered and execution issued therefor.

against commonwealth, how paid. R. S. 121, § 24.

SECT. 19. When a judgment for costs is rendered against the commonwealth, the treasurer of the county where the court is held shall pay the same upon the production of an attested copy of the judgment, and the sum so paid shall be allowed to him in his account with the treasury of the commonwealth.

for commonwealth, how taxed. R. S. 121, § 25.

SECT. 20. When costs are taxed for the commonwealth as a party in a civil suit or proceeding, no fees shall be taxed or allowed for the travel of the attorney-general or any other attorney for the commonwealth.

power of arbitrators, &c., as to, and of courts in case of amendments, &c., not affected. R. S. 121, §§ 21, 26. 2 Cush. 325.

SECT. 21. Nothing contained in this chapter shall take away or control the power of arbitrators or referees to make such award concerning costs as justice and equity require; nor the power of any court to require costs to be paid by either party, as the condition of an amendment, continuance, or other order, passed at his motion, or to withhold and refuse costs, on like occasions.

by whom taxed; notice of taxation. R. S. 121, § 27. 8 Met. 275.

SECT. 22. Bills of costs shall be taxed by the clerk of the court, or in suits before justices of the peace, or courts having no clerk, by the justice. No costs shall be taxed without notice to the adverse party, if he gives reasonable notice in writing to the clerk or justice of his desire to be present at the taxation, or causes such notice to be entered on the docket; and notice given by or to the attorney in the suit shall be equivalent to notice by or to the party himself.

appeal from taxation of by clerk. R. S. 121, § 53. 8 Met. 275.

SECT. 23. Either party may appeal from the taxation by the clerk, to the court in which the suit is pending, or any one of the justices thereof.

how conducted. R. S. 121, § 29.

SECT. 24. The appeal shall be heard and determined at the next term or session, unless the party who recovers costs elects to have it determined before one of the justices in vacation, and gives reasonable notice thereof to the adverse party; in which case it shall be thus determined. In either case the judgment shall be considered as rendered on the day when the costs are finally taxed and allowed, except as is provided in the following section.

Appellee may take execution in certain cases before appeal is settled. R. S. 121, § 30.

SECT. 25. If the appeal is made by the party who is to pay the costs, the other party may take out his execution and cause it to be satisfied, if he first gives bond to the adverse party with sufficient surety or sureties, to be approved by the clerk, in a sum equal to the whole amount of the costs, conditioned to repay such part of the costs as may be disallowed on the appeal, and to perform such other order as the court or judge shall make thereon.

Costs of appeal. R. S. 121, § 31.

SECT. 26. The court or judge before whom such appeal is heard may allow to either party, as justice may require, the costs incurred by the appeal; and the same may be added to or deducted from the costs

awarded in the principal suit, or a separate execution may be issued therefor, as the case may require.

SECT. 27. Parties recovering costs in civil causes shall be allowed as follows:—

For an attorney's fee in the supreme judicial court or superior court, when an issue in law or fact is joined, two dollars and fifty cents; and in all other cases, one dollar and twenty-five cents:

For the declaration in each writ in any justice's or other court, fifty cents:

For a term fee in the supreme judicial court or the superior court, five dollars for each term while the action is pending; but the plaintiff shall be allowed only one term fee if the defendant is defaulted without having appeared:

For attendance before a justice of the peace or police court, thirty-three cents for each day's actual attendance by the party or his attorney; but for not more than three days when the defendant is defaulted without having appeared; nor shall attendance be allowed after the day on which the action is nonsuited, defaulted, continued, or otherwise finally disposed of for the term, which day shall be entered on the docket:

For travel in either of the courts before mentioned, or before a justice of the peace, thirty-three cents for every ten miles' travel; but no allowance shall be made for travel to or from the clerk's office to take out or to carry thereto any writ or process, nor for more than eighty miles out and home, unless the party or some agent or attorney for him actually travels more than forty miles for the special purpose of attending the court in such cause; in which case allowance may be made, in the discretion of the court, according to the distance that is actually travelled.

SECT. 28. When a corporation is entitled to costs, an allowance shall be made for travel as in other cases, and the travel shall be computed from the place where the corporation is situated, if it is in its nature local, otherwise from the place in which its business is chiefly or commonly transacted.

Allowance to parties recovering costs.  
 R. S. 121, §§ 32, 33, 34, 36.  
 1842, 67.  
 1852, 312, § 81.  
 1855, 449, § 7.  
 1856, 246.  
 1 Met. 293.  
 9 Met. 318.

1851 Ch. 163.

Costs of travel for a corporation.  
 R. S. 121, § 35.

## CHAPTER 157.

### OF THE FEES OF CERTAIN OFFICERS.

SECTION

1. Fees of officers.
2. of justices of the peace.
3. of clerks of the courts.
4. of sheriffs.
5. of jailers.
6. of coroners.
7. of constables.
8. of jurors, witnesses, appraisers, commissioners, &c.
9. of town clerks.
10. of ministers, for marriages.
11. of the secretary of the commonwealth.
12. of registers of deeds.
13. of notaries public.

SECTION

14. Fees of recording officers, &c., in cases not specified.
15. "Page" defined.
16. List of fees to be posted up in public offices.
17. Officer to give bill of fees received, if required.
18. to indorse fees on writ, &c.
19. District-attorney may refuse to allow fees, &c., in certain cases.
20. Witnesses' fees in certain cases to be adjusted by clerk, &c.
21. to be refused in certain cases.
22. Officers not to purchase orders, &c.
23. Penalty for making false certificates of witnesses, &c.

SECTION 1. The fees of the several officers hereinafter mentioned, for the services specified with respect to each of them, shall be as follows, viz.:—

Fees of officers.  
 R. S. 122.  
 See Ch. 163, § 22.

#### JUSTICES OF THE PEACE.

SECT. 2. For a blank writ of original summons, or attachment and summons, seventeen cents, or if issued by a police court, five cents:

of justices of the peace. 1860 Ch. 191.



Fees of justices  
of the peace.  
R. S. 122, § 1.  
1843, 71.  
1852, 314, § 9.  
1859, 241.

For a subpoena for one or more witnesses, ten cents :

For the entry of an action, or filing a complaint in civil causes, including filing of papers, examining, allowing, and taxing, the bill of costs, and entering up the judgment and recording the same, sixty-one cents :

For the copy of a record or other paper, if less than one page, ten cents ; if more than one page, at the rate of twelve cents a page :

For a writ of execution, twenty-five cents :

Taking a recognizance to prosecute an appeal, including principal and surety, twenty cents :

Taking a deposition, fifty cents ; for writing the deposition and caption, at the rate of twelve cents a page ; and for the notice to the adverse party, twenty cents ; the justice shall certify on the deposition his own fees, and those of the deponent :

For administering an oath required by law, except on a trial or examination before himself, whether to one or more persons at the same time, twenty cents :

Taking the acknowledgment of a deed, by one or more grantors, if done at the same time, seventeen cents :

Granting a warrant of appraisal of the estates of deceased persons, of strays, forfeited goods, and in all other cases, twenty cents :

Receiving a complaint and issuing a warrant in criminal cases, fifty cents :

Entering a complaint in criminal prosecutions, rendering judgment and recording the same, examining, allowing, and taxing, the costs, and filing the papers, seventy-five cents :

For a mittimus for the commitment of any person on a criminal accusation, twenty-five cents :

For the trial of an issue with a jury, one dollar and fifty cents ; without a jury, one dollar :

And for travel in the performance of any official duty, at the rate of fifty cents for every ten miles in going and returning, but only one travel shall be allowed for returning papers to any court.

In all cases where the attendance of two or more justices is required, each of them shall be entitled to the fees prescribed, for all services rendered by him personally.

#### CLERKS OF THE COURTS.

SECT. 3. For the entry of an action, complaint, or petition, in a civil suit or proceeding in court, one dollar ; and before the county commissioners, one dollar and twenty-five cents :

For each term during which an action, complaint, or petition, is pending, forty cents :

For a writ of execution, whether in real or personal suits or proceedings, twenty-five cents :

For the entry of an indictment, presentment, complaint, or information, in a criminal case, including the recording of judgment, taxing costs, and filing papers, sixty-five cents :

For entry of an appearance in a criminal case, ten cents :

For the continuance of a criminal case, twelve cents :

For entering and recording a verdict in a criminal case, twenty cents :

For taking a recognizance, twenty cents :

For a warrant in any criminal suit or proceeding, twenty cents :

For a blank writ of attachment and summons, or an original summons, five cents :

For a writ of review, or other special writ, forty cents :

For a subpoena for one or more witnesses, ten cents :

For a *venire facias* for jurors, six cents :

1860 Ch. 191.  
of clerks of  
the courts.  
R. S. 122, §§ 2, 3.  
1853, 369.  
1855, 419, § 14.  
1856, 246.

For any writ not before mentioned, forty cents :

For examining and casting the grand jurors' accounts, and order thereon, thirty cents :

Fees of clerks  
of the courts.

For examining any other account, eight cents :

For the certificate of the proof of a deed in court, twenty cents :

For copies of records and papers containing less than one page, ten cents ; one page or more, at the rate of twelve cents a page :

For the warrant for a county tax, twenty cents :

For a warrant to lay out or alter a road, twenty cents :

For all other services as clerks of the county commissioners, the same fees as are allowed in like cases in court.

SHERIFFS.

SECT. 4. For the service of an original summons or *scire facias*, either by reading the same or leaving a copy, thirty cents for each defendant on whom service is made.

of sheriffs.  
R. S. 6, § 10.  
R. S. 122, § 5.  
1843, 75, § 2.  
1845, 162.  
1849, 208  
1856, 185.  
1859, 257.  
4 Mass. 411.  
See Ch. 17, § 71.

For the service of a *capias*, or of an attachment with summons, thirty cents for each defendant on whom it is served, and if the officer, by the direction of the plaintiff or his attorney, makes a special service of such writ, either by attaching property or arresting the body, he shall be entitled to fifty cents for each defendant on whom the writ is so served :

For a copy of any precept, when required by law or furnished to any party at his request, at the rate of twelve cents a page :

For taking bail, and furnishing and writing the bail bond, twenty cents, to be paid by the defendant, and taxed in his bill of costs, if he prevails :

For serving a warrant, thirty cents for each person on whom it is served :

For summoning witnesses in civil or criminal cases, ten cents for each witness ; and in criminal cases, the court may under special circumstances allow such further sum as it may judge reasonable :

For dispersing venirees for jurors, treasurers' warrants, and proclamations of all kinds, eight cents each, without allowance for travel :

For serving executions in personal actions, and collecting damages or costs on any execution, warrant of distress, or other like process, for any sum not exceeding one hundred dollars, four cents for every dollar ; all above one hundred dollars and not exceeding two hundred dollars, two cents for every dollar ; and for all above two hundred dollars, one cent for every dollar :

For serving a writ of seisin or possession in real actions, one dollar and ten cents ; and if served on more than one piece of land, seventy-five cents for each piece after the first :

For serving an execution upon a judgment for partition, or for assignment of dower, one dollar a day.

For travel in the service of all original writs, executions, warrants, subpoenas, and other like processes, four cents a mile, to be computed from the place of service to the court, or place of return ; only one travel to be allowed for the service of any one precept, and if the same precept is served on more than one person, the travel shall be computed from the most remote place of service, with such further travel as was necessary in serving it ; if the distance from the place of service to the place of return exceeds fifty miles, only one cent a mile shall be allowed for all travel exceeding that distance :

For the attendance of a deputy sheriff upon a court of record, or a meeting of the county commissioners, by their order, two dollars a day ; and for travel out and home once a week during the attendance, four cents a mile, to be paid out of the county treasury :

## Fees of sheriffs.

For returning to the office of the secretary of the commonwealth the votes for state, county, and district officers, one travel for the whole, at the rate of eight cents a mile, to be computed from the place of his abode to the secretary's office; for serving precepts for the election of representatives in congress, fifty cents each, and for returning the votes at such elections, eight cents a mile, to be computed as aforesaid; for the service of subpœnas issued by order of the legislature or either branch thereof, the same fees allowed for the service of subpœnas issued by a court, to be paid out of the treasury of the commonwealth.

And no sheriff, deputy-sheriff, coroner, or constable shall be entitled to any fees for attendance as a witness in a criminal case while he is paid for attending as an officer of the same court, or on the same examination or trial.

## JAILERS.

of jailers.  
R. S. 122, § 6.  
1836, 277.

SECT. 5. For every prisoner committed or discharged in the county of Suffolk, twenty cents.

## CORONERS.

of coroners.  
R. S. 122, § 7.  
1850, 133, §§ 2, 3.

SECT. 6. For granting a warrant and taking an inquisition on a dead body, three dollars; and if his attendance is required more than one day, two dollars for each day after the first; if a view only is taken, and no inquest is held, two dollars; which fees shall be paid by the state or county, agreeably to the provisions of chapter one hundred and seventy-five, section fourteen; but if the inquisition or view is upon more than one body at the same time, no additional fees shall be allowed.

For other services, fees allowed to sheriffs for like services.

## CONSTABLES.

1860 Ch. 191. of constables.  
R. S. 122, § 8.

SECT. 7. For serving a venire, twenty-five cents and four cents a mile for travel to the place of return; and for summoning jurors upon a coroner's inquest and attendance thereon, at the rate of ninety cents a day; to be paid out of the county treasury.

For attending a court of record by order of the court, and for services performed there, the fees allowed to deputy-sheriffs in like cases.

For other services, the same fees as are allowed to sheriffs for like services, unless other provision is expressly made.

## JURORS, WITNESSES, APPRAISERS, COMMISSIONERS, &amp;c.

1860 Ch. 191. § 1. of jurors, witnesses, appraisers, commissioners, &c.  
R. S. 122, § 10.  
1848, 123, 271.  
1849, 208.  
1852, 314, § 8.  
1854, 326.  
1855, 120, §§ 1, 2.  
1859, 196.

SECT. 8. For attending as a grand juror or traverse juror in any court, except before a justice of the peace, or police court, two dollars a day for attendance, and eight cents a mile for travel out and home; for attending as a juror before a sheriff, one dollar and seventy-five cents a day, and before a police court, justice of the peace, or coroner, or on any other occasion prescribed by law, one dollar and twenty-five cents a day for attendance, and six cents a mile for travel out and home.

For attending as a witness in a civil or criminal cause in the supreme judicial court, superior court, or before county commissioners, or juries summoned to assess damages under chapters forty-three, sixty-three, and one hundred and forty-nine, one dollar and twenty-five cents a day; for attendance before a justice of the peace, referees, arbitrators, or police court, or on any other occasion, fifty cents a day, and in all cases, four cents a mile for travel out and home; and each witness shall certify in writing the amount of his travel and attendance:

For attending as a witness in any case pending before the legislature, one dollar and twenty-five cents a day, and if the witness lives out of Boston, four cents a mile for travel to and from his place of abode, to be paid out of the treasury of the commonwealth if he is summoned by the legislature or either branch thereof; but in contested elections



of members of the house of representatives no party shall be so paid for witnesses, unless the committee by which the case is heard certifies that there was reasonable cause for the attendance of such witnesses.

Fees of witnesses, appraisers, &c.

For the services of appraisers of the estate of deceased persons; appraisers of real estate taken on execution; persons appointed under legal process for assigning dower or making partition of real estate; sheriffs' aid in criminal cases; and of all other private persons performing like service required by law, or in the execution of legal process, when no express provision is made for the compensation therefor; one dollar a day each, and four cents a mile for travel out and home.

TOWN CLERKS.

SECT. 9. For entering notice of an intention of marriage and issuing the certificate thereof, and for entering the certificate of marriage filed by persons married out of the state, fifty cents, to be paid by the parties :

of town clerks.  
R. S. 122, §§ 11, 12.  
1849, 202, § 2.  
1850, 121, § 4.

For a certificate of a birth or death, ten cents :

For copies of town records and other documents furnished to any person at his request, if containing less than one page, ten cents, and if more, at the rate of twelve cents a page.

MINISTERS, &c., FOR MARRIAGES.

SECT. 10. For lawfully solemnizing and certifying a marriage by a minister or justice of the peace, one dollar and twenty-five cents.

of ministers, &c., for marriages.  
R. S. 122, § 11.

SECRETARY OF THE COMMONWEALTH.

SECT. 11. For a copy of any resolve or order of the legislature, or of the governor and council, of a private or local nature, furnished to any private person, fifty cents :

of the secretary of the commonwealth.  
R. S. 122, § 13.  
See Ch. 14, § 3.

For copies of all other papers so furnished, at the rate of twelve cents a page.

REGISTER OF DEEDS.

SECT. 12. For entering and recording a deed or other paper, certifying the same on the original, and indexing it, and for all other duties pertaining thereto, twenty-five cents; and if it contains more than one page, at the rate of twenty cents for each page after the first; to be paid when the instrument is left for record :

of registers of deeds.  
1855, 311, § 1.  
1860 Ch. 43.

For all copies, at the rate of twenty cents a page :

For entering in the margin a discharge of a mortgage, twenty-five cents.

NOTARIES PUBLIC.

SECT. 13. For the protest of a bill of exchange, order, draft, or check, for non-acceptance or non-payment, or of a promissory note for non-payment, if the amount thereof is five hundred dollars or more, one dollar; if it is less than five hundred dollars, fifty cents; for recording the same, fifty cents; for noting the non-acceptance or non-payment of a bill of exchange, order, draft, or check, or the non-payment of a promissory note, seventy-five cents; for each notice of the non-acceptance or non-payment of a bill, order, draft, check, or note, given to a party liable for the payment thereof, twenty-five cents: *provided*, that the whole cost of protest, including necessary notices and the record, when the bill, order, draft, check, or note, is of the amount of five hundred dollars or upwards, shall not exceed two dollars; and when it is less than five hundred dollars, shall not exceed one dollar and fifty cents; and the whole cost of noting, including recording and notices, shall in no case exceed one dollar and twenty-five cents.

of notaries public.  
1839, 93, § 1.  
1 Gray, 175.

## SPECIAL PROVISIONS.

Fees in cases not specified.  
R. S. 122, § 21.  
1855, 311, §§ 1, 3.  
7 Gray, 132.  
13 Gray, 77.  
"Page" defined.  
R. S. 122, § 22.  
List of fees to be posted up in public offices.  
R. S. 122, § 17.

Officer to give a bill of fees received, if required.  
R. S. 122, § 18.  
1852, 312.

to indorse fees on writ, &c.  
R. S. 122, § 9.

District-attorney may refuse to allow fees, &c., in certain cases.  
1855, 180, § 1.

Witnesses' fees in certain cases to be adjusted by clerk, &c.  
1855, 180, § 2.

to be refused in certain cases.  
1854, 389.

Officers not to purchase orders, &c.  
1855, 180, § 3.

Penalty for making false certificates of witnesses, &c.  
1854, 380.

SECT. 14. In cases not expressly provided for by law, the fees for any official duty or service of recording officers shall be at the same rate as is prescribed in section twelve, and of other public officers at the same rate as those prescribed in this chapter for like services.

SECT. 15. The word "page," when used as the measure of computation, shall mean two hundred and twenty-four words.

SECT. 16. Each of the officers before mentioned, who keeps a public office, shall always keep posted up in some conspicuous and convenient place in his office, a printed or written list of the fees prescribed in this chapter, so far as they relate to him.

SECT. 17. Every officer, upon receiving fees for any official duty or service, shall, if required by the person paying the same, make out in writing a particular account of such fees, specifying for what they respectively accrued; and if he refuses or neglects so to do, he shall forfeit to the party paying the fees three times the amount so paid, to be recovered in an action of tort.

SECT. 18. All travelling fees and fees for the service of writs or precepts of which an officer is required to make a return, shall be indorsed on the writ or precept, or they shall not be allowed.

SECT. 19. When the administration of justice or the progress of business in criminal proceedings is delayed, obstructed, or prevented, by the negligence of a magistrate in certifying and returning recognizances, records, or other official papers, which it is his duty to transmit to a higher court, or in omitting the formalities required by law, the district-attorney, with the approbation of the court, may, either in whole or in part, refuse to allow the fees to which such magistrate would otherwise be entitled.

SECT. 20. When witnesses in criminal trials are in attendance in two or more cases pending at the same time before the same tribunal, they shall not be allowed full travel and attendance in each case, but the clerk of the court, under the direction of the district-attorney, may reduce and apportion the same as may be just and equitable, allowing at least one travel and attendance.

SECT. 21. If on the trial of a criminal case it appears that a witness has induced the defendant to commit the offence with which he is charged, with the intent to appear as a witness against him, the court or magistrate may in his discretion refuse to allow him his fees.

SECT. 22. No sheriff, deputy-sheriff, or other officer, taking the certificates of witnesses in criminal cases, shall purchase or discount, or have any interest in orders drawn or demands upon the treasury by such witnesses.

SECT. 23. Whoever, with a design to defraud, signs, or procures to be signed, a certificate of attendance or travel as a witness before a court, justice of the peace, or reference founded upon any rule of court, in any case in which the witness did not so attend, or for a greater number of days than he actually attended, or for a greater number of miles than he actually travelled, upon which certificate the attendance or travel so claimed is allowed in the taxation of costs, shall forfeit thirty dollars for each offence, to be recovered on complaint or indictment to the use of the commonwealth, or by action of tort to the use of any person against whom such excessive costs were taxed, together with four times the whole amount taxed for attendance or travel on such false certificate, and double costs in the action of tort: *provided*, that such complaint, indictment, or action, is commenced within two years after the commitment of the offence.

# PART IV.

## OF CRIMES, PUNISHMENTS, PROCEEDINGS IN CRIMINAL CASES, AND PRISONS.

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### TITLE I.

#### OF CRIMES AND PUNISHMENTS.

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- CHAPTER 158. — Of the Rights of Persons accused.  
CHAPTER 159. — Of Offences against the Sovereignty of the Commonwealth.  
CHAPTER 160. — Of Offences against the Person.  
CHAPTER 161. — Of Offences against Property.  
CHAPTER 162. — Of Forgery and Offences against the Currency.  
CHAPTER 163. — Of Offences against Public Justice.  
CHAPTER 164. — Of Offences against the Public Peace.  
CHAPTER 165. — Of Offences against Chastity, Morality, and Decency.  
CHAPTER 166. — Of Offences against the Public Health.  
CHAPTER 167. — Of Offences against Public Policy.  
CHAPTER 168. — Of Felonies, Accessories, Abettors, and Attempts to commit Crimes.
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### CHAPTER 158.

#### OF THE RIGHTS OF PERSONS ACCUSED.

##### SECTION

1. Persons arrested to be informed of ground of arrest, &c. Penalty for false answers, &c.
2. Officer who arrests, &c., on false pretences, how punished.
3. Offences to be prosecuted by indictment, except, &c.

##### SECTION

4. Party accused may have counsel, &c.
5. Persons indicted, how convicted.
6. Former acquittal, when a bar to subsequent prosecution.
7. when no defence.
8. No person to be punished until legally convicted.

SECTION 1. Every person arrested by virtue of process, or taken into custody by an officer in this state, has a right to know, from the officer who arrests or claims to detain him, the true ground on which the arrest is made; and an officer who refuses to answer a question relative to the reason for such arrest, or answers such question untruly, or assigns to the person arrested an untrue reason for the arrest, or neglects on request to exhibit to the person arrested, or any other person acting in his behalf, the precept by virtue of which such arrest is made, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the house of correction not exceeding one year.

Persons arrested to be informed of ground of arrest, &c. Penalty for false answers, &c. 1852, 224, § 1.



Officer who arrests, &c., on false pretences, how punished. 1852, 224, § 2.

SECT. 2. Every officer who arrests, takes into or detains in custody, a person in this state, pretending to have a process when he has none, or pretending to have a different process from that which he has, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the house of correction not exceeding one year.

Offences to be prosecuted by indictment, except, &c. R. S. 123, § 1.

SECT. 3. No person shall be held to answer in any court for an alleged crime or offence, unless upon indictment by a grand jury, except in the following cases:

First. When a prosecution by information is expressly authorized by statute;

Second. In proceedings before a police court or justice of the peace; and,

Third. In proceedings before courts martial.

Party accused may have counsel, &c. R. S. 123, § 2. Decl. of rights, art. 12.

SECT. 4. The accused shall at his trial be allowed to be heard by counsel, may defend himself, and shall have a right to produce witnesses and proofs in his favor, and to meet the witnesses produced against him face to face.

Persons indicted, how convicted. R. S. 123, § 3.

SECT. 5. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted and recorded by the court.

Former acquittal, when bar to subsequent prosecution. R. S. 123, § 4.

SECT. 6. No person shall be held to answer on a second indictment for an offence of which he has been acquitted by a jury upon the facts and merits; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or substance of the indictment on which he was acquitted.

when no defence. R. S. 123, § 5. 12 Pick. 496.

SECT. 7. If a person is on his trial acquitted upon the ground of a variance between the indictment and the proof, or upon an exception to the form or substance of the indictment, he may be arraigned again on a new indictment, and tried and convicted for the same offence, notwithstanding such former acquittal.

No person to be punished until legally convicted. R. S. 124, § 6.

SECT. 8. No person shall be punished for an offence, unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

## CHAPTER 159.

### OF OFFENCES AGAINST THE SOVEREIGNTY OF THE COMMONWEALTH.

SECTION

1. Treason defined.
2. punishment of.

SECTION

3. Treason, misprision of.
4. two witnesses required to convict of.

Treason defined. R. S. 124, § 1. Dec. of rights, art. 25.

SECTION 1. Treason against this commonwealth shall consist only in levying war against the same, or in adhering to the enemies thereof, giving them aid and comfort.

punishment of. 1852, 259, § 1. See Ch. 170, § 54.

SECT. 2. Whoever commits treason against this commonwealth shall be punished by imprisonment in the state prison for life.

misprision of. R. S. 124, § 3. 1859, 196.

SECT. 3. Whoever, having knowledge of the commission of treason, conceals the same, and does not as soon as may be disclose and make known such treason to the governor, or one of the justices of the supreme judicial court, or the superior court, shall be adjudged guilty of the offence of misprision of treason, and be punished by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or in the jail not exceeding two years.

SECT. 4. No person shall be convicted of treason but by the testimony of two lawful witnesses to the same overt act of treason whereof he stands indicted, unless he confesses the same in open court.

Treason, two witnesses required to convict of.  
R. S. 124, § 4.

CHAPTER 160.

OF OFFENCES AGAINST THE PERSON.

SECTION

1. Murder in first degree.
2. second degree.
3. Degree to be found by jury.
4. Punishment in first degree.
5. second degree.
6. Forms of indictments not changed.
7. Petit treason abolished, &c.
8. Body of murderer may be dissected.
9. Murder in a duel out of state, &c., where prosecuted.
10. Accessory in such duel.
11. Former conviction, &c., out of the state, may be pleaded in bar.
12. Engaging in duel; challenging, &c.
13. Accepting or carrying challenge, and abetting a duel.
14. Posting another, &c.
15. Prize fighting.
16. Aiding, advising, &c., in such fight.
17. Leaving state to fight.
18. Manslaughter.
19. Maiming, disfiguring, or aiding therein.
20. Assault with intent to murder, maim, &c.

SECTION

21. Attempt to murder by poisoning, &c.
22. Robbery, being armed, &c.
23. Assault with intent to rob, or murder, being armed.
24. Robbery, not being armed.
25. Assault with intent to rob or steal, not being armed.
26. Rape.
27. Assault with intent to commit rape.
28. Attempts to extort money, &c., by threats.
29. False accusation with intent that party shall be held as fugitive slave. When made by a public officer, &c.
30. Kidnapping, &c., or selling for slave, &c.
31. where to be prosecuted.
32. Poisoning food, medicines, springs, &c.
33. Assaults not before mentioned, how punished.
34. Loss of life by negligence, &c., of carriers.
35. Negligence, &c., of persons having care of public conveyances.
36. Drivers of stage coaches, &c., leaving horses without charge, &c.

SECTION 1. Murder committed with deliberately premeditated malice aforethought, or in the commission of, or attempt to commit, any crime punishable with death or imprisonment for life; or committed with extreme atrocity or cruelty, is murder in the first degree.

Murder in first degree.  
1858, 154, § 1.

SECT. 2. Murder not appearing to be in the first degree is murder in the second degree.

second degree.  
1858, 154, § 2.

SECT. 3. The degree of murder shall be found by the jury.

Degree to be found by jury.  
1858, 154, § 3.

SECT. 4. Whoever is guilty of murder in the first degree shall suffer the punishment of death.

1858, 154, § 4.

Punishment in first degree.

SECT. 5. Whoever is guilty of murder in the second degree shall be punished by imprisonment in the state prison for life.

in second degree.  
1858, 154, § 4.

SECT. 6. Nothing herein shall be construed to require any modification of the existing forms of indictment.

5 Cush. 295.

Forms not changed.

SECT. 7. The distinction between murder and petit treason is abolished, and the last-named offence shall be prosecuted and punished as murder.

1858, 154, § 6.  
Petit treason abolished, &c.  
R. S. 133, § 15.

SECT. 8. On every conviction of the crime of murder, the court may, in their discretion, order the body of the convict, after his execution, to be dissected, and the sheriff shall in such case deliver it to a professor of anatomy and surgery, in some college or public seminary, if requested; otherwise it shall, unless his friends desire it for interment, be delivered to any surgeon attending to receive it, and who will engage for the dissection thereof.

Body of murderer may be dissected.  
R. S. 125, § 2.

SECT. 9. Whoever, being an inhabitant or resident of this state, by previous appointment or engagement made within the same, fights a duel without the jurisdiction of the state, and in so doing inflicts a mortal wound upon any person, whereof he afterwards dies within this state,

Murder in a duel out of state, &c., where prosecuted.  
R. S. 125, § 3.

shall be deemed guilty of murder within this state, and may be indicted, tried, and convicted, in the county where the death happens.

Accessory in  
duel fought out  
of the state, &c.  
R. S. 125, § 4.

SECT. 10. Whoever, being an inhabitant or resident of this state, by previous appointment or engagement made within the same, becomes the second of either party in such duel, and is present as a second when such mortal wound is inflicted, whereof death ensues within this state, shall be deemed to be an accessory before the fact to the crime of murder in this state, and may be indicted, tried, and convicted, in the county where the death happens.

Former conviction, &c., out of  
state, may be  
pleaded in bar.  
R. S. 125, § 5.

SECT. 11. Any person indicted under either of the two preceding sections, may plead a former conviction or acquittal of the same offence in any other state or country, and such plea, if admitted or established, shall be a bar to all further or other proceedings against him for the same offence within this state.

Engaging in  
duel; challeng-  
ing, &c.  
R. S. 125, § 6.

SECT. 12. Whoever engages in a duel with a deadly weapon, although no homicide ensues, or challenges another to fight such duel, or sends or delivers a written or verbal message purporting or intended to be such challenge, although no duel ensues, shall be punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years; and shall be incapable of holding, or of being elected or appointed to, any place of honor, profit, or trust, under the constitution or laws of this state, for the term of twenty years after such conviction.

Accepting or  
carrying chal-  
lenge; and bet-  
ting a duel.  
R. S. 125, § 7.

SECT. 13. Whoever accepts such challenge, or knowingly carries or delivers any such challenge or message, whether a duel ensues or not, and whoever is present at the fighting of a duel with deadly weapons as an aid, second, or surgeon, or advises, encourages, or promotes, such duel, shall be punished by imprisonment in the jail not exceeding one year, or fine not exceeding five hundred dollars; and shall be incapacitated, as mentioned in the preceding section, for the term of five years after such conviction.

Posting another,  
&c.  
R. S. 125, § 8.

SECT. 14. Whoever posts another, or in writing or print uses any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding one hundred dollars.

Prize fighting.  
1849, 49, § 1.  
7 Gray, 324.

SECT. 15. Whoever by previous appointment or arrangement meets another person and engages in a fight, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars.

Aiding, advis-  
ing, &c., in such  
fight.  
1849, 49, § 2.  
7 Gray, 324.

SECT. 16. Whoever is present at such fight as an aid, second, or surgeon, or advises, encourages, or promotes, such fight, shall be punished by imprisonment in the state prison not exceeding five years, or by imprisonment in the jail not exceeding three years and fine not exceeding one thousand dollars.

Leaving state  
to fight.  
1849, 49, § 3.

SECT. 17. Whoever, being an inhabitant or resident of this state, by previous appointment or engagement made therein, leaves the state and engages in a fight with another person, without the limits thereof, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five thousand dollars.

Manslaughter.  
R. S. 125, § 9.

SECT. 18. Whoever commits manslaughter shall be punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

Maiming, dis-  
figuring, or aid-  
ing therein.  
R. S. 125, § 10.

SECT. 19. Whoever, with malicious intent to maim or disfigure, cuts out or maims the tongue, puts out or destroys an eye, cuts or tears off an ear, cuts, slits, or mutilates, the nose or lip, or cuts off or disables a limb or member, of any other person; and whoever is privy to such intent, or present aiding in the commission of such offence; shall be



punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

SECT. 20. Whoever assaults another with intent to murder, or to maim or disfigure his person in any of the ways mentioned in the preceding section, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

Assault with intent to murder, maim, &c.  
R. S. 125, § 11.

SECT. 21. Whoever attempts to commit murder by poisoning, drowning, or strangling, another person, or by any means not constituting the crime of assault with intent to murder, shall be punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

Attempt to murder by poisoning, &c.  
R. S. 125, § 12.

SECT. 22. Whoever assaults another, and feloniously robs, steals, and takes, from his person, money or other property which may be the subject of larceny; such robber being armed with a dangerous weapon, with intent if resisted to kill or maim the person robbed; or being so armed wounds or strikes the person robbed; shall be punished by imprisonment in the state prison for life.

Robbery, being armed, &c.  
R. S. 125, § 13.  
1839, 127.  
17 Mass. 359.  
6 Met. 565.

SECT. 23. Whoever, being armed with a dangerous weapon, assaults another with intent to rob or murder, shall be punished by imprisonment in the state prison not exceeding twenty years.

Assault with intent to rob, &c., being armed.

R. S. 125, § 14.

SECT. 24. Whoever, by force and violence, or assault and putting in fear, feloniously robs, steals, and takes, from the person of another, money or other property which may be the subject of larceny, (such robber not being armed with a dangerous weapon,) shall be punished by imprisonment in the state prison for life, or for any term of years.

Robbery, not being armed.  
R. S. 125, § 15.  
7 Mass. 242.  
8 Cush. 215.

SECT. 25. Whoever, not being armed with a dangerous weapon, assaults another with force and violence, and with intent to rob or steal, shall be punished by imprisonment in the state prison not exceeding ten years.

Assault with intent to rob, &c., not being armed.  
R. S. 125, § 16.

SECT. 26. Whoever ravishes and carnally knows a female of the age of ten years or more, by force and against her will, or unlawfully and carnally knows and abuses a female child under the age of ten years, shall be punished by imprisonment in the state prison for life.

Rape.  
1852, 259, § 2.  
19 Pick. 479.  
4 Gray, 7.  
See Ch. 170, § 51.

SECT. 27. Whoever assaults a female, with intent to commit a rape, shall be punished by imprisonment in the state prison for any term of years, or for life, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

Assault, with intent to commit rape.  
R. S. 125, § 19.  
4 Met. 351.

SECT. 28. Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offence, or by such communication maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, shall be punished by imprisonment in the state prison not exceeding fifteen years, or in the house of correction not exceeding ten years, or by fine not exceeding five thousand dollars, or by such imprisonment and fine.

Attempts to extort money, &c., by threats.  
R. S. 125, § 17.  
1853, 412.

SECT. 29. Whoever wilfully or falsely accuses another person of a crime or offence, with intent that the party so accused shall be held to answer any process, or be arrested on any process under the act of congress passed September eighteenth, A. D. eighteen hundred and fifty, entitled, "An Act to amend the act respecting fugitives from justice, and persons escaping from the service of their masters," shall be punished by fine of not less than one thousand, nor exceeding three thousand, dollars, and by imprisonment in the jail or house of correction not less than one year nor exceeding five years. A sheriff, constable, or other public officer, who makes such false or wilful accusation, with such intent, shall,

False accusation with intent that party shall be held as fugitive slave. When made by public officer, &c.  
1855, 116.

in addition to the above-named penalty, be forever disqualified from holding any office under the laws or constitution of this state.

Kidnapping,  
&c., or selling  
for slave, &c.  
R. S. 125, § 20.  
12 Met. 56, 78.

SECT. 30. Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this state against his will, or forcibly carries or sends such person out of this state, or forcibly seizes and confines, or inveigles, or kidnaps, another person, with intent either to cause him to be secretly confined or imprisoned in this state against his will, or to cause him to be sent out of this state against his will, or to be sold as a slave, or in any way held to service against his will; and whoever sells, or in any manner transfers, for any term, the service or labor of a negro, mulatto, or other person of color, who has been unlawfully seized, taken, inveigled, or kidnapped, from this state, to any other state, place, or country; shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

where to be  
prosecuted.  
R. S. 125, § 21.

SECT. 31. Every offence mentioned in the preceding section may be tried either in the county in which it is committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped, or sold, or whose services are so sold or transferred, is taken, confined, held, carried, or brought; and upon the trial of any such offence, the consent thereto of the person so taken, inveigled, kidnapped, or confined, shall not be a defence, unless it is made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or threats.

Poisoning food,  
medicines,  
springs, &c.  
R. S. 125, § 22.

SECT. 32. Whoever mingles any poison with food, drink, or medicine, with intent to kill or injure another person, or wilfully poisons any spring, well, or reservoir of water, with such intent, shall be punished by imprisonment in the state prison for life, or any term of years.

Assaults not be-  
fore mentioned,  
how punished.  
R. S. 125, § 23.

SECT. 33. Whoever assaults another with intent to commit burglary, robbery, rape, manslaughter, mayhem, or any felony, the punishment of which assault is not herein before prescribed, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

Loss of life by  
negligence, &c.,  
of carriers.  
1340, 80.  
11 Cush. 512.  
5 Gray, 473.

SECT. 34. If the life of any person, being a passenger, is lost by reason of the negligence or carelessness of the proprietor or proprietors of any steamboat, stage coach, or of common carriers of passengers, or by the unfitness or gross negligence or carelessness of their servants or agents, such proprietor or proprietors, and common carriers, shall be punished by fine not exceeding five thousand, nor less than five hundred, dollars, to be recovered by indictment, and paid to the executor or administrator, for the use of the widow and children of the deceased in equal moieties; but if there are no children, to the use of the widow, and if no widow, to the use of the next of kin.

Negligence,  
&c., of persons  
having care of  
public convey-  
ances.  
1853, 418.

SECT. 35. Whoever, having management or control of or over any steamboat or other public conveyance used for the common carriage of persons, is guilty of gross carelessness or neglect in, or in relation to, the conduct, management, or control, of such steamboat or other public conveyance, while being so used for the common carriage of persons, shall be punished by fine not exceeding five thousand dollars, or by imprisonment in the jail not exceeding three years.

Drivers of stage  
coaches, &c.,  
leaving horses  
without charge,  
&c.  
R. S. 51, § 4.

SECT. 36. If a driver of a stage coach or other vehicle, for the conveyance of passengers for hire, when a passenger is within or upon such coach or vehicle, leaves the horses thereof without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be punished by imprisonment in the jail not exceeding two months, or by fine not exceeding fifty dollars.



CHAPTER 161.

OF OFFENCES AGAINST PROPERTY.

SECTION

1. Burning dwelling-house, &c.
2. Burning in night meeting-house, &c., of value of \$1000; barn, &c., within curtilage, &c.
3. same in daytime.
4. buildings of less value than \$1000, &c., or bridge, ship, &c.
5. wood, fences, corn, grain, trees, soil, &c.
6. Wife liable for burning property of husband.
7. Burning property insured to injure the insurers.
8. Cutting, &c., bell rope, engine, &c., within twenty-four hours of fire.
9. same at time of fire, or preventing alarm or extinguishing of fire.
10. Burglary, being armed, or making an assault.
11. not being armed, &c.
12. Breaking in night building or ship, with intent, &c.
13. Entering in night without breaking, or breaking and entering in daytime, &c.
14. Entering dwelling-house in night, or breaking, &c., without putting in fear.
15. Stealing in a building, ship, &c.
16. in a building on fire, or at a fire.
17. Larceny from the person.
18. Larceny of property exceeding in value \$100. Not exceeding \$100.
19. Larceny, or destruction, &c., of will, &c.
20. Allegation of value, &c., not required.
21. Stealing property of value of \$5.
22. Second conviction, or conviction at same term of three larcenies.
23. Larceny of paper designed for bank bills, &c., with intent to pass, &c.
24. Printers, &c., retaining such paper, &c., with intent to pass, &c.
25. Larceny of things annexed to the realty.
26. Accessory to such larceny.
27. Jurisdiction in cases of such larceny.
28. Such larceny may be from one or more tenants. Of property of person deceased. From person unknown.
29. by whom it cannot be committed.
30. Larceny of beasts and birds.
31. Officer making arrest for robbery or larceny to secure, &c., goods stolen.
32. Allowance to prosecutor and officer, on conviction.
33. when prisoners forfeit recognizances, or escape.
34. Making, holding, using, &c., burglarious instruments.
35. Embezzlement of property the subject of larceny.
36. by persons in state treasury.
37. by town, city, or county officers.
38. by agents, clerks, &c.
39. by officers, &c., of banks.
40. Taking by accomplice deemed taking by officers, &c.
41. Embezzlement, &c., by carriers and others.
42. Indictment and evidence. What will not be a variance.
43. Buying, receiving, &c., stolen goods.
44. Effect of restitution of stolen property bought, &c.
45. Receiver of stolen goods tried before thief is convicted.

SECTION

46. Buying, &c., of embezzled goods, &c.
47. Second conviction and several offences. Common receiver.
48. Unlawful taking of animals, &c., but not with intent to steal, &c.
49. Issuing, &c., certificates of stock, bonds, &c., beyond amount authorized.
50. Fraudulently issuing or transferring certificates of stock, &c.
51. Making false entries, &c., in books of a corporation.
52. Books of corporation evidence.
53. Falsely personating another, &c.
54. Obtaining property by false pretences or tokens.
55. Forging, &c., private labels, trade marks, &c.
56. Selling wares having forged stamps, &c.
57. Obtaining property by tricks at cards, &c.
58. Gross frauds, &c., at common law.
59. Conveying land encumbered, without notice of the encumbrance.
60. Selling land attached, without notice.
61. Concealing mortgaged personal property, &c.
62. Mortgagor selling without consent of mortgagee.
63. Hirer, &c., of personal property, selling without consent.
64. Sale, &c., of collateral security before debt due, &c.
65. Consignee, &c., fraudulently depositing or pledging property, &c.
66. Maliciously destroying, &c., monuments, milestones, guideboards; extinguishing lamps, &c.
67. Wilful injury, &c., to school-house, church, &c., or the furniture, &c., and appurtenances thereof.
68. to house, &c., by exploding gunpowder, &c.
69. Throwing explosive substances into dwellings, &c.
70. oil of vitriol, coal tar, &c.
71. Raising water so as to injure mill. Proviso.
72. Malicious injury to dams, reservoirs, canals, &c.
73. Wilful injury, &c., to ice where taken as merchandise.
74. to bridges, turnpike gates, &c.
75. Passing, &c., toll-bridges, without paying.
76. Wilfully destroying vessels to defraud the owner or insurer.
77. Fitting out vessels with intent to destroy them, &c.
78. Making false invoices, &c., of cargo, to defraud insurer.
79. Making or procuring false protest, &c.
80. Malicious killing, maiming, or poisoning, cattle.
81. Wilful trespasses by cutting timber, wood, grain, &c.
82. Destroying fruit and ornamental trees, &c., injuring houses, fences, &c.
83. Destroying trees, &c., or stealing, &c., in gardens, &c.
84. Wilful trespasses by entering gardens, orchards, &c., with intent, &c. How, when done on the Lord's day, or secretly.
85. Other malicious injuries to personal property.



## SECTION

86. Persons wilfully injuring trees or committing mischief on Lord's day may be arrested, &c., and detained without warrant, not over twenty-four hours.
87. Killing pigeons on, or frightening from, beds.
88. Injury, or removal, &c., of property of Humane Society.

## SECTION

89. Setting fire to coal-pits, ou woodland in New Bedford, &c., between March and October.
90. Burning brushwood, &c., on such woodland.
91. Penalties for such burning, how recovered, and to whose use.

Burning dwelling-house, &c.  
R. S. 126, §§ 1, 2.  
1852, 250, § 3.  
3 Cush. 525.  
10 Cush. 478.  
See Ch. 170, § 54.

SECTION 1. Whoever wilfully and maliciously burns the dwelling-house of another, or any building adjoining such dwelling-house, or wilfully and maliciously sets fire to any building by the burning whereof such dwelling-house is burnt, shall be punished by imprisonment in the state prison for life.

Burning in night, meeting-house, &c., of value of \$1000; barn, &c., within curtilage, &c.  
R. S. 126, § 3.  
10 Cush. 480.

SECT. 2. Whoever wilfully and maliciously burns in the night time a meeting-house, church, court house, town house, college, academy, jail, or other building erected for public use, or a banking-house, warehouse, store, manufactory, or mill, of another, (being, with the property therein contained, of the value of one thousand dollars,) or a barn, stable, shop, or office, of another, within the curtilage of a dwelling-house, or any other building, by the burning whereof any building mentioned in this section is burnt in the night time, shall be punished by imprisonment in the state prison for life.

same in day-time.  
R. S. 126, § 4.

SECT. 3. Whoever wilfully and maliciously burns in the daytime any building mentioned in the preceding section, the punishment for which if burnt in the night time would be imprisonment in the state prison for life, shall be punished by imprisonment in the state prison not exceeding ten years.

buildings of less value than \$1000, &c., or bridge, ship, &c.  
R. S. 126, § 5.  
1 Met. 258.  
1 Gray, 495.

SECT. 4. Whoever wilfully and maliciously burns a banking-house, warehouse, store, manufactory, mill, barn, stable, shop, office, outhouse, or other building whatsoever, of another, other than is mentioned in section two, or a bridge, lock, dam, or flume, or a ship or vessel, of another, shall be punished by imprisonment in the state prison not exceeding ten years.

wood, fences, corn, grain, trees, soil, &c.  
R. S. 126, § 6.

SECT. 5. Whoever wilfully and maliciously burns or otherwise destroys, or injures, a pile or parcel of wood, boards, timber, or other lumber, or any fence, bars, or gate, or a stack of grain, hay, or other vegetable product, or any vegetable product severed from the soil and not stacked, or any standing trees, grain, grass, or other standing product of the soil, or the soil itself, of another, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the jail not exceeding one year.

Wife liable for burning property of husband.  
R. S. 126, § 7.

SECT. 6. The preceding sections severally extend to a married woman who commits either of the offences therein described, though the property burnt or set fire to belongs partly or wholly to her husband.

Burning property insured, to injure the insurers.  
R. S. 126, § 8.

SECT. 7. Whoever wilfully burns a building or any goods, wares, merchandise, or other chattels, which are at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person is the owner of the property burnt or not, shall be punished by imprisonment in the state prison not exceeding twenty years.

Cutting, &c., bell rope, cog-gine, &c., within twenty-four hours of fire.  
1855, 446, § 1.

SECT. 8. Whoever, within twenty-four hours prior to the burning of a building or other property, wilfully and maliciously cuts or removes any bell rope in the vicinity of such building or property, or cuts, injures, or destroys, any engine, or hose, or other apparatus belonging to an engine, in said vicinity, shall be deemed guilty of the burning as accessory before the fact, and be punished accordingly.

same, at time of fire, or preventing alarm or extinguishing fire.  
1855, 446, § 2.

SECT. 9. Whoever, during the burning of a building or other property, wilfully and maliciously cuts or removes any bell rope in the vicinity of such building or property, or otherwise prevents an alarm being given; or cuts, injures, or destroys, an engine, or hose, or other

apparatus belonging to any engine, in said vicinity, or otherwise wilfully and maliciously prevents or obstructs the extinguishing of any fire; shall be deemed guilty of the burning as accessory after the fact, and be punished by imprisonment in the state prison not exceeding seven years, or in the jail not exceeding three years, or by fine not exceeding one thousand dollars.

SECT. 10. Whoever breaks and enters a dwelling-house in the night time, with intent to commit the crime of murder, rape, robbery, larceny, or other felony, or after having entered with such intent, breaks such dwelling-house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entry, or so arming himself in such house, or making an actual assault on any person being lawfully therein, shall be punished by imprisonment in the state prison for life.

Burglary, being armed, or making an assault.  
R. S. 126, § 9.  
1839, 127.  
4 Met. 358.  
6 Met. 568.

SECT. 11. Whoever breaks and enters a dwelling-house in the night time with such intent; or having entered with such intent, breaks such dwelling-house in the night time, (the offender not being armed, nor arming himself in such house with a dangerous weapon, nor making an assault upon any person then being lawfully therein,) shall be punished by imprisonment in the state prison not exceeding twenty years.

not being armed, &c.  
R. S. 126, § 10.  
4 Met. 357.  
6 Met. 568.

SECT. 12. Whoever breaks and enters in the night time, a building, ship, or vessel, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, shall be punished by imprisonment in the state prison not exceeding twenty years.

Breaking in night, building, or ship, with intent, &c.  
R. S. 126, § 11.  
1851, 156, § 1.  
20 Pick. 363.

3 Met. 316. 6 Met. 238. 12 Met. 240. 6 Cush. 181.

SECT. 13. Whoever enters in the night time without breaking, or breaks and enters in the day time, a building, ship, or vessel, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, the owner or any other person lawfully therein being put in fear, shall be punished by imprisonment in the state prison not exceeding ten years.

Entering in night, without breaking, or breaking, &c., in day time, &c.  
R. S. 126, § 12.  
1851, 156, § 2.

SECT. 14. Whoever enters a dwelling-house in the night time, without breaking, or breaks and enters in the day time any building, ship, or vessel, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, (no person lawfully therein being put in fear,) shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, and imprisonment in the jail not exceeding two years.

Entering dwelling-house in night, or breaking, &c., without putting in fear.  
R. S. 126, § 13.  
1851, 156, § 3.

SECT. 15. Whoever steals in a building, ship, or vessel, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding two years.

Stealing in building, ship, &c.  
R. S. 126, § 14.  
1845, 28.  
1851, 156, § 4.  
2 Cush. 583.

6 Cush. 182. 3 Gray, 450. See Ch. 116, § 14. Ch. 120, § 44.

SECT. 16. Whoever steals in a building that is on fire, or steals any property removed in consequence of an alarm caused by fire, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the jail not exceeding two years.

at a fire.  
R. S. 126, § 15.  
See Ch. 116, § 14.  
Ch. 120, § 41.

SECT. 17. Whoever commits larceny by stealing from the person of another shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding two years.

Larceny from the person.  
R. S. 126, § 16.  
See Ch. 116, § 14.  
Ch. 120, § 41.

SECT. 18. Whoever commits larceny, by stealing, of the property of another, any money, goods, or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order, or certificate, or any book of accounts for or concerning money or goods due, or to become due, or to be delivered, or any deed or writing containing a conveyance of land or any other valuable contract in force, or any receipt, release, or defeasance, or any writ, process, or public record, if the property stolen exceeds the value of one hundred dollars, shall be punished by

of property exceeding \$100 in value.  
R. S. 126, § 17.  
R. S. 143, §§ 5, 6.  
2 Met. 419.  
9 Met. 273.  
4 Gray, 416.  
See Ch. 116, § 14.  
Ch. 120, § 41.



Larceny of property not exceeding \$100 in value.

Larceny, destruction, &c., of wills, &c.

Allegation of value not required.  
See Ch. 92, § 17.

Larceny of property of value of \$5.  
R. S. 143, §§ 5, 6.  
1837, 217.  
1851, 346.

Second conviction, or conviction at same term of three larcenies.  
R. S. 126, § 19.  
22 Pick. 1.  
3 Met. 458.  
4 Met. 361, 364.  
11 Met. 575, 581.  
12 Met. 246.

Larceny of paper designed for bank bills, &c., with intent to pass, &c.  
1858, 67, § 1.

Printers, &c., retaining such paper, &c., with intent to pass, &c.  
1858, 67, § 2.

Larceny of things annexed to the realty.  
1851, 151, § 1.

Accessory to such larceny.  
1851, 151, § 2.

imprisonment in the state prison not exceeding five years, or by fine not exceeding six hundred dollars and imprisonment in the jail not exceeding two years; or if the property stolen does not exceed the value of one hundred dollars, shall be punished by imprisonment in the state prison or jail not exceeding one year, or by fine not exceeding three hundred dollars.

SECT. 19. Whoever steals, or for any fraudulent purpose, destroys or conceals any will, codicil, or other testamentary instrument, shall, upon conviction thereof, be punished by imprisonment in the house of correction not exceeding two years, or in the state prison not exceeding five years.

SECT. 20. In an indictment for an offence under the preceding section, no allegation of value or ownership need be made; and in the trial of such an indictment, no disclosure made by any person under section seventeen of chapter ninety-two shall be used in evidence against him.

SECT. 21. Whoever, upon a complaint before a justice of the peace or police court, is convicted of stealing money or goods, not exceeding the value of five dollars, may be committed to the house of correction or to the house of industry or workhouse within the city or town where the offence was committed, for a term not exceeding six months; or he may instead thereof be sentenced to pay a fine not exceeding twenty dollars, either with or without a condition, that if the same with the costs of prosecution is not paid within a time specified, he shall be so committed for a term designated in the sentence.

SECT. 22. Whoever, having been convicted, upon indictment, either of the crime of larceny or of being accessory to the crime of larceny before the fact, afterwards commits the crime of larceny, or is accessory thereto before the fact, and is convicted thereof upon indictment; and whoever is convicted at the same term of the court, either as principal or accessory before the fact, of three distinct larcenies; shall be deemed a common and notorious thief, and be punished by imprisonment in the state prison not exceeding twenty years, or in the jail not exceeding three years.

SECT. 23. Whoever commits the crime of larceny by stealing any printed piece of paper or blank designed for issue by any incorporated bank or banking company in the United States, as a bank bill, certificate, or promissory note, or printed by means of any engraved plate designed for printing such pieces of paper or blanks, with intent either to utter or pass the same, or to cause or allow the same to be uttered or passed as true, either with or without alteration or addition, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or any term of years.

SECT. 24. Whoever, having been employed to print, or having assisted in printing, any such printed piece of paper or blank, or having been intrusted with the care or custody thereof, retains the same in his possession without the knowledge and consent of the corporation for which the same was printed, with the intent either to utter or pass it, or to cause or allow it to be uttered or passed, as true, either with or without alteration or addition, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or any term of years.

SECT. 25. Whoever by a trespass, with intent to steal, takes and carries away any thing which is parcel of the realty or annexed thereto, the property of another of some value, against his will, shall be guilty of such simple or aggravated larceny as he would be guilty of if such property were personal property.

SECT. 26. Any person may become an accessory to such larceny before or after the fact, or a receiver of the property stolen, in like man-



ner as if the property stolen were personal, and shall be punished accordingly.

SECT. 27. The same courts and justices shall have jurisdiction of offences under the preceding section, as would have jurisdiction if the property stolen were personal property.

SECT. 28. The stealing of such real property may be a larceny from one or more tenants, sole, joint, or in common, in fee, for life, or years, at will or sufferance, mortgagors or mortgagees, in possession of the same, or who may have an action of tort against the offender for trespass upon the property, but not from one having only the use or custody thereof. The larceny may be from a wife in possession, where she is authorized by law to hold such property as if sole, otherwise her occupation may be the possession of the husband. Where such property which was of a person deceased is stolen, it may be a larceny from any one or more heirs, devisees, reversioners, remainder-men, or others, having a right upon such decease to take possession but not having entered as it would be after entry. The larceny may be from a person unknown, when it would be such if the property stolen were personal.

SECT. 29. Such larceny cannot be committed by one against whom no action of tort could be maintained for acts like those constituting the larceny, but may be committed by those having only the use or custody.

SECT. 30. Whoever, without the consent of the owner and with a felonious intent, takes any beast or bird ordinarily kept in a state of confinement and not the subject of larceny at common law, shall be deemed guilty of larceny.

SECT. 31. The officer who arrests a person charged as principal or accessory in any robbery or larceny, shall secure the property alleged to be stolen, annex a schedule thereof to his return, and be answerable for the same; and upon conviction of the offender, the stolen property shall be restored to the owner.

SECT. 32. Upon a conviction of burglary, robbery, or larceny, the court may order a meet recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses with a reasonable allowance for their time and trouble; which shall be paid by the county treasurer, and charged by him to the commonwealth.

SECT. 33. When a person arrested upon a charge of burglary, robbery, or larceny, forfeits his recognizance, or escapes from the custody of the law after being committed to jail for trial, the court before whom the case would have been tried shall have the same authority to order a recompense and allowance to the prosecutor, and to the officer who has secured and kept the property, as provided in the preceding section.

SECT. 34. Whoever makes or mends, or begins to make or mend, or knowingly has in his possession, any engine, machine, tool, or implement, adapted and designed for cutting through, forcing, or breaking open, any building, room, vault, safe, or other depository, in order to steal therefrom money or other property, or to commit any other crime, knowing the same to be adapted and designed for the purpose aforesaid, with intent to use or employ or allow the same to be used or employed for such purpose, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

SECT. 35. Whoever embezzles, or fraudulently converts to his own use, or secretes with intent to embezzle or fraudulently convert to his own use, money, goods, or property, delivered to him, which may be the subject of larceny, or any part thereof, shall be deemed guilty of simple larceny.

SECT. 36. If a clerk, or other person employed in the treasury of this

Jurisdiction.  
1851, 151, § 3.  
See Ch. 116, § 14.  
Ch. 120, § 41.

Such larceny may be from one or more tenants.  
1851, 151, § 4.  
1852, 312.

of property of person deceased.

from person unknown.

by whom it cannot be committed.  
1851, 151, § 5.  
1852, 312.

Larceny of beasts and birds.  
1850, 303.

Officer making arrest to secure, &c., goods stolen.  
R. S. 126, § 25.  
21 Pick. 156.

Allowance to prosecutor and officer on conviction.  
R. S. 126, § 26.

when prisoners forfeit recognizances, or escape.  
1841, 33.

Making, holding, using, &c., burglarious instruments.  
1853, 194.

Embezzlement of property the subject of larceny.  
1857, 233.

by persons in state treasury.

R. S. 13, § 23.  
R. S. 126, § 23.

Embezzlement  
by town, city,  
or county offi-  
cers.  
1855, 487.

by agents,  
clerks, &c.  
R. S. 126, § 19.  
2 Met. 343.  
11 Met. 64.  
1 Gray, 461.

by officers,  
&c., of banks.  
1846, 171, § 1.  
8 Met. 247.

Taking by ac-  
complice deem-  
ed taking by of-  
ficer, &c.  
1846, 171, § 3.

Embezzlement,  
&c., by carriers  
and others.  
R. S. 126, § 30.  
9 Met. 141, 142.  
3 Gray, 461.  
6 Gray, 15.

Indictment and  
evidence.  
What will not  
be a variance.  
R. S. 133, § 10.  
1845, 215.  
1846, 171, § 2.  
8 Met. 247.

commonwealth, commits any fraud or embezzlement therein, he shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the state prison for life, or such term of years as the court shall order.

SECT. 37. If a town, city, or county officer, embezzles or fraudulently converts to his own use, or fraudulently takes or secretes with intent so to do, any effects or property belonging to or in possession of said town, city, or county, he shall be deemed guilty of larceny, and be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 38. If an officer, agent, clerk, or servant, of any incorporated company, or if a clerk, agent, or servant, of any private person, or copartnership, except apprentices and other persons under the age of sixteen years, embezzles, or fraudulently converts to his own use, or takes, or secretes, with intent so to do, without consent of his employer or master, any property of another, which has come to his possession or is under his care by virtue of such employment, he shall be deemed guilty of simple larceny.

SECT. 39. If an officer of an incorporated bank, or any person in the employment of such bank, fraudulently converts to his own use, or fraudulently takes and secretes with intent so to do, any bullion, money, note, bill, or other security for money, belonging to and in possession of such bank, or belonging to any person and deposited therein, he shall, whether intrusted with the custody thereof or not, be deemed guilty of larceny in said bank, and be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 40. In prosecutions for such offences, the fraudulent taking or receiving by any person or persons of any bullion, money, note, bill, or other security for money, belonging to such bank, by reason of an unlawful confederacy or agreement of him or them with an officer of said bank, or any person in the employment thereof, with intent to defraud the same, shall be deemed to be a fraudulent taking by such officer or person in the employment of the bank, to his own use, within the meaning of the preceding section; and it shall not be necessary on the trial to identify the particular bullion, money, note, bill, or security for money, so taken or received.

SECT. 41. If a carrier or other person to whom any property which may be the subject of larceny has been delivered to be carried for hire, or if any other person intrusted with such property, embezzles, or fraudulently converts to his own use, or secretes with intent so to do, any such property, either in the mass as the same was delivered, or otherwise, and before delivery thereof at the place at which, or to the person to whom, it was to be delivered, he shall be deemed to be guilty of simple larceny.

SECT. 42. In prosecutions for the offence of embezzling, fraudulently converting to one's own use, or fraudulently taking and secreting with intent so to embezzle or convert, the bullion, money, notes, bank notes, checks, drafts, bills of exchange, obligations, or other securities for money, of any person, bank, incorporated company, or copartnership, by a cashier, or other officer, clerk, agent, or servant, of such person, bank, incorporated company, or copartnership, it shall be sufficient to allege generally in the indictment an embezzlement, fraudulent conversion, or taking with such intent, of money to a certain amount, without specifying any particulars of such embezzlement; and on the trial evidence may be given of any such embezzlement, fraudulent conversion, or taking with such intent, committed within six months next after the time stated in the indictment; and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance, if it is proved, that any bullion, money, notes, bank note, check,



draft, bill of exchange, or other security for money, of such person, bank, incorporated company, or copartnership, of whatever amount, was fraudulently embezzled, converted, or taken with such intent, by such cashier, or other officer, clerk, agent, or servant, within said period of six months.

SECT. 43. Whoever buys, receives, or aids in the concealment of, stolen money, goods, or property, knowing the same to have been stolen, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the jail not exceeding two years.

SECT. 44. Upon a first conviction under the preceding section, and when the act of stealing the property was a simple larceny, if the party convicted of buying, receiving, or aiding in the concealing of, such stolen property, makes satisfaction to the party injured, to the full value of the property stolen and not restored, he shall not be imprisoned in the state prison.

SECT. 45. In prosecutions for the offence of buying, receiving, or aiding in the concealment of, stolen property known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole the property has been convicted.

SECT. 46. Whoever buys, receives, or aids in the concealment of, any embezzled property, knowing the same to have been embezzled, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding two years.

SECT. 47. Whoever is convicted of buying, receiving, or aiding in the concealment of, stolen or embezzled property, knowing the same to have been stolen or embezzled, having been before convicted of the like offence, and whoever is convicted at the same term of the court of three or more distinct acts of buying, receiving, or aiding in the concealment of, money, goods, or property stolen or embezzled as aforesaid, shall be deemed and adjudged to be a common receiver of stolen or embezzled goods, and shall be punished by imprisonment in the state prison not exceeding ten years.

SECT. 48. Whoever wilfully, mischievously, and without right, takes or uses any boat or vehicle, or takes, drives, rides, or uses, any horse, ass, mule, ox, or any draught animal, the property of another, without the consent of the owner or other person having the legal custody, care, or control, of the same, shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the house of correction for a term not exceeding six months: *provided*, that nothing in this section shall be so construed as to apply to any case where the taking of the property of another is with the intent to steal the same, or when it is taken under a claim of right, or with the presumed consent of the owner or other person having the legal control, care, or custody, of the same.

SECT. 49. An officer, agent, clerk, or servant, of a corporation, or any other person, who issues, or signs with intent to issue, any certificate of stock in a corporation, or who issues, signs, or indorses, with intent to issue, any bond, note, bill, or other obligation or security, in the name of such corporation, beyond the amount authorized by law, or limited by the legal votes of such corporation or its proper officers, or negotiates, transfers, or disposes of, such certificate, with intent to defraud, shall be punished by imprisonment in the state prison not exceeding ten years, or in the house of correction not exceeding one year.

SECT. 50. An officer, agent, clerk, or servant, of a corporation, or any other person, who fraudulently issues or transfers a certificate of the stock of a corporation, to any person not entitled thereto, or fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred, by himself or any other person, shall

Buying, receiving, &c., stolen goods.  
R. S. 126, § 20.  
6 Met. 242.  
5 Cush. 287.  
See Ch. 116, § 14.  
Ch. 120, § 41.  
Effect of restitution of stolen property bought, &c.  
R. S. 126, § 21.

Receiver of stolen goods tried before thief is convicted.  
R. S. 126, § 24.

Buying, &c., of embezzled goods, &c.  
1853, 184, § 1.

Second conviction and several offences.  
Common receiver.  
1853, 184, § 2.

Unlawful taking of animals, &c., but not with intent to steal, &c.  
1856, 39, § 1.  
See Ch. 120, § 43.

Issuing, &c., certificates of stock, bonds, &c., beyond amount authorized.  
1856, 123, § 1.  
1858, 114.

Fraudulently issuing or transferring certificates of stock, &c.  
1856, 123, § 2.



be punished by imprisonment in the state prison not exceeding ten years, or in the house of correction not exceeding one year.

Making false entries, &c., in books of corporation.

SECT. 51. An officer, agent, clerk, or servant, of a corporation, who makes a false entry in the books thereof, with intent to defraud, and any person whose duty it is to make in such books a record or entry of the transfer of stock, or of the issuing or cancelling of certificates thereof, or of the amount of stock issued by such corporation, who omits to make a true record or entry thereof, with intent to defraud, shall be punished by imprisonment in the state prison not exceeding ten years, or in the house of correction not exceeding one year.

Books of corporation evidence. 1856, 123, § 4.

SECT. 52. On the trial of any person for an offence under the three preceding sections, the books of any corporation to which such person had access or the right of access, shall be admissible in evidence.

Falsely personating another, &c.  
R. S. 126, § 31.

SECT. 53. Whoever falsely personates or represents another, and in such assumed character receives any property intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed to have committed simple larceny.

Obtaining property by false pretences or tokens.  
R. S. 126, § 32.  
1854, 12, § 1.  
1 Mass. 137.  
6 Mass. 72.  
4 Pick. 177.  
21 Pick. 5 5.  
10 Met. 521.  
12 Met. 446.  
See Ch. 116, § 14.  
Ch. 120, § 41.

SECT. 54. Whoever designedly, by a false pretence, or by a privy or false token, and with intent to defraud, obtains from another person any property, or obtains, with such intent, the signature of any person to a written instrument, the false making whereof would be punishable as forgery, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five hundred dollars and imprisonment in the jail not more than two years; but the provisions of this section shall not apply to any purchase of property by means of a false pretence relating to the purchaser's means or ability to pay, when by the terms of the purchase, payment for the same is not to be made upon or before the delivery of the property purchased, unless such pretence is made in writing, and signed by the party to be charged.

Forging, &c., private labels, trade marks, &c.  
1850, 90, § 1.

SECT. 55. Whoever knowingly and wilfully forges or counterfeits, or causes or procures to be forged or counterfeited, upon any goods, wares, or merchandise, the private labels, stamps, or trade marks, of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares, or merchandise, whatever, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

Selling wares having forged stamps, &c.  
1850, 90, § 2.

SECT. 56. Whoever vends any goods, wares, or merchandise, having thereon a forged or counterfeited stamp, label, or trade mark, of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall be punished by imprisonment not exceeding six months, or by fine not exceeding fifty dollars.

Obtaining property by tricks at cards, &c.  
1855, 135, § 1.  
See Ch. 116, § 14.  
Ch. 120, § 41.

SECT. 57. Whoever by the game of three-card monte, so called, or any other game, device, sleight of hand, pretensions to fortune telling, trick, or other means whatever, by the use of cards, or other implements or instruments, fraudulently obtains from another person property of any description, shall be punished as in case of larceny of property of like value.

Gross frauds, &c., at common law.  
R. S. 126, § 33.

SECT. 58. Whoever is convicted of any gross fraud or cheat at common law shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding two years, or by fine not exceeding four hundred dollars.

Conveying land encumbered without notice.  
1855, 177, § 2.

SECT. 59. Whoever conveys any real estate, knowing that any encumbrance exists thereon, without, before the consideration is paid, informing the grantee or grantees of the existence and nature of such an encumbrance, so far as he has knowledge thereof, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding one thousand dollars.

Selling land at

SECT. 60. Whoever, knowing that his land is attached on mesne

process, with intent to defraud sells and conveys it without giving notice of the attachment to the person to whom he sells and conveys it, shall be punished by imprisonment in the state prison not exceeding three years, or in the jail not exceeding one year.

tached without notice.  
R. S. 126, § 34.

SECT. 61. Whoever, with a fraudulent intent to place mortgaged personal property beyond the control of the mortgagee, removes or conceals, or aids or abets in removing or concealing, the same, and any mortgagor of such property who assents to such removal or concealment, shall be punished by fine not exceeding one thousand dollars or by imprisonment in the jail not exceeding one year.

Concealing mortgaged personal property, &c.  
1859, 246.

SECT. 62. If a mortgagor of personal property sells or conveys the same or any part thereof, without the written consent of the mortgagee, and without informing the person to whom he sells or conveys, that the same is mortgaged, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the jail not exceeding one year.

Mortgagor selling without consent of mortgagee.  
1850, 284. *Allen 488.*

SECT. 63. If a hirer or lessee of personal property sells or conveys the same, or any part thereof, without the written consent of the owner or lessor, and without informing the person to whom the same is sold or conveyed, that it is so hired or leased, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the jail not exceeding one year.

Hirer, &c., of personal property selling without consent.  
1857, 156.

SECT. 64. Whoever, holding any collateral security deposited with him for the payment of a debt which may be due him, sells, pledges, loans, or in any way disposes of, the same, before such debt becomes due and payable, and without the authority of the party depositing the same, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the state prison or jail not exceeding two years.

Sale, &c., of collateral security before debt due, &c.  
1855, 213.

SECT. 65. If a consignee or factor deposits or pledges any merchandise, bill of lading, certificate, or order for the delivery of merchandise, consigned or intrusted to him as security for money borrowed, or negotiable instrument received by him, and disposes of or applies the same to his own use in violation of good faith and with intent to defraud the owner thereof; or with the like fraudulent intent, applies or disposes of any money or negotiable instrument raised or acquired by the sale or other disposition of such merchandise, bill of lading, certificate, or order, to his own use; he shall be punished by fine not exceeding five thousand dollars and imprisonment not exceeding five years.

Consignees, &c., fraudulently depositing or pledging property, &c.  
1849, 216, § 6.

SECT. 66. Whoever wilfully and maliciously breaks down, injures, removes, or destroys, any monument erected for the purpose of designating the boundaries of a city or town, or of a tract or lot of land, or any tree marked for that purpose, or so breaks down, injures, removes, or destroys, any mile stone, mile board, or guide board, erected upon a highway or other public way, turnpike, or railroad, or wilfully or maliciously defaces or alters the inscription on any such stone or board, or wilfully or maliciously mars or defaces any building, or sign board, or extinguishes any lamp, or breaks, destroys, or removes, any lamp, or lamp post, or railing, or posts, erected on any bridge, sidewalk, street, highway, court, or passage, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding fifty dollars.

Maliciously destroying, &c., monuments, mile-stones, guide-boards; extinguishing lamps, &c.  
R. S. 25, § 33.  
R. S. 126, § 43.

SECT. 67. Whoever wilfully and maliciously, or wantonly and without cause, destroys, defaces, mars, or injures, any school-house, church, or other building erected or used for the purposes of education or religious instruction, or for the general diffusion of knowledge; or any of the out-buildings, fences, wells, or appurtenances, of such school-house, church, or other building; or any furniture, apparatus, or other property, belonging to, or connected with, such school-house, church, or other building; shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding one year.

Wilful injury, &c., to school-house, church, &c., or furniture, &c., and appurtenances thereof.  
1857, 222.

SECT. 68. Whoever wilfully and maliciously, by the explosion of

to house, &c.,



by exploding  
gunpowder, &c.  
1851, 129, § 1.

gunpowder or any other explosive substance, unlawfully destroys or injures any dwelling-house, office, shop, or other building, or any ship or vessel, shall be punished by imprisonment in the state prison not exceeding twenty years, or in the jail not exceeding five years, or by fine not exceeding one thousand dollars.

Throwing ex-  
plosive sub-  
stances into  
dwellings, &c.  
1851, 129, § 2.

SECT. 69. Whoever wilfully and maliciously throws into, against, or upon, or puts, places, or explodes, or causes to be exploded, in, upon, or near, any dwelling-house, office, shop, building, or vessel, any gunpowder or other explosive substance, or any bomb-shell, torpedo, or other instrument, filled, or loaded with any explosive substance, with intent unlawfully to destroy or injure such dwelling-house, office, shop, building, or vessel, or any person or property therein, shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding five years, or by fine not exceeding five hundred dollars.

oil of vitriol,  
coal tar, &c.  
1851, 129, § 3.

SECT. 70. Whoever wilfully and maliciously throws into, against, or upon, any dwelling-house, office, shop, or other building, or vessel, or puts or places therein or thereon any oil of vitriol, coal-tar, or other noxious or filthy substance, with intent unlawfully to injure, deface, or defile, such dwelling-house, office, shop, building, or vessel, or any property therein, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding three years, or by fine not exceeding three hundred dollars.

Raising water  
so as to injure  
mill. Proviso.  
1849, 98.

SECT. 71. Whoever by erecting or maintaining a dam, either within or without the limits of this state, knowingly causes the water of a river or stream to be raised so as to flow upon or injure a mill lawfully existing in this state, and belonging to any citizen or citizens thereof, without right as against the owner or owners of such mill, shall be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding six months; but this section shall not apply to cases where the courts of this state have jurisdiction to abate a dam so raised or maintained.

Malicious inju-  
ry to dams,  
reservoirs, ca-  
nals, &c.  
R. S. 126, § 40.  
1857, 160.

SECT. 72. Whoever wilfully and maliciously breaks down, injures, removes, or destroys, any dam, reservoir, canal, or trench, or any gate, flume, flash boards, or other appurtenances thereof, or any of the wheels, mill gear, or machinery, of a water-mill, or wilfully or wantonly, without color of right, draws off the water contained in a mill pond, reservoir, canal, or trench, or wilfully and maliciously, without color of right, obstructs the water of a mill pond, reservoir, canal, or trench, from flowing out of the same, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, and imprisonment in the jail not exceeding two years.

Wilful injury,  
&c., to ice taken  
as merchandise.  
1850, 114.

SECT. 73. Whoever wilfully, maliciously, and without right or license, cuts, injures, mars, or otherwise damages or destroys, any ice, upon any waters within this state, from which ice is or may be taken as an article of merchandise, whereby the taking thereof is hindered, or the value thereof diminished for that purpose, shall be punished by fine not exceeding one hundred dollars.

to bridges,  
turnpike gates,  
&c.  
R. S. 126, § 41.

SECT. 74. Whoever wilfully and maliciously breaks down, injures, removes, or destroys, any public or toll bridge, or turnpike gate, or any lock, culvert, or embankment, of a canal, or wilfully and maliciously makes any aperture or breach in such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the jail not exceeding two years.

Passing, &c.,  
toll-bridges,  
without paying.  
1842, 66.

SECT. 75. Whoever, not exempt from paying toll, passes, or attempts to pass, any toll-bridge lawfully established, without first paying the legal toll, and with intent to avoid paying the same, shall be liable to a fine not exceeding fifty dollars.

Wilfully de-

SECT. 76. Whoever wilfully casts away, burns, sinks, or otherwise



destroys, a ship or vessel, with intent to injure or defraud any owner of such ship or vessel, or the owner of any property laden on board the same, or an insurer of such ship, vessel, or property, or of any part thereof, shall be punished by imprisonment in the state prison for life or any term of years.

Destroying vessels to defraud owner or insurer.  
R. S. 126, § 35.

SECT. 77. Whoever lades, equips, or fits out, or assists in lading, equipping, or fitting out, a ship or vessel, with intent that the same shall be wilfully cast away, burnt, sunk, or otherwise destroyed, to injure or defraud an owner or insurer of such ship or vessel, or of any property laden on board the same, shall be punished by imprisonment in the state prison not exceeding twenty years, or fine not exceeding five thousand dollars and imprisonment in the jail not exceeding three years.

Fitting out vessels with intent to destroy them, &c.  
R. S. 126, § 36.

SECT. 78. If the owner of a ship or vessel, or of property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of a ship or vessel, makes out or exhibits, or causes to be made out or exhibited, a false or fraudulent invoice, bill of lading, bill of parcels, or other false estimates, of any goods or property laden, or pretended to be laden, on board such ship or vessel, with intent to injure or defraud an insurer of such ship, vessel, or property, or of any part thereof, he shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars and imprisonment in the jail not exceeding two years.

Making false invoices, &c., of cargo to defraud insurer, &c.  
R. S. 126, § 37.

SECT. 79. If a master, other officer, or mariner, of a ship or vessel, makes, or causes to be made, or swears to, any false affidavit or protest, or if an owner or other person concerned in such ship or vessel, or in the goods or property laden on board the same, procures any such false affidavit or protest to be made, or exhibits the same, with intent to injure, deceive, or defraud an insurer of such ship or vessel, or of any goods or property laden on board the same, he shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars and imprisonment in the jail not exceeding two years.

Making or procuring false protest, &c.  
R. S. 126, § 38.

SECT. 80. Whoever wilfully and maliciously kills, maims, or disfigures, any horses, cattle, or other beasts, of another person, or wilfully and maliciously administers poison to any such beasts, or exposes any poisonous substance, with intent that the same shall be taken or swallowed by them, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

Malicious killing, maiming, or poisoning, cattle.  
R. S. 126, § 39.  
1 Mass. 59.  
2 Met. 21.  
3 Cush. 559.

SECT. 81. Whoever wilfully commits a trespass, by cutting down or destroying any timber or wood, standing or growing on the land of another, or by carrying away any kind of timber or wood, cut down or lying on such land, or by digging up or carrying away any stone, ore, gravel, clay, sand, turf, or mould, from such land, or any roots, fruit, or plant, there being, or by cutting down or carrying away any sedge, grass, hay, or any kind of corn, standing, growing, or being, on such land, or by carrying away from any wharf or landing place any goods whatever in which he has no interest or property, without the license of the owner thereof, shall be punished by imprisonment in the jail not exceeding sixty days, or by fine not exceeding fifty dollars.

Wilful trespasses by cutting timber, wood, grain, &c.  
R. S. 126, § 44.  
See § 81.

SECT. 82. Whoever wilfully and maliciously, or wantonly and without cause, cuts down or destroys, or by girdling, lopping, or otherwise, injures any fruit or other tree, not his own, standing or growing for shade, ornament, or other useful purpose, or maliciously or wantonly breaks any glass, in a building not his own, or maliciously breaks down, injures, mars, or defaces, any fence belonging to or enclosing lands not his own, or maliciously throws down or opens any gate, bars, or fence,

Destroying fruit and ornamental trees, &c., injuring houses, fences, &c.  
R. S. 126, § 42.  
3 Greenl. 177.  
See Ch. 126, § 42.

and leaves the same down or open, or maliciously and injuriously severs from the freehold of another any produce thereof, or any thing attached thereto, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding one hundred dollars.

Destroying trees, &c., or stealing, &c., in gardens, &c.  
1855, 457, § 1.  
6 Gray, 349.  
See Ch. 120, § 42.

SECT. 83. Whoever wilfully and maliciously enters any orchard, nursery, garden, or cranberry meadow, and takes away, mutilates, or destroys, any tree, shrub, or vine, or steals, takes, and carries away, any fruit or flower, without the consent of the owner thereof, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the house of correction not exceeding three months.

Wilful trespasses by entering gardens, orchards, &c., with intent.  
How, when done on the Lord's day or secretly.  
R. S. 126, § 45.

SECT. 84. Whoever wilfully commits a trespass, by entering upon the garden, orchard, or other improved land, of another, without permission of the owner, and with intent to cut, take, carry away, destroy, or injure, the trees, grain, grass, hay, fruit, or vegetables, there growing or being, shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding twenty dollars; and if any of the offences mentioned in this or section eighty-one are committed on the Lord's day, or in disguise, or secretly in the night time, the imprisonment shall not be less than five days, nor the fine, less than five dollars.

Other malicious injuries to personal property.  
R. S. 126, § 39.  
1843, 52, § 1.  
6 Gray, 349.  
See Ch. 120, § 42.

SECT. 85. Whoever wilfully and maliciously destroys or injures the personal property of another in any manner or by any means not particularly described or mentioned in this chapter, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year: *provided*, that when the value of the property so destroyed or injured is not alleged to exceed the sum of fifteen dollars, the punishment shall be by fine not exceeding fifteen dollars, or imprisonment in the jail not exceeding thirty days.

Persons wilfully injuring trees or committing mischief on Lord's day, may be arrested, &c.  
1851, 246.  
1852, 245.

SECT. 86. Whoever is discovered in the act of wilfully injuring any fruit or forest trees, or committing any kind of malicious mischief on the Lord's day, may be arrested by any sheriff, deputy-sheriff, constable, watchman, police officer, or other person, and lawfully detained by imprisonment in the jail or otherwise, until a complaint can be made against him for the offence for which he was arrested, and he be taken upon a warrant issued upon such complaint; but such detention without warrant shall not continue more than twenty-four hours.

Killing pigeons on, or frightening from, beds.  
1849, 29, § 1.

SECT. 87. Whoever wilfully commits any trespass by killing pigeons on, or frightening them from, beds made for the purpose of taking them in nets, by firing guns, or in any other manner, within one hundred rods of the same, except on lands lawfully occupied by himself, shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding twenty dollars; and shall also be liable for the actual damages to the owner or occupant of such beds.

Injury or removal, &c., to property of Humane Society.  
1854, 353.

SECT. 88. Whoever unlawfully enters any house or hut, the property of the Humane Society, and wilfully injures, destroys, removes, or carries away any food, fuel, oil, candles, furniture, utensils, or other property, belonging to said society, or unlawfully or wilfully enters any boat-house of said society, and carries away, removes, or injures, any life-boat, car, or any of the ropes, tackle, oars, or any appurtenance thereof, or wilfully injures or destroys, or unlawfully uses or commits any trespass upon the property of said society, intended or kept for the purpose of saving or preserving human life, or commits any trespass upon such hut or boat-house, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the jail not exceeding ninety days; but the penalties of this section shall not apply to persons for whose use said boats, houses, and other property, are intended and kept. Pilots, commissioners of wrecks, sheriffs, and their deputies, and constables, shall make complaint against all persons guilty of any offence under this section.

SECT. 89. Whoever sets fire to any coal-pit or pile of wood for the purpose of charring the same, on any woodland in either of the towns of New Bedford, Dartmouth, Fall River, Freetown, and Fairhaven, in the county of Bristol, and Middleborough and Rochester in the county of Plymouth, between the first day of April and the first day of October annually, shall forfeit one hundred dollars for each offence.

Setting fire to coal-pits, on woodland, in New Bedford, &c., between March and October, 1839, 148, § 1.

SECT. 90. Whoever between the times aforesaid sets fire to any brushwood or bushes on any part of such woodland, or any land adjoining thereto, so as to cause the burning thereof, shall forfeit fifty dollars for each offence.

Burning brush wood, &c. 1839, 148, § 2.

SECT. 91. All forfeitures under the two preceding sections may be recovered, one half to the use of the town in which the offence is committed, and the other half to the use of whoever sues therefor.

How penalties recovered, and to whose use. 1839, 148, § 3.

## CHAPTER 162.

### OF FORGERY AND OFFENCES AGAINST THE CURRENCY.

SECTION

1. Forgery of records, contracts, &c.
2. Uttering forged records or contracts.
3. Forging notes of state treasurer, &c.
4. bank bills or notes.
5. Having in possession ten or more counterfeit bills, with intent, &c.
6. Passing counterfeit bills or forged notes.
7. Second conviction, and three convictions at same term.
8. Having counterfeit bills with intent, &c.
9. Making or having tools, &c., for counterfeiting, with intent, &c.
10. Testimony of president, &c., of banks, dispensed with in certain cases.
11. Sworn certificates of certain officers made evidence.
12. Affixing fictitious signatures.
13. Intent to defraud; statement and proof.
14. Counterfeiting coin, or having ten counterfeit pieces, &c.
15. Having less than ten pieces, with intent, &c. Uttering counterfeit coin.

SECTION

16. Second conviction, and three convictions at same term.
17. Making, mending, or having, tools for coining with intent, &c.
18. Issuing or passing notes as currency, &c., except, &c.
19. small notes, &c., as currency.
20. Circulation of fractional bills.
21. Fraudulently connecting parts of several bank notes, &c.
22. Wilful and malicious injury to bank bills.
23. gathering up, &c., bills of bank for purposes of injuring business, &c. Penalty.
24. Having in possession uncurrent and worthless bills, &c.
25. Uttering or passing such bills, &c.
26. Engraving, &c., shop bills resembling bank bills.
27. Sheriff, &c., to seize counterfeit bills, &c.
28. Remuneration to prosecutors, &c., of forgers, &c.

SECTION 1. Whoever falsely makes, alters, forges, or counterfeits, a public record, or a certificate, return, or attestation, of any clerk or register of a court, public register, notary public, justice of the peace, town clerk, or any other public officer, in relation to a matter wherein such certificate, return, or attestation, may be received as legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, or promissory note; or an order, acquittance, or discharge, for money or other property; or an acceptance of a bill of exchange, or indorsement or assignment of a bill of exchange or promissory note for the payment of money; or an accountable receipt, for money, goods, or other property; with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding two years.

Forgery of records, contracts, &c. R. S. 127, § 1. 1858, 93. 2 Mass. 397. 10 Mass. 181. 15 Mass. 526. 17 Mass. 46. 3 Cush. 150. 3 Gray, 441, 448.

SECT. 2. Whoever utters and publishes as true a false, forged, or altered record, deed, instrument, or other writing, mentioned in the preceding section, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding two years.

Uttering forged records or contracts. R. S. 127, § 2.



Forging notes  
of state treasur-  
er, &c.  
R. S. 127, § 3.  
See § 28.

SECT. 3. Whoever falsely makes, alters, forges, or counterfeits, a note, certificate, or other bill of credit, issued by the treasurer of this commonwealth, or by any commissioner or other officer authorized to issue the same for a debt of this commonwealth, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or for any term of years.

bank bills or  
notes.  
R. S. 127, § 4.  
See § 28.

SECT. 4. Whoever falsely makes, alters, forges, or counterfeits, a bank bill or promissory note, payable to the bearer thereof or to the order of any person, issued by an incorporated banking company established in this state, or within the United States, or any foreign province, state, or government, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or for any term of years.

Having in pos-  
session ten or  
more counter-  
feit bills, with  
intent, &c.  
R. S. 127, § 5.  
2 Mass. 138.  
8 Mass. 59.  
4 Pick. 233.

SECT. 5. Whoever has in his possession at the same time ten or more similar, false, altered, forged, or counterfeit notes, bills of credit, bank bills or notes, such as are mentioned in any of the preceding sections, payable to the bearer thereof, or to the order of any person, knowing the same to be false, altered, forged, or counterfeit, with intent to utter or pass the same as true, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or for any term of years.

Passing coun-  
terfeit bills or  
forged notes.  
R. S. 127, § 6.  
11 Mass. 136.

SECT. 6. Whoever utters or passes, or tenders in payment as true, any such false, altered, forged, or counterfeit note, certificate, or bill of credit for any debt of this commonwealth, or any bank bill, or promissory note, payable to the bearer thereof or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

Second convic-  
tion, and three  
convictions at  
same term.  
R. S. 127, § 7.

SECT. 7. Whoever, having been convicted of the offence mentioned in the preceding section, is again convicted of the like offence committed after the former conviction, and whoever is, at the same term of the court, convicted upon three distinct charges of such offence, shall be deemed a common utterer of counterfeit bills, and be punished by imprisonment in the state prison not exceeding ten years.

Having coun-  
terfeit bills,  
with intent, &c.  
R. S. 127, § 8.  
Act of amend.  
§ 15.

SECT. 8. Whoever brings into this state, or has in his possession, a false, forged, or counterfeit bill or note, in the similitude of the bills or notes, payable to the bearer thereof or to the order of any person, issued by or for any bank or banking company, established in this state, or within the United States, or in any foreign province, state, or government, with intent to utter or pass the same, or to render the same current as true, knowing the same to be false, forged, or counterfeit, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

Making or hav-  
ing tools, &c.,  
for counterfeit-  
ing, with intent,  
&c.  
R. S. 127, § 9.  
Act of amend.  
§ 16.

SECT. 9. Whoever engraves, makes, or mends, or begins to engrave, make, or mend, any plate, block, press, or other tool, instrument, or implement, or makes or provides any paper or other material, adapted and designed for the forging or making a false and counterfeit note, certificate, or other bill of credit, purporting to be issued by lawful authority for a debt of this commonwealth, or a false and counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, or in any foreign province, state, or government, and whoever has in his possession any such plate or block engraved in any part, or any press, or other tool, instrument, or implement, or any paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used, in forging or making any such false and coun-

terfeit certificates, bills, or notes, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 10. In prosecutions for forging or counterfeiting notes or bills of the banks before mentioned, or for uttering, publishing, or tendering in payment, as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with intent to utter and pass the same as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence is out of this state, or more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of such president or cashier, or who has knowledge of the difference in the appearance of the true and the counterfeit bills or notes of such banks, may be admitted to prove that such bills or notes are counterfeit.

Testimony of president, &c., of banks, dispensed with, in certain cases. R. S. 127, § 10. 2 Pick. 47. 5 Cush. 609.

SECT. 11. In prosecutions for forging or counterfeiting any note, certificate, bill of credit, or other security, issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing, or tendering in payment, as true, any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory, on whose behalf such note, certificate, bill of credit, or security, purports to have been issued, shall be admitted as evidence, for the purpose of proving the same to be forged or counterfeit.

Sworn certificates of certain officers made evidence. Decl. of rights, art. 12. R. S. 127, § 11.

SECT. 12. If a fictitious or pretended signature, purporting to be the signature of an officer or agent of a corporation, is fraudulently affixed to any instrument or writing, purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, or ever have existed.

Affixing fictitious signatures. R. S. 127, § 13. 2 Mass. 77.

SECT. 13. Where an intent to defraud is required to constitute the offence of forgery, or any other offence, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial it shall be sufficient, and shall not be deemed a variance, if there appears to be an intent to defraud the United States, or any state, county, city, town, or parish, or any body corporate, or any public officer in his official capacity, or any copartnership or members thereof, or any particular person.

Intent to defraud; statement and proof. R. S. 127, § 14. 12 Met. 448.

SECT. 14. Whoever counterfeits any gold or silver coin current by law or usage within this state, or has in his possession at the same time ten or more pieces of false money, or coin counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be punished by imprisonment in the state prison for life, or for any term of years.

Counterfeiting coin, or having ten counterfeit pieces, &c. R. S. 127, § 15. 8 Mass. 59. 21 Pick. 523. 8 Met. 315. 10 Met. 256. 13 Met. 515. 1 Gray, 566. See § 28.

SECT. 15. Whoever has in his possession any number of pieces, less than ten, of the counterfeit coin mentioned in the preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, or utters, passes, or tenders in payment, as true, any such counterfeit coin, knowing the same to be false and counterfeit, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

Having less than ten pieces, with intent, &c. Uttering counterfeit coin. R. S. 127, § 16. 21 Pick. 523. 10 Met. 256. 13 Met. 515. 1 Gray, 566. See § 28.

SECT. 16. Whoever, having been convicted of either of the offences mentioned in the preceding section, is again convicted of either of the same offences, committed after the former conviction, and whoever is at

Second conviction, and three convictions at same term.



R. S. 127, § 17.  
13 Met. 514.

the same term of the court convicted upon three distinct charges of said offences, shall be deemed a common utterer of counterfeit coin, and punished by imprisonment in the state prison not exceeding twenty years.

Making, mending, or having tools for coining, with intent, &c.  
R. S. 127, § 18.  
6 Met. 221.  
See § 28.

SECT. 17. Whoever casts, stamps, engraves, makes, or mends, or knowingly has in his possession, any mould, pattern, die, puncheon, engine, press, or other tool or instrument, adapted and designed for coining, or making counterfeit coin, in the similitude of any gold or silver coin current by law or usage in this state, with intent to use or employ the same, or to cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

Issuing or passing notes as currency, &c., except, &c.  
R. S. 36, § 70.

SECT. 18. Whoever issues or passes any note, bill, order, or check, other than foreign bills of exchange, the notes or bills of some bank incorporated by the laws of this state, or by the laws of the United States, or of some one of the United States, or by the laws of either of the British Provinces in North America, with the intent that the same shall be circulated as currency, shall forfeit fifty dollars for each offence.

small notes, &c., as currency except, &c.  
R. S. 33, § 7.

SECT. 19. Whoever issues or passes any note, bill, order, or check, other than the notes or bills of a bank incorporated under the authority of this state or some one of the United States, for a sum less than five dollars, or whereon a less sum than five dollars is due at the time of such issuing or passing thereof, with intent that the same shall be circulated as currency, shall forfeit fifty dollars for each offence.

Circulation of fractional bills.  
1853, 392, § 2.

SECT. 20. Whoever receives or puts in circulation as currency a bank note or bill which is, or a part of which is, for any fractional part of a dollar, shall be punished by fine of twenty-five dollars.

Fraudulently connecting parts of several bank notes, &c.  
R. S. 127, § 12.  
10 Mass. 34.

SECT. 21. Whoever fraudulently connects together different parts of several bank notes, or other genuine instruments, in such a manner as to produce one additional note or instrument, with intent to pass all of them as genuine, shall be deemed guilty of forgery in like manner as if each of them had been falsely made or forged.

Wilful and malicious injury to bank bills.  
1852, 64.

SECT. 22. Whoever wilfully and maliciously tears, cuts, or in any manner damages and impairs the usefulness for circulation of any bank bill or note of a bank in this state, shall be punished by fine not exceeding ten dollars for each offence; but the possession or uttering of a bill so injured shall not be evidence against a party charged, unless connected with other circumstances tending to prove that the bill or note was injured by him.

gathering up, &c., bills of bank for purpose of injuring business, &c.  
Penalty.  
1859, 116, §§ 3, 4.

SECT. 23. Whoever maliciously gathers up or retains, or maliciously aids in gathering up or retaining, any bills or notes of any bank or banking company, current by law or usage in this state, for the purpose of injuring or impeding the circulation or business of such bank or banking company, or of compelling it to do any act out of the usual course of its business, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding two years; and in the prosecution of any such offence it shall not be necessary to set out and describe each bill, but it shall be sufficient to aver and prove any amount of the bills of any bank which have been so gathered up or retained.

Having in possession uncurrent and worthless bills, &c.  
1857, 231, § 1.  
See § 27.

SECT. 24. Whoever has in his possession at the same time five or more uncurrent bank bills or notes, which are worthless as bank bills or notes, knowing the same to be worthless as aforesaid, or has papers not bank bills or notes, but made in the similitude of bank bills or notes, or papers purporting to be the bills or notes of any bank which has never existed, knowing the character of such papers, with intent to pass, utter, or circulate, the same, or to procure any other person so to do, for the purpose of injuring or defrauding, shall be punished by imprison-



ment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the house of correction not exceeding three years.

SECT. 25. Whoever utters or passes, or tenders in payment as true, any such uncurrent and worthless bank bill or note, or any paper not a bank bill or note, but made in the similitude of a bank bill or note, or any paper purporting to be the bill or note of any bank which has never existed, knowing the same to be worthless and uncurrent, as aforesaid, with intent to injure and defraud, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the house of correction not exceeding three years.

Uttering or passing such bills, &c. 1857, 231, § 2. See §§ 27, 28.

SECT. 26. Whoever engraves, prints, issues, utters, or circulates, a shop bill or advertisement, in similitude, form, and appearance, like a bank bill, on paper similar to paper used for bank bills, and with vignettes, figures, or decorations, used on bank bills, or having the general appearance of a bank bill, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the jail not exceeding ninety days.

Engraving, &c., shop bills, resembling bank bills. 1849, 5.

SECT. 27. When false, forged, or counterfeit bank bills, or notes, or plates, dies, or other tools, instruments, or implements, used by counterfeiters, or designed for the forging or making of false or counterfeit notes, coin, or bills, or worthless and uncurrent bank bills or notes described in sections twenty-four and twenty-five, come to the knowledge of any sheriff, constable, police officer, or other officer of justice, in this state, such officer shall immediately seize and take possession of and deliver the same into the custody of the court of record having jurisdiction of the offence of counterfeiting in the county, and the court shall, as soon as the ends of justice will permit, cause the same to be destroyed by an officer of the court, who shall make return to the court of his doings in the premises.

Sheriff, &c., to seize counterfeit bills, &c. 1855, 168, § 1. 1857, 231, § 3.

SECT. 28. Upon a conviction of any offence mentioned in sections three, four, fourteen, fifteen, seventeen, or twenty-five, and also upon forfeiture by persons prosecuted for any such offence of any recognizance for their appearance to answer to the same, the court before which the conviction is had, or where the record of the recognizance may be, may order a meet recompense to the prosecutor and to the officer who has secured and kept the evidence of the offence, not exceeding their actual expenses with a reasonable allowance for their time and trouble, to be paid by the county treasurer, and charged by him to the commonwealth; but where recognizances are so forfeited, the amount paid in any case shall not exceed the amount received by the commonwealth thereon.

Remuneration to prosecutors, &c., of forgers, &c. 1846, 142, § 1.

## CHAPTER 163.

### OF OFFENCES AGAINST PUBLIC JUSTICE.

SECTION

1. Perjury.
2. what shall be deemed.
3. subornation of.
4. inciting to commit.
5. on presumption of, by witness, court may commit, &c.
6. Papers, &c., may be secured.
7. Giving or offering bribes to officers.
8. Acceptance of bribes by officers.

SECTION

9. Corrupting jurors, arbitrators, &c.
10. Acceptance of bribes by jurors, arbitrators, &c.
11. Attempts to aid escapes from prison, and rescuing prisoners.
12. Aiding in an escape from an officer.
13. Voluntary escape from prison.
14. Negligent escape; refusing to receive prisoner.

## SECTION

15. Refusing to arrest, and suffering escape.
16. to aid officers.
17. upon order of a justice of the peace.
18. Falsely assuming to be a justice of the peace or officer.

## SECTION

19. Disguising, to resist execution of the law.
20. Concealing and compounding offences.
21. Officers taking rewards for omitting their duty.
22. Extortion, by taking unlawful fees.

Perjury.  
R. S. 128, § 1.  
12 Mass. 274.

1860 Ch. 186  
what shall be  
deemed.  
R. S. 94, § 12.  
R. S. 128, § 2.

1860 Ch. 186  
subornation  
of.  
R. S. 128, § 3.

inciting to  
commit.  
R. S. 128, § 4.

on presump-  
tion of, by wit-  
ness, court may  
commit, &c.  
R. S. 128, § 6.

Papers, &c.,  
may be secured.  
R. S. 128, § 7.

Giving or offer-  
ing bribes to of-  
ficers.  
R. S. 128, § 8.

Acceptance of  
bribes by offi-  
cers.  
R. S. 128, § 9.

SECTION 1. Whoever, being lawfully required to depose the truth in any proceeding in a course of justice, commits perjury, shall be punished, if the perjury is committed on the trial of an indictment for a capital crime, by imprisonment in the state prison for life, or any term of years, and if committed in any other case, by imprisonment in the state prison not exceeding twenty years.

SECT. 2. Whoever, being required by law to take an oath or affirmation, wilfully swears or affirms falsely, in regard to any matter or thing respecting which such oath or affirmation is required, shall be deemed guilty of perjury.

SECT. 3. Whoever is guilty of subornation of perjury, by procuring another person to commit perjury, shall be punished in the same manner as for perjury.

SECT. 4. Whoever endeavors to incite or procure any other person to commit perjury, though no perjury is committed, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding one year.

SECT. 5. When it appears to a court of record, that a witness or party who has been legally sworn and examined, or has made an affidavit, in any proceeding in a course of justice, has so testified as to induce a reasonable presumption that he is guilty of perjury therein, the court may immediately commit such witness or party by an order or process for that purpose, or may take a recognizance with sureties for his appearing to answer to an indictment for perjury; and thereupon the witnesses to establish such perjury may if present be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district-attorney.

SECT. 6. If in any proceeding in a court of justice, in which perjury is reasonably presumed as aforesaid, papers, books, or documents, have been produced, which are deemed necessary to be used on a prosecution for such perjury, the court may by order detain the same from the person producing them, so long as may be necessary for their use in such prosecution.

SECT. 7. Whoever corruptly gives, offers, or promises, to any executive, legislative, or judicial officer, after his election or appointment, either before or after he is qualified, or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment, on any matter, question, cause, or proceeding, which may be then pending, or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding three thousand dollars and imprisonment in the jail not exceeding one year.

SECT. 8. Every executive, legislative, or judicial officer who corruptly accepts a gift or gratuity, or a promise to make a gift, or to do an act beneficial, to such officer, under an agreement, or with an understanding, that his vote, opinion, or judgment, shall be given in any particular manner, or upon a particular side of any question, cause, or proceeding, which is or may be by law brought before him in his official capacity, or that, in such capacity, he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust, or appointment, under the constitution or laws of this state, and be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 9. Whoever corrupts, or attempts to corrupt, any master in chancery, auditor, juror, arbitrator, umpire, or referee, by giving, offering, or promising, any gift or gratuity whatever, with intent to bias the opinion or influence the decision of such master in chancery, auditor, juror, arbitrator, umpire, or referee, in relation to any cause or matter pending in the court, or before an inquest, or for the decision of which, such arbitrator, umpire, or referee, has been chosen or appointed, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

Corrupting jurors, arbitrators, &c.  
R. S. 128, § 10.  
1850 Ch. 186.

SECT. 10. If any person summoned as a juror, or chosen or appointed as an arbitrator, umpire, or referee, or if any master in chancery, or auditor, corruptly takes any thing to give his verdict, award, or report, or corruptly receives any gift or gratuity whatever, from a party to a suit, cause, or proceeding, for the trial or decision of which such juror has been summoned, or for the hearing or determination of which such master in chancery, auditor, arbitrator, umpire, or referee, has been chosen or appointed, he shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

Acceptance of bribes by jurors, arbitrators, &c.  
R. S. 128, § 11.

SECT. 11. Whoever conveys into a jail, house of correction, house of reformation, or other like place of confinement, any disguise, instrument, tool, weapon, or other thing, adapted or useful to aid a prisoner in making his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained; or by any means whatever aids or assists such prisoner in his endeavor to escape therefrom, whether such escape is effected or attempted or not; and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of an offence; shall be punished by imprisonment in the state prison not exceeding seven years; or if the person whose escape or rescue was effected or intended was charged with an offence not capital nor punishable by imprisonment in the state prison, then by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

Attempts to aid escapes from prison, and rescuing prisoners.  
R. S. 128, § 12.

SECT. 12. Whoever aids or assists a prisoner in escaping, or attempting to escape, from an officer or person who has the lawful custody of such prisoner, shall be punished by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

Aiding in an escape from an officer.  
R. S. 128, § 13.

SECT. 13. If a jailer or other officer voluntarily suffers a prisoner in his custody upon conviction or any criminal charge, to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to, or would be liable to suffer upon conviction of the crime or offence wherewith he stood charged.

Voluntary escape from prison.  
R. S. 128, § 14.

SECT. 14. If a jailer or other officer through negligence suffers a prisoner in his custody upon conviction or any criminal charge, to escape, or wilfully refuses to receive into his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, he shall be punished by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

Negligent escape; and refusing to receive a prisoner.  
R. S. 128, § 15.

SECT. 15. If an officer authorized to serve process, wilfully and corruptly refuses to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offence, or wilfully and corruptly omits or delays to execute such process, whereby such person escapes and goes at large, he shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding five hundred dollars.

Refusing to arrest, and suffering escape.  
R. S. 128, § 16.

SECT. 16. Whoever being required in the name of the commonwealth, by a sheriff, deputy-sheriff, coroner, constable, police officer, or watchman, neglects or refuses to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the appre-

to aid officers.  
R. S. 128, § 17.  
1855, 45, § 1.



hending or securing of any person for a breach of the peace, or in a case of escape or rescue of persons arrested upon civil process, shall be punished by imprisonment in the jail not exceeding one month, or by fine not exceeding fifty dollars.

Refusing to arrest upon order of a justice of the peace.  
R. S. 128, § 18.

SECT. 17. Whoever being required by a justice of the peace, upon view of a breach of the peace or any other offence proper for his cognizance, to apprehend and bring before him the offender, refuses or neglects to obey such justice, shall be punished in the manner provided in the preceding section for refusing assistance to a sheriff; and no person, to whom such justice is known or declares himself to be a justice of the peace, shall plead any excuse on pretence of ignorance of his office.

Falsely assuming to be a justice of the peace or officer.  
R. S. 128, § 19.  
10 Cush. 61.

SECT. 18. Whoever falsely assumes or pretends to be a justice of the peace, sheriff, deputy-sheriff, coroner, constable, police officer, or watchman, and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars.

Disguising to resist execution of the law.  
R. S. 128, § 20.

SECT. 19. Whoever in any manner disguises himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder, or interrupt, any officer or other person in the legal performance of his duty, or the exercise of his rights under the constitution or laws of this state, whether such intent is effected or not, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding five hundred dollars, and may also be bound to good behavior for the term of one year after the expiration of such imprisonment.

Concealing and compounding offences.  
R. S. 128, § 21.  
16 Mass. 91.

SECT. 20. Whoever, having knowledge of the commission of an offence punishable with death or by imprisonment in the state prison, takes money, or a gratuity or reward, or an engagement therefor, upon an agreement or understanding express or implied to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, shall, where such offence of which he has knowledge is punishable with death or imprisonment in the state prison for life, be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding one year; and where the offence of which he so had knowledge was punishable in any other manner, he shall be punished by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

Officers, taking rewards for omitting their duty.  
R. S. 128, § 22.

SECT. 21. If a sheriff, constable, or other officer authorized to serve legal process, receives from a defendant, or any other person, any money or other valuable thing, as a consideration, reward, or inducement, for omitting or delaying to arrest a defendant, or to carry him before a magistrate, or for delaying to take a person to prison, or for postponing the sale of property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the jail not exceeding three months.

Extortion by taking illegal fees.  
R. S. 128, § 23.  
1852, 312.  
1855, 311, § 2.  
1 Mass. 227.  
15 Mass. 525.  
17 Mass. 410.  
7 Pick. 171.  
1 Pick. 279.

SECT. 22. A recording officer who wilfully and corruptly demands and receives any greater fee for an official duty or service than is allowed by law, shall forfeit fifty dollars for each offence; and any other person who wilfully and corruptly demands and receives for the performance of any official duty or service for which a fee or compensation is allowed and provided by law, a greater fee or compensation than is so allowed and provided, shall forfeit thirty dollars for each offence; which penalties may be recovered by complaint or indictment to the use of the commonwealth, or by action of tort to the use of any person who sues therefor: *provided*, that the prosecution or action is commenced within one year after the offence is committed.

CHAPTER 164.

OF OFFENCES AGAINST THE PUBLIC PEACE.

SECTION

1. Unlawful assemblies, how suppressed.
2. Refusing assistance, when required; or to disperse, when commanded.
3. Neglect of mayor or other officer to suppress, &c.
4. Officers may quell unlawful assemblies, by force, &c.
5. Armed force, if called out, to obey orders of governor, judge, &c.
6. Officers, &c., to be held guiltless, though death is caused. Rioters, &c., responsible.

SECTION

7. Riotously destroying dwelling-house, &c.
8. Towns, &c., to pay three-fourths of value of property destroyed or injured.
9. may recover from offenders.
10. Carrying slung shot.
11. Manufacturing, &c., slung shot.
12. Making bonfire within ten rods of a building.
13. False alarm of fire.

SECTION 1. If any persons, to the number of twelve or more, being armed with clubs or other dangerous weapons, or if any persons, to the number of thirty or more, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any city or town, it shall be the duty of the mayor and of each of the aldermen of such city, and of each of the selectmen of such town, and of every justice of the peace living in any such city or town, and also of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the commonwealth to command all the persons so assembled, immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers to command the assistance of all persons there present, in seizing, arresting, and securing, such persons in custody, so that they may be proceeded with for their offence, according to law.

Unlawful assemblies, how suppressed.  
R. S. 129, § 1.  
10 Mass. 518.

SECT. 2. If any person present, being commanded by any of the magistrates or officers mentioned in the preceding section to aid or assist in seizing and securing such rioters, or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such magistrate or officer to depart from the place, refuses or neglects so to do, he shall be deemed one of the rioters, or persons unlawfully assembled, and may be prosecuted and punished accordingly.

Refusing assistance when required; or to disperse when commanded.  
R. S. 129, § 2.

SECT. 3. If any mayor, alderman, selectman, justice of the peace, sheriff, or deputy-sheriff, having notice of any such riotous or tumultuous and unlawful assembly, in the city or town in which he lives, neglects or refuses immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or omits or neglects to exercise the authority with which he is invested by this chapter for suppressing such assembly, and for arresting and securing the offenders, he shall be punished by fine not exceeding three hundred dollars.

Neglect of mayor or other officer to suppress, &c.  
R. S. 129, § 3

SECT. 4. If any persons who are so riotously or unlawfully assembled, and who have been commanded to disperse, as before provided, refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned may require the aid of a sufficient number of persons, in arms or otherwise as may be necessary, and shall proceed in such manner as in their judgment is expedient, forthwith to disperse and suppress such assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Officers may quell unlawful assemblies by force, &c.  
R. S. 129, § 4.

SECT. 5. When any armed force called out in the manner provided by chapter thirteen, to suppress a tumult or riot, or to disperse any body of men acting together by force and with intent to commit a felony, or

Armed force, if called out, to obey orders of governor, judge, &c.

R. S. 129, § 5.  
See Ch. 13, § 131.  
Ch. 144, §§ 64,  
65.

to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this state, arrives at the place of such unlawful, riotous, or tumultuous assembly, they shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all persons who are committing any of said offences, as they have received from the governor, or any judge of a court of record, or the sheriff of the county, and also such orders as they there receive from any two of the magistrates or officers before mentioned.

Officers, &c., to  
be held guilt-  
less, though  
death is caused.  
Rioters, &c., re-  
sponsible.  
R. S. 129, § 6.  
1839, 54, § 1.

SECT. 6. If, by reason of the efforts made by any two or more of said magistrates or officers, or by their direction, to disperse such assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person, or other person then present, is killed or wounded, the magistrates and officers, and all persons acting by their order, or under their directions, and all persons acting under the two preceding sections, shall be held guiltless and fully justified in law; and if any of said magistrates or officers, or any person acting under or by the direction of any of the officers before mentioned, is killed or wounded, all persons so assembled, and all other persons who, when commanded or required, refused to aid and assist said magistrates or officers, shall be held answerable therefor.

Riotously de-  
stroying dwell-  
ing-house, &c.  
R. S. 129, § 7.  
1852, 312.

SECT. 7. If any of the persons so unlawfully assembled demolishes, pulls down, or destroys, or begins to demolish, pull down, or destroy, any dwelling-house, or other building, or ship or vessel, he shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years, and shall also be answerable to any person injured, to the full amount of the damage, in an action of tort.

Towns, &c., to  
pay three-  
fourths of value  
of property de-  
stroyed or in-  
jured.  
1839, 54, § 2.  
1852, 312.

SECT. 8. When property of the value of fifty dollars or more is destroyed, or property is injured to that amount, by any persons to the number of twelve or more, riotously, rontously, or tumultuously assembled, the city or town within which the property was situated shall be liable to indemnify the owner thereof, to the amount of three-fourths of the value of the property destroyed, or of the amount of such injury thereto, to be recovered in an action of tort: *provided*, that the owner of such property uses all reasonable diligence to prevent its destruction or injury, and to procure the conviction of the offenders.

may recover  
from offenders.  
1839, 54, § 3.

SECT. 9. A city or town which pays any sum under the provisions of the preceding section may recover the same against any or all of the persons who destroyed or injured such property.

Carrying slung  
shot, &c.  
1850, 194, § 1.  
1852, 295, § 1.  
1859, 199.

SECT. 10. Whoever when arrested upon a warrant of a magistrate issued against him for an alleged offence against the laws of this state, and whoever when arrested by a sheriff, deputy-sheriff, constable, police officer, or watchman, while committing a criminal offence against the laws of this state, or a breach or disturbance of the public peace, is armed with, or has on his person, slung shot, metallic knuckles, billies, or other dangerous weapon, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the jail not exceeding one year.

Manufacturing,  
&c., slung shot,  
&c.  
1850, 194, § 2.

SECT. 11. Whoever manufactures, or causes to be manufactured, or sells, or exposes for sale, any instrument or weapon of the kind usually known as slung shot, or metallic knuckles, shall be punished by fine not less than fifty dollars, or by imprisonment in the jail not exceeding six months.

Making bonfire  
within ten rods  
of a building.  
1837, 177, § 1.

SECT. 12. Whoever is concerned in causing or making a bonfire within ten rods of any house or building shall be punished by fine not exceeding twenty dollars, or imprisonment not exceeding one month.

False alarm of  
fire.  
1837, 177, § 2.

SECT. 13. Whoever without reasonable cause, by outcry, or the ringing of bells, or otherwise, makes or circulates, or causes to be made or circulated, a false alarm of fire, shall be punished by fine not exceeding fifty dollars.



CHAPTER 165.

OF OFFENCES AGAINST CHASTITY, MORALITY, AND DECENCY.

SECTION

1. Abduction of an unmarried female under sixteen for the purpose of marriage.
2. of unmarried women, &c., for the purpose of prostitution. Limitation.
3. Adultery.
4. Polygamy.
5. Excepted cases.
6. Lewd and lascivious cohabitation, and open and gross lewdness.
7. Incest.
8. Fornication.
9. Unlawful attempts, &c., to procure miscarriage.
10. Advertising, &c., notices, &c., of means to procure abortion.
11. Concealment by mother of death of bastard child.
12. Offence may be inserted in indictment for murder.
13. Keeping house of ill fame.
14. Lease of house so kept, void at option of lessor.
15. Importing, selling, receiving, &c., obscene books or prints, &c.
16. Police court, &c., may issue search warrant for such books, &c., and cause to be destroyed.
17. Half of fine to be paid to prosecutor.
18. Crime against nature.
19. Blasphemy.
20. Profane cursing and swearing.

SECTION

21. Disturbing religious worship.
22. Gaming, &c., within a mile of place of field meeting for religious purposes.
23. Disturbance of schools and public meetings.
24. of funerals.
25. Drunkenness.
26. second conviction.
27. in the city of Boston.
28. Rogues, vagabonds, &c.
29. may be punished by fine, and sentenced conditionally.
30. Master of house of industry, &c., to receive persons committed, &c.
31. Party committing offences, under section twenty-eight, after appeal.
32. Respondent may be discharged on recognizance, paying costs.
33. Disorderly persons arrested in night time.
34. Conviction of certain offenders after discharge on former conviction.
35. Night-walking, third conviction.
36. Sheriff, &c., taking a dead body.
37. Violation of sepulture.
38. Buying or having dead body for the purpose of sale, &c.
39. Injuring or defacing tombs, memorials of the dead, &c.
40. Making roads, canals, &c., through burial grounds.
41. Cruelty to animals.

SECTION 1. Whoever fraudulently and deceitfully entices or takes away an unmarried female under the age of sixteen years, from her father's house or wherever else she may be found, without the consent of the parent, guardian, or master, if any, under whose care and custody she is living, for the purpose of effecting a clandestine marriage of such female without such consent, shall be punished by imprisonment in the state prison not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment in the jail.

Abduction of an unmarried female under sixteen for the purpose of marriage. 1852, 254. 7 Gray, 484.

SECT. 2. Whoever fraudulently and deceitfully entices or takes away an unmarried woman, of a chaste life and conversation, from her father's house, or wherever else she may be found, for the purpose of prostitution at a house of ill fame, assignation, or elsewhere, and whoever aids and assists in such abduction for such purpose, shall be punished by imprisonment in the state prison not exceeding three years, or in the common jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment in the jail. But no prosecution shall be commenced after two years from the commission of the offence.

of unmarried women, &c., for the purpose of prostitution. Limitation. 1845, 216, §§ 1, 2. 12 Met. 94.

SECT. 3. Whoever commits adultery shall be punished by imprisonment in the state prison not exceeding three years, or in the jail not exceeding two years; or by fine not exceeding five hundred dollars; and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery.

Adultery. R. S. 130, § 1. 21 Pick. 509. 2 Met. 190. 5 Met. 535. 2 Cush. 551. 6 Cush. 78.

SECT. 4. Whoever, having a former husband or wife living, marries another person, or continues to cohabit with such second husband or wife in this state, shall (except in the cases mentioned in the following section) be deemed guilty of polygamy, and be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding three years, or by fine not exceeding five hundred dollars.

Polygamy. R. S. 130, § 2. 1 Pick. 136. 8 Pick. 483. 7 Met. 472. 2 Cush. 553.

Excepted cases.  
R. S. 130, § 3.

SECT. 5. The provision of the preceding section shall not extend to any person whose husband or wife has been continually remaining beyond sea, or has voluntarily withdrawn from the other, and remained absent for the space of seven years together, the party marrying again not knowing the other to be living within that time, nor to any person legally divorced from the bonds of matrimony, and not the guilty cause of such divorce.

Lewd and lascivious cohabitation, and open and gross lewdness.  
R. S. 130, § 4.  
1 Mass. 8.  
10 Mass. 153.

SECT. 6. If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of open and gross lewdness and lascivious behavior, every such person shall be punished by imprisonment in the state prison not exceeding three years, or in the jail not exceeding two years, or by fine not exceeding three hundred dollars.

Incest.  
R. S. 130, § 13.

SECT. 7. Persons within the degrees of consanguinity within which marriages are prohibited or declared by law to be incestuous and void, who intermarry, or commit adultery or fornication with each other, shall be punished by imprisonment in the state prison not exceeding twenty years, or in the jail not exceeding three years.

Fornication.  
R. S. 130, § 5.  
1849, 132, § 3.

SECT. 8. If a man commits fornication with a single woman, each of them shall be punished by imprisonment in the jail not exceeding three months, or by fine not exceeding thirty dollars.

Unlawful attempts, &c., to procure miscarriage.  
1845, 27.

SECT. 9. Whoever, with intent to procure miscarriage of any woman, unlawfully administers to her, or advises or prescribes for her, or causes to be taken by her, any poison, drug, medicine, or other noxious thing, or unlawfully uses any instrument or other means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman dies in consequence thereof, be imprisoned in the state prison not exceeding twenty, nor less than five, years, and if the woman does not die in consequence thereof, shall be punished by imprisonment in the state prison not exceeding seven years, nor less than one year, and by fine not exceeding two thousand dollars.

Advertising, &c., notices, &c., of means to procure abortion.  
1847, 83.

SECT. 10. Whoever knowingly advertises, prints, publishes, distributes, or circulates, or knowingly causes to be advertised, printed, published, distributed, or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement, or reference, containing words or language giving or conveying any notice, hint, or reference, to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop, or office, where, any poison, drug, mixture, preparation, medicine, or noxious thing, or any instrument or means whatever, or any advice, direction, information, or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be punished by imprisonment in the state prison or jail not exceeding three years, or by fine not exceeding one thousand dollars.

Concealment by mother of death of bastard child.  
R. S. 130, § 6.

SECT. 11. If a woman conceals the death of any issue of her body, which, if born alive, would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the jail not exceeding one year.

Offence may be inserted in indictment for murder.  
R. S. 130, § 7.

SECT. 12. Any woman indicted for the murder of her infant bastard child, may also be charged in the same indictment with the offence described in the preceding section; and if on the trial the jury acquit her of the charge of murder, they may find her guilty of the concealment.

Keeping house of ill fame.  
R. S. 130, § 8.  
1849, 84.  
2 Gray, 356.  
Lease of house so kept, void at

SECT. 13. Whoever keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness, shall be punished by imprisonment in the jail not exceeding two years.

SECT. 14. When the lessee of a dwelling-house is convicted of the offence mentioned in the preceding section, the lease or contract for

letting the house shall, at the option of the lessor, become void; and the lessor shall have the like remedy to recover the possession as against a tenant holding over after the expiration of his term.

option of lessor.  
R. S. 130, § 9.  
3 Pick. 26.

SECT. 15. Whoever imports, prints, publishes, sells, or distributes, any book, pamphlet, ballad, printed paper, or other thing, containing obscene language, or any obscene prints, pictures, figures, or descriptions, manifestly tending to the corruption of the morals of youth; or introduces into any family, school, or place of education, or buys, procures, receives, or has in his possession, any such book, pamphlet, ballad, printed paper, or other thing, either for the purpose of sale, exhibition, loan, or circulation, or with intent to introduce the same into any family, school, or place of education; shall be punished by imprisonment in the state prison not exceeding five years, or by imprisonment in the jail not exceeding two years, and fine not exceeding one thousand dollars.

Importing, selling, receiving, &c., obscene books or prints, &c.  
R. S. 130, § 10.  
17 Mass. 336.  
1 Cush. 66.

SECT. 16. Any police court or justice of the peace may issue a warrant for the purpose of searching for any obscene books, pamphlets, ballads, printed papers, or other things, mentioned in the preceding section, in the manner provided in chapter one hundred and seventy; and all such things found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards shall be destroyed by order of the court before whom the same is brought.

Police court, &c., may issue search warrant for such books, &c., and cause to be destroyed.  
R. S. 130, § 11.

SECT. 17. When a person is convicted under either of the two preceding sections, and sentenced to pay a fine, there shall be paid to the person who informed and prosecuted such offender to conviction, one-half of the amount of the fine actually paid by such convict.

Half of fine to be paid to prosecutor.  
R. S. 130, § 12.  
1852, 312, § 60.

SECT. 18. Whoever commits the abominable and detestable crime against nature, either with mankind, or with any beast, shall be punished by imprisonment in the state prison not exceeding twenty years.

Crime against nature.  
R. S. 130, § 14.

SECT. 19. Whoever wilfully blasphemes the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing or contumeliously reproaching Jesus Christ, or the Holy Ghost, or by cursing or contumeliously reproaching the holy word of God, contained in the holy scriptures, or exposing them to contempt and ridicule, shall be punished by imprisonment in the state prison not exceeding two years, or in the jail not exceeding one year, or by fine not exceeding three hundred dollars, and may also be bound to good behavior.

Blasphemy.  
R. S. 130, § 15.  
20 Pick. 206.

SECT. 20. Whoever, having arrived at the age of discretion, profanely curses or swears, shall, on conviction before any justice of the peace or police court, be punished by fine not exceeding five dollars nor less than one dollar; but no prosecution shall be commenced after twenty days from the commission of the offence.

Profane cursing and swearing.  
R. S. 130, § 16.

SECT. 21. Whoever wilfully interrupts or disturbs any assembly of people met for the worship of God shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding fifty dollars.

Disturbing religious worship.  
R. S. 130, § 17.  
2 Mass. 163.

SECT. 22. Whoever, during the time of holding any camp or field meeting for religious purposes, and within one mile of the place of holding such meeting, hawks or peddles goods, wares, merchandise, or, without permission from the authorities having charge of such meeting, establishes any tent or booth, for vending provisions or refreshments, or practises or engages in gaming or horse-racing, or exhibits or offers to exhibit, shows or plays, shall forfeit for each offence a sum not exceeding twenty dollars: *provided*, that a person having his regular and usual place of business within such limits, is not hereby required to suspend his business.

Gaming, &c., within a mile of place of field meeting for religious purposes.  
1838, 143.



Disturbance of schools and public meetings.

1849, 59.  
1 Gray, 476.

of funerals.  
1851, 193.  
1 Gray, 480.

Drunkenness.  
R. S. 130, § 18.

second conviction.  
1850, 263.

in the city of Boston.  
1855, 53.

Rogues, vagabonds, &c.  
R. S. 143, § 5.  
1837, 217.  
1856, 186.  
8 Met. 513.  
5 Gray, 85.  
See §§ 31, 34.  
Ch. 178, §§ 17, 58.

may be punished by fine, and sentenced conditionally.  
R. S. 143, § 6.  
1837, 157.  
1851, 346.  
8 Met. 513.

Master of house of industry, &c., to receive persons committed, &c.  
R. S. 87, § 41.  
R. S. 143, § 6.  
1851, 346.

SECT. 23. Whoever wilfully interrupts or disturbs any school or other assembly of people met for a lawful purpose, shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding fifty dollars.

SECT. 24. Whoever wilfully interrupts, or by fast driving or otherwise in any way disturbs, a funeral assembly or procession, shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding fifty dollars.

SECT. 25. Whoever is guilty of drunkenness by the voluntary use of intoxicating liquor shall for the first offence be punished by fine not exceeding five dollars, and for any like offence committed after the first conviction, by fine not exceeding ten dollars, or by imprisonment in the house of correction not exceeding three months; but no prosecution shall be commenced after six months from the commission of the offence.

SECT. 26. Whoever has become liable to imprisonment in the house of correction upon a second conviction for the crime of drunkenness, may be committed to the workhouse, if any, in the town or city where the offence was committed, instead of the house of correction.

SECT. 27. A person convicted of the crime of drunkenness in the city of Boston, may be committed, in case of non-payment of the fine, to the house of industry instead of the jail or house of correction. The term of imprisonment and the manner of pardon and discharge shall in all respects be the same as are provided in cases where such persons are held in prison in the county of Suffolk for non-payment of fine and costs.

SECT. 28. Rogues and vagabonds, idle and dissolute persons who go about begging, persons who use any juggling or unlawful games or plays, common pipers and fiddlers, stubborn children, runaways, common drunkards, common night walkers, pilferers, lewd, wanton, and lascivious persons in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, misspend what they earn and do not provide for themselves or for the support of their families, and all other idle and disorderly persons, including therein those persons who neglect all lawful business and habitually misspend their time by frequenting houses of ill fame, gaming houses, or tipping shops, may, upon conviction, be committed, for a term not exceeding six months, to the house of correction, or to the house of industry or workhouse within the city or town where the conviction is had, or to the workhouse, if any there is, in the city or town in which the offender has a legal settlement, if such town is within the county.

SECT. 29. When a person is convicted, by a justice of the peace or police court, of any offence mentioned in the preceding section, he may, instead of the punishment therein mentioned, be punished by fine not exceeding twenty dollars, either with or without a condition that if the same with the costs of prosecution is not paid within a time specified, he shall be committed to the house of correction, house of industry, or workhouse, as is provided in the preceding section; which conditional sentence shall be carried into execution according to the provisions of section seven of chapter one hundred and seventy-four.

SECT. 30. The master, keeper, director, or overseer, of a house of industry or workhouse to which any person is committed under the two preceding sections, shall receive all persons so committed, set them to work if they are able, and employ and govern them in the manner required by law and prescribed by the rules and orders established for that purpose; and the city or town in which such house is situated may recover the balance of the expense of the support of any such person over and above the amount of his labor, from the party thus sentenced, or from any kindred, town, or city, liable by law for his support, if he is

1860 Ch. 166.

1 Allen 6.

a pauper, in like manner as if he had been committed to the house of correction for the same offence.

SECT. 31. If any person convicted under the provisions of section twenty-eight appeals from the sentence, the commission of any like offence by him before judgment on the appeal, shall be deemed a breach of the condition of the recognizance, if any was taken upon allowing the appeal.

Party committing offences under section twenty-eight after appeal. R. S. 143, § 8. Respondent may be discharged on recognizance, paying costs. R. S. 143, § 9.

SECT. 32. When a person is brought before a magistrate upon a charge of any offence mentioned in section twenty-eight, such magistrate, or the court before which the cause may be carried by appeal, may in any stage of the proceedings direct the respondent or appellant to be discharged, upon his entering into a recognizance with sufficient sureties, in such sum as the magistrate or court directs, for his good behavior for a term not less than six months nor exceeding two years, and paying the costs of prosecution or such part thereof as the magistrate or court shall direct.

SECT. 33. A person found in a street, highway, or other public place, in the night time, committing any of the offences or disorders before mentioned, may be apprehended by any sheriff, deputy-sheriff, constable, or watchman, or by any other person by the order of any magistrate or either of said officers, without a written warrant, and kept in custody in a convenient place, not more than twenty-four hours, Sundays excepted; at or before the expiration of which time, he shall be brought before a justice of the peace or police court, and proceeded against in the manner directed in the preceding section, or discharged, as such magistrate shall determine.

Disorderly persons arrested in night time. R. S. 143, § 7.

SECT. 34. If a person discharged under the provisions of section seventeen of chapter one hundred and seventy-eight, is afterwards convicted of any offence mentioned in section twenty-eight, committed after the former conviction, either in the same or a different county, he may be sentenced by the magistrate or court before whom the second conviction is had, to hard labor in the house of correction, house of industry, or workhouse, for a term not exceeding one year.

Conviction of certain offenders after discharge on former conviction. R. S. 143, § 13.

SECT. 35. When a person is convicted as a common night walker, and it is alleged in the complaint, and proved at the trial, that the defendant has been previously twice convicted of the same offence, such person may be sentenced to the house of correction, house of industry, or workhouse, if any such is established in the town or city, for a term not exceeding five years.

Night walking, third conviction. 1855, 69, § 1. See Ch. 178, § 18.

SECT. 36. If a sheriff, deputy-sheriff, coroner, or constable, takes the body of any deceased person, on mesne process or execution, he shall be punished by fine not exceeding five hundred dollars, or imprisonment in the jail not exceeding six months.

Sheriff, &c., taking a dead body. R. S. 14, § 81.

SECT. 37. Whoever not being authorized by the board of health, overseers of the poor, directors of a workhouse, selectmen, or mayor and aldermen, of any city or town, by the board of directors for public institutions, or overseers of the poor of the city of Boston, wilfully digs up, disinters, removes, or conveys away, any human body, or the remains thereof, or knowingly aids in such disinterment, removal, or conveying away, and whoever is accessory thereto, either before or after the fact, shall be punished by imprisonment in the state prison not exceeding one year, or in the jail not exceeding two years, or by fine not exceeding two thousand dollars.

Violation of sepulture. R. S. 130, § 19. 1857, 35. 10 Pick. 37. 19 Pick. 304.

SECT. 38. Whoever buys, sells, or has in his possession for the purpose of buying or selling, or trafficking in, the dead body of any human being, shall be punished by fine of not less than fifty nor exceeding five hundred dollars, or by imprisonment in the jail not less than three months, nor exceeding three years.

Buying or having dead body for the purpose of sale, &c. 1855, 323, §§ 2, 3.

SECT. 39. Whoever wilfully destroys, mutilates, defaces, injures, or removes, any tomb, monument, gravestone, or other structure, or thing,

Injuring or defacing tombs,

memorials of the dead, &c.  
R. S. 130, § 20.

placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing, intended for the protection or ornament of any tomb, monument, gravestone, or other structure, before mentioned, or of any enclosure for the burial of the dead, or wilfully destroys, mutilates, removes, cuts, breaks, or injures, any tree, shrub, or plant, placed or being within any such enclosure, or wantonly or maliciously disturbs the contents of a tomb or grave, shall be punished by fine not exceeding five hundred dollars nor less than ten dollars, or by imprisonment in the jail not exceeding one year.

Making roads, canals, &c., through burial grounds.  
R. S. 24, §§ 59, 60.  
R. S. 130, § 21.

SECT. 40. Whoever lays out, opens, or makes, a highway or town way, or constructs a railroad, turnpike, or canal, or any other thing in the nature of a public easement, over, through, in, or upon, any part of such enclosure, being the property of a city, town, parish, religious society, or of private proprietors, used or appropriated for the burial of the dead, unless an authority for that purpose is specially granted by law, or unless the consent of such city, town, parish, religious society, or proprietors, respectively, is first obtained, shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the jail not exceeding one year.

Cruelty to animals.  
R. S. 130, § 22.

SECT. 41. Whoever cruelly beats or tortures any horse, ox, or other animal, whether belonging to himself or another, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding one hundred dollars.

CHAPTER 166.

OF OFFENCES AGAINST THE PUBLIC HEALTH.

SECTION

1. Selling corrupt or unwholesome provisions without notice.
2. Killing for sale or selling calves less than four weeks old.
3. Adulterating food.
4. Liquor, &c., with *cocculus indicus*, &c.

SECTION

5. Adulteration of drugs and medicines.
6. Wilfully corrupting springs, &c., or injuring aqueduct.
7. Persons selling arsenic, &c., to keep record, &c. Purchasers who give false name, &c.

12 Cash. 199. Selling corrupt or unwholesome provisions without notice.  
R. S. 131, § 1.

SECTION 1. Whoever knowingly sells any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding two hundred dollars.

Killing for sale or selling calves less than four weeks old.  
1855, 239.

SECT. 2. Whoever kills or causes to be killed, for the purpose of sale, any calf less than four weeks old, or knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than four weeks old, shall be punished by fine not exceeding two hundred dollars.

Adulterating food.  
R. S. 131, § 2.

SECT. 3. Whoever fraudulently adulterates, for the purpose of sale, bread or any other substance intended for food, with any substance injurious to health, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; and the articles so adulterated shall be forfeited, and destroyed under the direction of the court.

liquor used for drink, with *cocculus indicus*, &c.  
1855, 356.

SECT. 4. Whoever adulterates, for the purpose of sale, any liquor used or intended for drink, with *cocculus indicus*, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, Brazil wood, cochineal, sugar of lead, or any other substance which is poisonous



or injurious to health; and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison not exceeding three years; and the articles so adulterated shall be forfeited.

SECT. 5. Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars; and such adulterated drugs and medicines shall be forfeited, and destroyed under the direction of the court.

Adulteration of drugs and medicines. 1853, 394, § 1.

SECT. 6. Whoever wilfully or maliciously defiles, corrupts, or makes impure, any spring or other source of water or reservoir, or destroys or injures any pipe, conductor of water, or other property, pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year.

Wilfully corrupting springs, &c., or injuring aqueduct. 1843, 65, § 2.

SECT. 7. If an apothecary or other person sells any arsenic, strychnine, corrosive sublimate, or prussic acid, without the written prescription of a physician, he shall keep a record of the date of such sale, the article, the amount thereof sold, and the person or persons to whom delivered; and for each neglect he shall forfeit a sum not exceeding fifty dollars. Whoever purchases deadly poisons, as aforesaid, and gives a false or fictitious name to the apothecary or other person, shall be punished by fine not exceeding fifty dollars.

Persons selling arsenic, &c., to keep record, &c. Purchasers who give false name, &c. 1857, 280, §§ 1, 2.

## CHAPTER 167.

### OF OFFENCES AGAINST PUBLIC POLICY.

SECTION

- 1. Setting up or promoting illegal lotteries, gifts, &c.
- 2. Permitting lotteries, &c., to be set up, &c., in a house, &c.
- 3. Selling lottery tickets, shares, &c., or aiding therein.
- 4. Second conviction.
- 5. Advertising lottery tickets for sale. Exhibiting representation of lottery, &c.
- 6. Making or selling tickets in a fictitious lottery.

SECTION

- 7. Defendant to prove genuineness, &c., of tickets sold by him.
- 8. Prizes, &c., forfeited to the state.
- 9. Racing, &c., declared unlawful. Penalty.
- 10. Location and regulation of race grounds and trotting parks. Selectmen, &c., may alter terms.
- 11. Unlawful race grounds deemed nuisances. Penalty.

SECTION 1. Whoever sets up or promotes any lottery for money; or by way of lottery disposes of any property of value, real or personal; or under the pretext of a sale, gift, or delivery, of any other property, or any right, privilege, or thing, whatever, disposes of, or offers or attempts to dispose of, any real or personal property, with an intent to make the disposal of such real or personal property dependent upon or connected with any chance by lot, dice, numbers, game, hazard, or other gambling device, whereby such chance or device is made an additional inducement to the disposal or sale of said property; and whoever aids either by printing or writing, or is in any way concerned, in the setting up, managing, or drawing, of any such lottery, or in such disposal, or offer, or attempt, to dispose of property by any such chance or device; shall for each offence be punished by fine not exceeding two thousand dollars.

Setting up or promoting illegal lotteries, gifts, &c. R. S. 132, § 1. 1856, 121, § 1. 8 Pick. 78. 2 Met. 329, 338. 2 Gray. 69.

SECT. 2. Whoever in a house, shop, or building, owned or occupied by him or under his control, knowingly permits the setting up, managing, or drawing, of such lottery, or such disposal or attempt to dispose of

Permitting lotteries, &c., to be set up, &c., in a house, &c.

R. S. 132, § 1.  
1856, 121, § 1.  
2 Gray, 69.

property, or the sale of a lottery ticket, or share of a ticket, or any other writing, certificate, bill, token, or other device, purporting or intended to entitle the holder, bearer, or any other person, to a prize, or to a share of or interest in a prize, to be drawn in a lottery, or in such disposal of property; and whoever knowingly suffers money or other property to be raffled for in such house, shop, or building, or to be won there by throwing or using dice, or by any other game of chance; shall for each offence be punished by fine not exceeding two thousand dollars.

Selling lottery tickets, shares, &c., or aiding therein.

R. S. 132, § 2.  
1856, 121, § 1.  
2 Met. 329, 333.

SECT. 3. Whoever sells, either for himself or another person, or offers for sale, or has in his possession with intent to sell or offer for sale, or to exchange or negotiate, or in any wise aids or assists in the selling, negotiating, or disposing of, a ticket in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token, or other device, or any share or right in such disposal or offer, as is mentioned in section one, shall for each offence be punished by fine not exceeding two thousand dollars.

Second conviction.

R. S. 132, § 3.  
1856, 121, § 1.

SECT. 4. Whoever, after being convicted of any offence mentioned in either of the preceding sections, commits the like offence, or any other of the offences therein mentioned, shall, in addition to the fine before provided therefor, be punished by imprisonment in the house of correction not exceeding one year.

Advertising lottery tickets for sale.

Exhibiting representation of lottery, &c.

R. S. 132, § 4.  
5 Pick. 41, 42.

SECT. 5. Whoever advertises any lottery ticket, or any share in such ticket, for sale, either himself or by another person, or sets up or exhibits, or devises or makes for the purpose of being set up or exhibited, any sign, symbol, or emblematic or other representation, of a lottery or the drawing thereof, in any way indicating where a lottery ticket or a share thereof, or any such writing, certificate, bill, token, or other device, before mentioned, may be purchased or obtained, or in any way invites or entices, or attempts to invite or entice, any other person to purchase or receive the same, shall for each offence be punished by fine not exceeding one hundred dollars.

Making or selling tickets in a fictitious lottery.

R. S. 132, § 5.

SECT. 6. Whoever makes or sells, or has in his possession with intent to sell, exchange, or negotiate; or by printing, writing, or otherwise, assists in making or selling, or in attempting to sell, exchange, or negotiate a false or fictitious lottery ticket, or any share thereof, or any writing, certificate, bill, token, or other device, before mentioned, or any ticket, or share thereof, in a fictitious or pretended lottery, knowing the same to be false or fictitious; or receives any money or other thing of value for any such ticket or share of a ticket, writing, certificate, bill, token, or other device, purporting that the owner, bearer, or holder, thereof, shall be entitled to receive any prize, or share of a prize, or any other thing of value, that may be drawn in a lottery, knowing the same to be false or fictitious; shall for each offence be punished by imprisonment in the state prison not exceeding three years.

Defendant to prove genuineness, &c., of tickets sold by him.

R. S. 132, § 6.

SECT. 7. Upon the trial of an indictment for either of the offences mentioned in the preceding section, any ticket or share of a ticket, or any other writing or thing before mentioned, which the defendant has sold or offered for sale, or for which he has received a valuable consideration, shall be deemed to be false, spurious, or fictitious, unless such defendant proves that the same was true and genuine, duly issued by the authority of some legislature within the United States, that such lottery was existing and undrawn, and that such ticket or share thereof, or other writing or thing before mentioned, was issued by lawful authority, and binding upon the persons who issued the same.

Prizes, &c., forfeited to the state.

R. S. 132, § 8.  
1856, 121, §§ 1, 2.

SECT. 8. All sums of money and every other valuable thing drawn as a prize or as a share of a prize in any lottery, and all property disposed of or offered to be disposed of by any chance or device under the pretext mentioned in section one, by any person being an inhabitant or resident within this state, and all sums of money or other things of

value received by any such person, by reason of his being the owner or holder of any ticket or share of a ticket in a lottery or pretended lottery, or of a share or right in any such scheme of chance or such device, contrary to the provisions of this chapter, shall be forfeited, and may be recovered by an information filed, or by an action for money had and received brought by the attorney-general or any district-attorney or other prosecuting officer in the name and on behalf of the commonwealth.

SECT. 9. All racing, running, trotting, or pacing, of any horse or other animal of the horse kind, for a bet or wager of money or other valuable thing, or for a purse or stake, made within this state, is declared to be unlawful; and all persons engaged in such racing, running, trotting, or pacing, for any such bet or wager, purse or stake, and all persons aiding or abetting the same, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year, or by both such fine and imprisonment.

Racing, &c., declared unlawful. Penalty. 1846, 200, §§ 1, 2.

SECT. 10. No land within any town or city shall be laid out or used as a race ground or trotting park, for the admission to which of persons or property, any money or other valuable consideration shall be directly or indirectly taken or required, without the previous consent of and location by the selectmen or mayor and aldermen; who may regulate and alter the terms and conditions under which the same shall be laid out, used, or continued in use; and discontinue the same when in their judgment the public good so requires; and no land shall be used for any of the purposes mentioned in the preceding section.

Location and regulation of race grounds and trotting parks. Selectmen, &c., may alter terms. 1856, 102, § 1.

SECT. 11. Every race ground or trotting park established, laid out, used, or continued in use, contrary to the provisions of this chapter, is declared a common nuisance, and shall be abated as such; and all persons owning, keeping, using, or permitting to be used, such race ground or trotting park, or aiding or abetting therein, shall be punished in the manner provided in section nine.

Unlawful race grounds deemed nuisances. Penalty. 1856, 102, §§ 2, 3.

## CHAPTER 168.

### OF FELONIES, ACCESSORIES, ABETTORS, AND ATTEMPTS TO COMMIT CRIMES.

**SECTION**

1. Felony.
2. Indictments, &c., for, not to be quashed, &c.
3. Persons accessory before fact, punished as principals.

**SECTION**

4. Accessories before fact, when and how tried.
5. where to be tried.
6. Accessories after fact, who shall be deemed.
7. how, when, and where, tried.
8. Attempts to commit offences.

SECTION 1. Any crime punishable by death or imprisonment in the state prison is a felony; and no other crime shall be so considered.

Felony. 1852, 37, § 1. 3 Gray, 448. *12 Wash. 58.*

SECT. 2. It shall not be necessary to allege in any indictment or complaint that the offence charged is a felony, or felonious, or done feloniously; nor shall any indictment or complaint be quashed or deemed invalid by reason of the omission of the words "felony," "felonious," or "feloniously."

Indictments, &c., for, not to be quashed, &c. 1852, 37, § 3. 1858, 25.

SECT. 3. Whoever aids in the commission of a felony, or is accessory thereto before the fact, by counselling, hiring, or otherwise procuring, such felony to be committed, shall be punished in the manner prescribed for the punishment of the principal felon.

Persons accessory before fact punished as principals. R. S. 133, § 1. 3 Gray, 441, 448.



Accessories before fact, when and how tried.  
R. S. 133, § 2.  
16 Mass. 423.  
3 Gray, 448.

SECT. 4. Whoever counsels, hires, or otherwise procures, a felony to be committed, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after his conviction; or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been convicted, or is or is not amenable to justice; and in the last-mentioned case may be punished in the same manner as if convicted of being an accessory before the fact.

where to be tried.  
R. S. 133, § 3.

SECT. 5. A person charged with the offence mentioned in the preceding section may be indicted, tried, and punished, in the same court and county where the principal felon might be indicted and tried, although the offence of counselling, hiring, or procuring, the commission of such felony is committed on the high seas, or on land either within or without the limits of this state.

Accessories after fact who shall be deemed.  
R. S. 133, § 4.

SECT. 6. Whoever, not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, to the offender, after the commission of a felony, harbors, conceals, maintains, or assists, the principal felon or accessory before the fact, or gives such offender any other aid, knowing that he has committed a felony, or been accessory thereto before the fact, with intent that he shall avoid or escape detection, arrest, trial, or punishment, shall be deemed an accessory after the fact, and be punished by imprisonment in the state prison not exceeding seven years, or in the jail not exceeding three years, or by fine not exceeding one thousand dollars.

how, when, and where, tried.  
R. S. 133, § 5.

SECT. 7. Whoever becomes an accessory to a felony after the fact may be indicted, convicted, and punished, (whether the principal felon has or has not been previously convicted, or is or is not amenable to justice,) by any court having jurisdiction to try the principal felon, and either in the county where such person became an accessory, or in the county where the principal felony was committed.

Attempts to commit offences.  
R. S. 133, § 12.  
10 Met. 422.  
3 Cush. 529.  
5 Cush. 365.

SECT. 8. Whoever attempts to commit an offence prohibited by law, and in such attempt does any act towards the commission of such offence, but fails in the perpetration, or is intercepted or prevented in the execution, of the same, where no express provision is made by law for the punishment of such attempt, shall be punished as follows:—

First. If the offence attempted to be committed is punishable with death, the person convicted of such attempt shall be punished by imprisonment in the state prison not exceeding ten years:

Second. If the offence so attempted to be committed is punishable by imprisonment in the state prison for life, or for five years or more, the person convicted of such attempt shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding one year:

Third. If the offence attempted to be committed is punishable by imprisonment in the state prison for a term less than five years, or by imprisonment in the jail, or by fine, the offender convicted of such attempt shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; but in no case shall the punishment by imprisonment exceed one-half of the greatest punishment which might have been inflicted if the offence attempted had been committed.

## TITLE II.

### OF PROCEEDINGS IN CRIMINAL CASES.

- CHAPTER 169. — Of Proceedings to prevent the Commission of Crimes.
- CHAPTER 170. — Of Search Warrants, Rewards, Arrest, Examination, Commitment, and Bail.
- CHAPTER 171. — Of Indictments, Prosecutions, and Proceedings before Trials.
- CHAPTER 172. — Of Trials.
- CHAPTER 173. — Of Appeals, New Trials. and Reports.
- CHAPTER 174. — Of Judgment and Execution.
- CHAPTER 175. — Of Inquests on Dead Bodies.
- CHAPTER 176. — Of Fines, Forfeitures, and Costs.
- CHAPTER 177. — Of Fugitives from Justice and Pardons.

### CHAPTER 169.

#### OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

**SECTION**

1. Officers authorized to keep the peace.
2. Complaint, how made.
3. Arrest.
4. Trial. Recognizance to keep the peace.
5. Proceedings upon an order to recognize, &c.
6. Complainant, when to pay costs.
7. Payment of costs in other cases.
8. Appeal.
9. Witnesses to recognize.
10. Proceedings on appeal.
11. Recognizance, when to remain in force.

**SECTION**

12. Person committed for not recognizing, how discharged.
13. Recognizances to be transmitted to court. Suit thereon.
14. when to be required on view of court or magistrate.
15. Persons who go armed may be required to find sureties for the peace, &c.
16. Court may remit part of penalty.
17. Surety may surrender his principal, who may recognize anew.

**SECTION 1.** The justices of the supreme judicial court, superior court, and police courts, in vacation or in open court, and justices of the peace, may cause to be kept all laws made for the preservation of the public peace; and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, as provided in this chapter.

**SECT. 2.** When complaint is made to any such magistrate, that a person has threatened to commit an offence against the person or property of another, the magistrate shall examine on oath the complainant and any witnesses who may be produced, reduce the complaint to writing, and cause it to be subscribed by the complainant.

**SECT. 3.** If upon examination it appears that there is just cause to fear that such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to apprehend the person complained of, and bring him before such magistrate or some other magistrate or court having jurisdiction of the cause.

**SECT. 4.** When the party complained of is brought before the court or magistrate, he shall be heard in his defence, and may be required to

Officers authorized to keep the peace.  
R. S. 134, § 1.  
1859, 196.  
See § 14.

Complaint, how made.  
R. S. 134, § 2.

Arrest.  
R. S. 134, § 3.

Trial. Recognizance to keep the peace.

R. S. 134, § 4.  
2 B. & A. 278.  
4 Mass. 497.  
8 Mass. 78.

enter into a recognizance with sufficient sureties in such sum as the court or magistrate directs, to keep the peace towards all the people of this commonwealth, and especially towards the person requiring such security, for such term, not exceeding six months, as the court or magistrate may order; but he shall not be bound over to the next court, unless he is also charged with some other offence for which he ought to be held to answer at such court.

Proceedings upon an order to recognize, &c.  
R. S. 134, §§ 5, 6.

SECT. 5. If the person so ordered to recognize complies with the order, he shall be discharged; but if he refuses or neglects, the court or magistrate shall commit him to the jail, house of correction, or house of industry, during the period for which he was required to give security, or until he so recognizes, stating in the warrant the cause of commitment, with the sum and time for which security was required.

Complainant, when to pay costs.  
R. S. 134, § 7.

SECT. 6. If upon examination it does not appear that there is just cause to fear that such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate deems the complaint unfounded, frivolous, or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Payment of costs in other cases.  
R. S. 134, § 8.

SECT. 7. When no order respecting the costs is made by the court or magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security to keep the peace, or for his good behavior, the court or magistrate may further order, that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until the costs are paid or he is otherwise legally discharged.

Appeal.  
R. S. 134, § 9.  
1852, 14.  
1859, 196.

SECT. 8. Whoever is aggrieved by the order of a justice of the peace or police court, requiring him to recognize as aforesaid, may on giving the security required appeal to the superior court next to be held in the same county.

Witnesses to recognize.  
R. S. 194, § 10.

SECT. 9. The court or magistrate shall require such witnesses as may be necessary to support the complaint, to recognize for their appearance at the court appealed to.

Proceedings on appeal.  
R. S. 134, § 11.

SECT. 10. The court before which the appeal is prosecuted may affirm the order or discharge the appellant, or may require him to enter into a new recognizance with sufficient sureties in such sum and for such time as the court deems proper, and may make such order in relation to the costs of prosecution as may be deemed just and reasonable.

Recognizance, when to remain in force.  
R. S. 134, § 12.

SECT. 11. If the appellant fails to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment or order of the court or magistrate, and shall also stand as a security for any costs which the court appealed to orders to be paid by the appellant.

Person committed for not recognizing, how discharged.  
R. S. 134, § 13.

SECT. 12. A person committed for not finding sureties or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

Recognizances to be transmitted to court. Suit thereon.  
R. S. 134, § 14.  
1852, 14.  
1859, 196.

SECT. 13. Every recognizance taken pursuant to the foregoing provisions shall be transmitted by the magistrate to the superior court for the county on or before the first day of the next term, and shall be there filed of record by the clerk; and upon a breach of the condition a suit shall be commenced thereon by the district-attorney.

when to be required on view of court or magistrate.  
R. S. 134, § 15.

SECT. 14. Whoever in the presence of any magistrate mentioned in section one, or before any court of record, makes an affray, or threatens to kill or beat another, or to commit any violence or outrage against his person or property, and whoever in the presence of such court or magistrate contends with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize



for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed.

SECT. 15. Whoever goes armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, may on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appeal as before provided.

Persons who go armed may be required to find sureties for the peace, &c.  
R. S. 143, § 16.

SECT. 16. When, upon a suit brought on such recognizance, the penalty thereof is adjudged forfeited, the court may, on the petition of any defendant, remit such portion of it as the circumstances of the case render just and reasonable.

Court may remit part of penalty.  
R. S. 134, § 17.  
7 Mass. 397.

SECT. 17. A surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil cause; and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance. The person so surrendered may recognize anew with sufficient sureties before any justice of the peace for the residue of the term, and shall thereupon be discharged.

Surety may surrender his principal, who may recognize anew.  
R. S. 134, § 18.

## CHAPTER 170.

### OF SEARCH WARRANTS, REWARDS, ARREST, EXAMINATION, COMMITMENT, AND BAIL.

#### SEARCH WARRANTS.

##### SECTION

1. Search warrants for property stolen, &c.
2. Search warrants in other cases.
3. to whom directed; when and how executed.
4. Search in the night time, when allowed.
5. Property seized may be kept as evidence, and then restored to owner or destroyed.

#### REWARDS FOR APPREHENDING OFFENDERS.

6. Governor may offer rewards, &c.
7. Mayor and aldermen, &c., may offer rewards, &c.
8. Payment of reward.

#### ARREST, EXAMINATION, COMMITMENT, AND BAIL.

9. Warrants to arrest, by whom issued.
10. how to issue.
11. in what cases executed out of county, &c.
12. Prisoners, when to be brought before magistrate on arrest, &c.
13. Magistrate taking bail, to return recognizance to court, &c.
14. Officer, how to proceed, if prisoner is not bailed.
15. to take prisoner to county where warrant issued.
16. to be taken before magistrate, &c.
17. Magistrate may adjourn examination, &c.
18. In case of default, magistrate to certify recognizance to court.
19. Proceedings when party fails to recognize.

#### SECTION

20. Manner of conducting examination.
21. on part of prisoner.
22. Witnesses may be kept separate, &c.
23. Testimony reduced to writing, &c.
24. Prisoner, when to be discharged.
25. when to be bailed or committed.
26. Witnesses to recognize.
27. may be required to give sureties.
28. Recognizances by married women and minors.
29. Witnesses refusing, shall be committed.
30. Depositions of witnesses may be taken in certain cases. Proceedings.
31. to be returned to court, &c.
32. Magistrate may have associates. Fees in such cases.
33. Commitments, when to be superseded, and recognizances discharged.
34. Orders therefor, how to be filed, and effect thereof.
35. Prisoners, how bailed if arrested after court adjourns.
36. how bailed when committed.
37. not to be bailed without notice, &c.
38. when bailed on Lord's day.
39. Condition of recognizances.
40. Recognizances and examinations to be returned to court.
- 41, 42, 43. Bail may exonerate themselves, &c.
44. may surrender principal, &c.
45. New bail not to have benefit, &c.
46. Defaults on forfeited recognizances.
47. Surety may pay amount of recognizances, &c.

## SECTION

48. Action and judgment on recognizances.  
 49. not to be defeated, &c., for certain irregularities.  
 50. Review of judgments on forfeited recognizances.

## SECTION

51. Review, petition for.  
 52. Proceedings when former judgment is diminished.  
 53. when not diminished.  
 54. Offences not bailable.

## SEARCH WARRANTS.

Search warrants for property stolen, &c. Decl. of rights, art. 14.  
 R. S. 142, § 1  
 5 Cush. 369.  
 1 Gray, 1.

Search warrants in other cases.  
 R. S. 142, § 2.  
 for counterfeit coin, notes, &c.

for obscene books and prints.

for lottery tickets, &c.  
 5 Cush. 369.

for gaming apparatus, &c.  
 11 Met. 79.

to whom directed; when and how executed.  
 R. S. 142, § 3.  
 5 Met. 98.  
 2 Met. 329.

Search in the night time, when allowed.  
 R. S. 142, § 4.

Property seized may be kept as evidence, and then restored to owner or destroyed.  
 R. S. 142, § 5.

SECTION 1. When complaint is made on oath to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen, embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he is satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such property.

SECT. 2. Any such magistrate may also, upon like complaint made on oath, issue search warrants when satisfied that there is reasonable cause, in the following cases, to wit:—

First. To search for and seize counterfeit or spurious coin, forged bank notes, and other forged instruments, or tools, machines, or materials, prepared or provided for making either of them:

Second. To search for and seize books, pamphlets, ballads, printed papers, or other things, containing obscene language, or obscene prints, pictures, figures, or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, or distributed, or to be introduced into any family, school, or place of education:

Third. To search for and seize lottery tickets or materials for a lottery, unlawfully made, provided, or procured, for the purpose of drawing a lottery:

Fourth. To search for and seize gaming apparatus or implements used, or kept and provided to be used, in unlawful gaming, in any gaming house, or in any building, apartment, or place resorted to for the purpose of unlawful gaming.

SECT. 3. All search warrants shall be directed to the sheriff of the county or his deputy, or to any of the constables of a city or town, commanding such officer to search, in the day time, the house or place where the stolen property or other things for which he is required to search are believed to be concealed, (which place and property, or things to be searched for, shall be designated and described in the warrant,) and to bring such stolen property, or other things, when found, and the persons in whose possession they are found, before the magistrate who issued the warrant, or some other magistrate or court having cognizance of the case.

SECT. 4. If there is satisfactory evidence that any property stolen, embezzled, or obtained by false tokens or pretences, or that any of the other things for which a search warrant may be issued by the provisions of this chapter, are concealed, kept, prepared, or used, in a particular house or place, a warrant may be issued by two magistrates, or by a police court, to authorize the searching of such house or place by a public officer, in the night time, and to bring the property or things described in the warrant, if found, and the persons in whose possession they are found, before either of the magistrates who issued the warrant, or some other magistrate or court having cognizance of the case.

SECT. 5. When an officer in the execution of a search warrant finds stolen or embezzled property, or seizes any of the other things for which a search is allowed by the provisions of this chapter, all the property and things so seized shall be safely kept by the direction of the court or magistrate, so long as necessary for the purpose of being produced or used as evidence on any trial. As soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner

thereof, and all the other things seized by virtue of such warrants shall be burnt or otherwise destroyed under the direction of the court or magistrate.

REWARDS FOR APPREHENDING OFFENDERS.

SECT. 6. The governor, when in his opinion the public good requires it, may offer and pay a suitable reward, not exceeding one thousand dollars in one case, to any person who in consequence of such offer apprehends, brings back, and secures, any person convicted of or charged with a capital crime, or other high crime or misdemeanor, who has escaped from prison in this state, or to any person who in consequence of such offer apprehends and secures a person charged with such offence, when the person cannot be arrested and secured in the common course of proceeding. The governor with the advice of the council may draw his warrant on the treasury for the payment of every such reward.

Governor may offer rewards, &c.  
R. S. 142, § 14.  
R. S. act of amend. § 13.

SECT. 7. The mayor and aldermen or selectmen of any city or town, when in their opinion the public good requires it, may offer a suitable reward, to be paid by such city or town, not exceeding five hundred dollars in one case, to any person who in consequence of such offer secures any person charged with a capital crime or other high crime or misdemeanor committed in such place; and such reward shall be paid by the treasurer upon the warrant of the mayor and aldermen or selectmen.

Mayor and aldermen, &c., may offer rewards, &c.  
1840, 75, § 1.  
5 Met. 56.  
7 Met. 409.  
5 Cush. 219.  
7 Gray, 274, 374.

SECT. 8. When more than one claimant appears and applies for the payment of such reward, the mayor and aldermen or selectmen shall determine to whom the same shall be paid, and if to more than one person, in what proportion to each; and their determination shall be final and conclusive.

Payment of reward.  
1840, 75, § 2.

ARREST, EXAMINATION, COMMITMENT, AND BAIL.

SECT. 9. For the apprehension of persons charged with offences, the justices of the supreme judicial court, the superior court, or of any police court, in vacation as well as in term time, and all justices of the peace, are authorized to issue process, to carry into effect the following provisions of this chapter.

Warrants to arrest, by whom issued.  
R. S. 135, § 1.  
1859, 196.

SECT. 10. Upon complaint made to any such magistrate, that a criminal offence has been committed, he shall examine on oath the complainant and any witnesses produced by him, shall reduce the complaint to writing, and cause the same to be subscribed by the complainant, and if it appears that such offence has been committed, the court or justice shall issue a warrant, reciting the substance of the accusation, and requiring the officer to whom it is directed, forthwith to take the person accused and bring him before said court or justice or some other court or magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

how to issue.  
R. S. 135, § 2.  
R. S. 143, § 6.  
1 Cush. 503.  
4 Gray, 32.

SECT. 11. If a person against whom a warrant is issued under the provisions of chapter seventy-two, or for any alleged offence, before or after the issuing of such warrant escapes from or is out of the county, the officer to whom such warrant is directed may pursue and apprehend the party charged, in any county of this state, and for that purpose may command aid and exercise the same authority as in his own county.

in what cases executed out of county, &c.  
R. S. 135, § 3.  
1846, 266.

SECT. 12. In all cases where the offence charged in a warrant is not punishable by death or imprisonment in the state prison, if the person arrested requests that he may be taken before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance without a trial or examination, the officer who made the

Prisoners, when to be brought before magistrate on arrest, &c.  
R. S. 135, § 4.



arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance with sufficient sureties for his appearance at the court having cognizance of the offence, and next to be held in the county where it is alleged to have been committed, and the party arrested shall thereupon be liberated.

Magistrate taking bail, to return recognizance to court, &c.  
R. S. 135, § 5

SECT. 13. The magistrate who so lets the person arrested to bail, shall certify that fact upon the warrant, and deliver the same with the recognizance to the officer, who shall cause the same to be delivered without unnecessary delay to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, or the district-attorney, shall cause such witnesses as he thinks necessary to be summoned to the same court.

Officer, how to proceed if prisoner is not bailed.  
R. S. 135, § 6.

SECT. 14. When a person is arrested in a county other than that in which the offence was committed, if the magistrate before whom he is brought refuses to admit him to bail, or if no sufficient bail is offered, the officer shall take him before the magistrate who issued the warrant, or in his absence before some other magistrate of, or police court in, the county in which the warrant was issued.

to take prisoner to county where warrant issued.  
R. S. 135, § 7.

SECT. 15. When the offence charged in a warrant is punishable with death, or by imprisonment in the state prison, if the officer makes the arrest in another county, he shall convey the prisoner to the county where the warrant was issued.

Person arrested to be taken before magistrate, &c.  
R. S. 135, § 8.  
1 Cush. 503.

SECT. 16. Every person arrested by warrant for any offence, where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or if he is absent or unable to attend, before some other magistrate of the same county; and the warrant, with a proper return thereon signed by the person who made the arrest, shall be delivered to the magistrate.

Magistrate may adjourn examination, &c.  
R. S. 135, § 9.  
1852, 259.

SECT. 17. A magistrate may adjourn an examination or trial pending before himself, from time to time as occasion requires, not exceeding ten days at one time, without the consent of the defendant or person charged, and to the same or a different place in the county, as he deems necessary. In the mean time, if the party is charged with an offence not bailable, he shall be committed; otherwise he may be recognized in a sum and with sureties to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

In case of default, magistrate to certify recognizance to court.  
R. S. 135, § 10.

SECT. 18. If the person so recognized does not appear before the magistrate or court according to the condition of such recognizance, the magistrate or court shall record the default; but such default may be taken off by the magistrate or court for good cause shown at any time to which the matter may be continued by said magistrate or court. And in case such default shall not be taken off as aforesaid, the magistrate shall certify the recognizance with a record of such default to the superior court, and like proceedings shall be had thereon as upon a breach of the condition of a recognizance for appearance before said superior court.

Proceedings, when party fails to recognize.  
R. S. 135, § 11.

SECT. 19. When such person fails to recognize, he may be committed to prison by an order under the hand of the magistrate stating concisely that he is committed for further examination on a future day to be named in the order, and on the day appointed he may be brought before the magistrate by his verbal order to the officer who made the commitment, or by an order in writing to a different person.

Manner of conducting examination.  
R. S. 135, § 12.

SECT. 20. The magistrate before whom a person is brought upon a charge of having committed an offence, shall as soon as may be examine the complainant and the witnesses to support the prosecution on oath in presence of the party charged, in relation to any matters connected with such charge which may be deemed pertinent.

SECT. 21. After the testimony to support the prosecution, the witnesses for the prisoner, if he has any, shall be sworn and examined, and he may be assisted by counsel in such examination, and in the cross-examination of the witnesses in support of the prosecution.

Examination on part of prisoner.  
R. S. 135, § 13.

SECT. 22. The magistrate may at his discretion, while examining a witness, exclude from the place of examination all the other witnesses, and may if requested, or if he see cause, direct the witnesses, for or against the prisoner, to be kept separate so that they cannot converse with each other until they have been examined.

Witnesses may be kept separate, &c.  
R. S. 135, § 14.

SECT. 23. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he deems it necessary, and shall if required by the magistrate be signed by the witnesses.

Testimony reduced to writing, &c.  
R. S. 135, § 15.

SECT. 24. If it appears to the magistrate, upon the whole examination, that no offence has been committed, or that there is not probable cause for charging the prisoner with the offence, he shall be discharged.

Prisoner when to be discharged.  
R. S. 135, § 16.

SECT. 25. If it appears that an offence has been committed and that there is probable cause to believe the prisoner guilty, and if the offence is bailable by the magistrate and the prisoner offers sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail is offered, or the offence is not bailable by the magistrate, the prisoner shall be committed to prison for trial.

when to be bailed or committed.  
R. S. 135, § 17.

SECT. 26. When the prisoner is admitted to bail or committed, the magistrate shall bind by recognizance such witnesses against the prisoner as he deems material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

Witnesses to recognize.  
R. S. 135, § 18.

SECT. 27. If the magistrate is satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security is given, he may order the witness to enter into a recognizance with such sureties as may be deemed necessary for his appearance at court.

may be required to give sureties.  
R. S. 135, § 19.

SECT. 28. When a married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness; or the magistrate may in his discretion take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law notwithstanding the coverture or minority.

Recognizances by married women and minors.  
R. S. 135, § 20.

SECT. 29. Witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order or are otherwise discharged according to law.

Witnesses refusing, shall be committed.  
R. S. 135, § 21.

SECT. 30. If it appears to the magistrate that a witness is unable to procure sureties when so ordered, he may with the consent of the defendant take, or cause to be taken by any magistrate authorized to take depositions in civil cases, the deposition of such witness in manner and form as is provided in civil cases, and the witness shall thereupon be discharged. The attorney for the commonwealth who will have charge of the case at the trial shall be notified of the time and place of taking the same, as parties are required to be notified; and the assent of the defendant shall be indorsed on the deposition. The fees shall be the same as in civil cases, and shall be taxed in the bill of costs. The provisions of this section shall not apply to the prosecutor in the case, or to any accomplice in the commission of the offence charged in the complaint.

Depositions of witnesses may be taken in certain cases.  
Proceedings.  
1851, 71, §§ 1, 2.

SECT. 31. The deposition shall be seasonably transmitted to the court at which the witness was ordered to appear; and if he is unable to attend at the time of the trial, by reason of his death, insanity, sickness,

to be returned to court, &c.  
1851, 71, § 2.



or any infirmity, or of his being absent from the state so that he cannot be compelled to attend by subpœna or attachment, the deposition may be read in evidence on the trial by either party, subject to all legal objections.

Magistrate may have associates. Fees in such cases.  
R. S. 135, § 23.

SECT. 32. A magistrate to whom complaint is made, or before whom a prisoner is brought, may associate with himself one or more of the magistrates of the same county, and they may together execute the powers and duties given to magistrates by this chapter; but no fees shall be taxed for such associates.

Commitments, when to be superseded, and recognizances discharged.  
R. S. 135, § 25.  
1846, 198.

SECT. 33. When a person is committed to prison or under recognizance to answer to a charge of assault and battery or other misdemeanor for which the party injured may have a remedy by civil action, (except where the offence was committed by or upon a sheriff or other officer of justice, or riotously or with intent to commit a felony, or is punishable by imprisonment in the state prison,) if the party injured appears before the magistrate who made the commitment or took the recognizance, and acknowledges in writing that he has received satisfaction for the injury, the magistrate may in his discretion, on the payment of all the costs which have accrued, by an order under his hand discharge the recognizance or supersede the commitment, and may also discharge all recognizances and supersede the commitment of all witnesses in the case.

Orders therefor, how to be filed and effect thereof.  
R. S. 135, § 26.

SECT. 34. Every such order discharging the recognizance of the party or witnesses, shall be filed in the office of the clerk before the sitting of the court at which they are bound to appear; and every order superseding the commitment of the party charged, or of any witness, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

Prisoners, how bailed if arrested after court adjourns.  
1845, 166, § 1.

SECT. 35. When a person under indictment for aailable offence is arrested after the adjournment of the court in which the same is triable, any justice of the court, or any standing or special commissioner appointed for such purpose by the court, may fix the amount of and receive bail in the same manner as the court might do.

how bailed when committed.  
R. S. 135, § 22.  
1851, 92, § 2.  
1855, 265, § 1.  
1853, 196.  
8 Greenl. 179.

SECT. 36. A justice of the supreme judicial court, superior court, or a standing or special commissioner appointed by either of said courts, or a justice of a police court or two justices of the peace and of the quorum in any county, on application of a prisoner committed for aailable offence, whether on a warrant or without one, may inquire into the case and admit such prisoner to bail; and such officers and justices of the peace may respectively admit to bail any person committed for not finding sufficient sureties to recognize for him.

not to be bailed without notice, &c.  
R. S. 135, § 22.  
1851, 92, § 2.  
1855, 265, § 1.

SECT. 37. If the person is committed without an order fixing the amount of the recognizance, he shall not be admitted to bail under the preceding section until reasonable notice of his application to the officer by whom he was committed; and if committed with such order, he shall not be admitted to bail by a commissioner, police court, or justices of the peace, for a less amount than is required by the order.

when bailed on Lord's day.  
1855, 265, § 2.

SECT. 38. Persons committed to jail on the Lord's day, or on the evening or afternoon preceding, may be admitted to bail on that day, when in the opinion of the magistrate an application for that purpose appears to be proper.

Condition of recognizances.  
1845, 166, § 2.

SECT. 39. When a court or magistrate takes a recognizance of a person, either with or without surety, binding him to appear at a court to be held by any police justice, or trial justice, or at a term of any court, to answer to a charge against him, or to prosecute an appeal or bill of exceptions, the condition shall be so framed as to bind him personally to appear at the time or term so expressed, and at any subsequent time or



term to which the case may be continued, (if not previously surrendered or discharged,) and so from time to time or term to term, until the final decree, sentence, or order, of the court thereon, and to abide such final sentence, order, or decree, and not depart without leave.

SECT. 40. All recognizances and examinations taken by a magistrate under the provisions of this chapter, shall be certified and returned by him to the district-attorney or the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate refuses or neglects to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment as for a contempt.

Recognizances and examinations to be returned to court.  
R. S. 135, § 24.

SECT. 41. Bail in criminal cases, at any time before the commencement of an action of *scire facias* on the recognizance, may exonerate themselves by surrendering their principal to the jailer in the county where the offence was committed or is punishable, and delivering to him a certified copy of the recognizance; and the principal shall be received and detained by the jailer, and may be again bailed, in the same manner as if committed for not finding sureties to recognize for him.

Bail may exonerate themselves, &c.  
1851, 92, §§ 1, 2.  
1859, 131.

SECT. 42. Bail may also exonerate themselves at any time before final judgment in an action of *scire facias* on the recognizance by surrendering their principal into court; but if such action has been commenced the court may require the bail to pay the whole or any portion of the costs or penalty.

same subject.  
1859, 131.

SECT. 43. If by the act of God, or the government of the United States, or any state, or by sentence of law, bail are unable without their fault to surrender their principal, they shall, on motion before final judgment on the *scire facias*, be exonerated and discharged by the court, with or without costs, as the court deems equitable.

same subject.  
1859, 131.

SECT. 44. Bail may take and surrender their principal into court or in the manner provided in section forty-one, after final judgment on the *scire facias*, and before or after satisfaction thereof, and may thereupon as of right have a review and rehearing as provided in section fifty to fifty-three inclusive.

may surrender principal, &c.  
1859, 131.

SECT. 45. When the principal has been once surrendered and bailed anew, his new bail shall not have the benefit of the provisions of the four preceding sections, nor of section fifty to fifty-three inclusive.

New bail not to have benefit, &c.  
1859, 131.

SECT. 46. When a person under recognizance to appear and answer, or to prosecute an appeal or bill of exceptions, in a criminal prosecution, fails to appear for that purpose according to the condition of his recognizance, and when a person under recognizance to testify in a criminal prosecution fails to perform the condition of his recognizance, his default may be recorded; whereupon the obligation of such person and his sureties shall be deemed forfeited, and process shall be issued against them or such of them as the prosecuting officer directs; but in such suit no costs shall be taxed for travel.

Defaults on forfeited recognizances.  
R. S. 135, § 27.  
1845, 166, § 3.

SECT. 47. A surety in such recognizance may by leave of the court, after default and either before or after process has been issued against him, pay to the county treasurer or clerk of the court the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged.

Surety may pay amount of recognizances, &c.  
R. S. 135, § 28.

SECT. 48. When an action is brought on behalf of the commonwealth against a principal or surety in a recognizance in a criminal prosecution entered into either by a party or a witness, and the penalty is adjudged forfeited, the court may render judgment for the whole of such penalty with interest, or on application of the defendant, for any part thereof according to the circumstances of the case and the situation of the party, and upon such terms and conditions as the court deems just and reasonable.

Action and judgment on recognizances.  
R. S. 135, § 29.  
1844, 44, § 1.  
14 Mass. 65.

Action on recognizance not to be defeated, &c., for certain irregularities.  
 R. S. 135, § 30.  
 2 Greenl. 62.  
 9 Mass. 520.  
 12 Mass. 1.  
 16 Mass. 447.  
 9 Met. 407.  
 7 Gray, 316.  
 Review of judgments on forfeited recognizances.  
 1852, 126, § 1.

petition for.  
 1852, 126, § 2.

Proceedings when former judgment is diminished.  
 1852, 126, § 3.

when not diminished, &c.  
 1852, 126, § 4.

Offences not bailable.  
 1852, 259, § 4.

SECT. 49. Such action shall not be barred or defeated, nor shall judgment be arrested, by reason of neglect or omission to note or record the default of any principal or surety at the term when it happens, nor by reason of a defect in the form of the recognizance, if it sufficiently appears from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance.

SECT. 50. A court that has rendered judgment on a recognizance the penalty of which is forfeited to the commonwealth, may on the petition of any person interested grant a review and a rehearing of the case, upon the surrender or recaption of the prisoner who was enlarged, or for any sufficient cause which has occurred or been ascertained by the person interested after the rendition of such judgment, or at such time as not to have afforded opportunity for presenting the same in evidence.

SECT. 51. The petition, stating the grounds relied upon, shall be filed in court, and notice thereof with a copy given to or served on the attorney for the commonwealth for the county where the court is to sit, fourteen days at least before the term at which such hearing may be had, unless the attorney waives such notice or service.

SECT. 52. If it appears to the court that any part of such preceding judgment has been actually paid to or for the commonwealth upon the recognizance or judgment, and upon such review the court orders the judgment to be reversed or given for a less sum than has been so actually paid, the court may decree a sum equal to the difference between the amount actually paid and the amount so ordered, to be repaid to the party who paid the same or his legal representatives; and the treasurer or other officer of the commonwealth who received or then has the same, shall, on presentation of proper evidence of authority therefor, repay the same accordingly.

SECT. 53. If upon such petition the review is not granted, or the original judgment is not altered, the court may award reasonable costs for the commonwealth against the petitioner.

SECT. 54. The offences of treason, rape, and arson shall not be bailable.

## CHAPTER 171.

### OF INDICTMENTS, PROSECUTIONS, AND PROCEEDINGS BEFORE TRIAL.

#### SECTION

- 1, 2. Grand jurors, when and how returned, and term of service.
3. Same subject. Who grand jurors, and who jurors for trials.
4. Grand jurors, deficiency in, how supplied.
5. how empanelled and sworn. Form of oath.
6. when allowed to affirm.
7. Foreman.
8. duty and term of service of. Foreman *pro tempore*.
9. Who may swear witnesses before grand jury. List of witnesses.
10. Grand jury may appoint clerk. Minutes of clerk.
11. may be resummoned at same term.
12. Grand jurors, &c., not to disclose fact of indictment found.
13. not to testify how members voted, &c.
14. Prisoner not indicted, when to be discharged.
15. when discharged as insane, to be sent to hospital.

#### SECTION

16. Special acts, &c., need not be set out in complaint, &c.
17. Offences committed near county lines, and on the sea.
18. Indictment where injury is in one county and death in another.
19. for offences committed at sea or out of state, &c.
20. Limitation of criminal prosecutions.
21. Indictment for a capital offence.
22. copy of, to be served on prisoner, &c.
23. notice of, to chief justice of S. J. C.; entry, &c.
24. prisoner to have copy of, list of jurors, &c.
25. What other prisoners entitled to copies of indictment.
26. Prosecuting officers may issue subpoenas.
27. Witnesses for state not entitled to fees in advance. Payment of witnesses' fees.
28. What criminal prosecutions may be stayed upon reparation to party injured.

SECTION

- 29. Prisoner refusing to plead. Need not be asked how he will be tried.
- 30. When persons in prison under an indictment are to be tried, if they require it.
- 31. Plea in abatement, when to be verified.

SECTION

- 32. Commission to examine witnesses, how granted.
- 33. Such commissions, how executed, and depositions, how used.
- 34. Civil remedies not barred by proceedings in criminal cases.

SECTION 1. The clerk of the superior court for each county, not less than seven nor more than thirty days before the commencement of the first term of the court in each year, shall issue writs of *venire facias*, in each county, for twenty-three grand jurors to be returned to that court, who shall be held to serve at each term thereof throughout the year, and until another grand jury is empanelled in their stead: except that in the counties where terms of the court are established for the transaction of criminal business, grand jurors shall be required to attend only at such terms. 1860 Ch. 143.

Grand jurors, when and how returned, and term of service. R. S. 136, § 1. 1840, 74. See 1860, Ch. 143.

SECT. 2. The clerk of the superior court for criminal business, not less than seven nor more than fourteen days before each term commencing on the first Mondays of January and July, shall issue writs of *venire facias* for twenty-three grand jurors to serve in said court, twenty-two of whom shall be drawn and returned from the city of Boston, and one from Chelsea, North Chelsea, or Winthrop, who shall be held to serve for each term thereof for six months and until another grand jury is empanelled in their stead.

in Suffolk. R. S. 86, § 6. 1844, 44, § 3. 1846, 127. 1852, 53. See 1860, Ch. 143.

SECT. 3. Grand jurors shall be drawn, summoned, and returned, in the same manner as jurors for trials; and when drawn at the same time with jurors for trials, the persons whose names are first drawn, to the number required, shall be returned as grand jurors, and those afterwards drawn shall be jurors for trials.

Same subject. Who grand jurors, and who jurors for trials. R. S. 136, § 3. See Ch. 132.

SECT. 4. In case of deficiency of grand jurors in any court, writs of *venire facias* may be issued to the constables of such cities or towns as the court may direct, to return forthwith such further number of grand jurors as may be required.

Grand jurors, deficiency in, how supplied. R. S. 136, § 4.

SECT. 5. The clerk of the court shall prepare an alphabetical list of the names of all persons returned as grand jurors, and when they are to be empanelled, the two persons first named thereon shall be first called, and the following oath shall be administered to them:—

how empanelled and sworn. R. S. 136, § 5.

You, as grand jurors of this inquest for the body of this county of —, do solemnly swear, that you will diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge; the commonwealth's counsel, your fellows', and your own, you shall keep secret; you shall present no man for envy, hatred, or malice, neither shall you leave any man unrepresented for love, fear, favor, affection, or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

form of oath.

The other jurors shall then be called in such divisions as the court may deem proper, and the following oath shall be administered to them:—

The same oath which your fellows have taken on their part, you, and each of you, on your behalf, shall well and truly observe and keep; so help you, God.

SECT. 6. When a person returned as grand juror is conscientiously scrupulous of taking the oath before prescribed, he shall be allowed to make affirmation, substituting the word "affirm" instead of the word "swear," and also the words, "this you do under the pains and penalties of perjury," instead of the words, "so help you, God."

when allowed to affirm. R. S. 136, § 6.

SECT. 7. After the grand jurors have been empanelled and received their charge from the court, they shall retire with the officer appointed to attend them, and before proceeding to discharge their duties, elect by ballot one of their number to be foreman, and give notice thereof to the court, and the clerk shall record the same.

Foreman. R. S. 136, § 7.

SECT. 8. The foreman elected at the first term shall be foreman for

duty and



term of service of. Foreman *pro tempore*.  
R. S. 136, § 8.

Who may swear witnesses before the grand jury. List of witnesses.  
R. S. 136, § 9.  
4 Gray, 5.

Grand jury may appoint clerk. Minutes of clerk.  
R. S. 136, § 10.

may be re-summoned at same term.  
R. S. 136, § 11.

Grand jurors, &c., not to disclose fact of indictment found.  
R. S. 136, § 12.

not to testify how members voted, &c.  
R. S. 136, § 13.

Prisoner not indicted, when to be discharged.  
R. S. 136, § 14.

when discharged as insane, to be sent to hospital.  
R. S. 136, § 15.  
1853, 318, § 1.  
1856, 247, § 3.  
See Ch. 73, § 8.

Special acts, &c., need not be set out in complaint, &c.  
1838, 181, § 4.  
1846, 62.  
1846, 95, § 15.  
3 Pick. 462.

Offences committed near county lines, and on the sea.  
R. S. 133, § 7.

Indictment where injury is in one county and death in another.  
R. S. 133, § 8.  
for offences committed at sea or out of state, &c.

the whole period they are required to serve, but in his absence another foreman shall be elected in the same manner, who shall perform the duties during such absence, and in case of the death of the foreman, for the residue of their term of service.

SECT. 9. The foreman of the grand jury, or the prosecuting officer before them, may administer oaths and affirmations in the manner prescribed by law, to witnesses who appear to testify before the jury, and the foreman shall under his hand return to the court a list of all witnesses sworn before the grand jury during the term, which shall be filed of record by the clerk.

SECT. 10. The grand jury may appoint one of their number to be clerk, to preserve minutes of the proceedings before them, which minutes when the jury so direct shall be delivered to the attorney-general or district-attorney.

SECT. 11. When the grand jury are dismissed before the court is adjourned without day, they may be summoned to attend again in the same term, at such time as the court directs for the despatch of any business that may come before them.

SECT. 12. No grand juror or officer of the court shall disclose the fact that an indictment for felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on the indictment.

SECT. 13. No grand juror shall be allowed to state or testify in any court, in what manner he or any other member of the jury voted on any question before them, or what opinion was expressed by any juror in relation to such question; and in charging the grand jury, the court shall remind them of the provisions of this and the preceding sections.

SECT. 14. Any person held in prison on a charge of having committed a crime, shall be discharged if he is not indicted before the end of the second term of the court at which he is held to answer, unless it appears to the satisfaction of the court that the witnesses on the part of the government have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident, and except in the case provided for in the following section.

SECT. 15. When a person held in prison on a charge of having committed an indictable offence is not indicted by the grand jury by reason of insanity, they shall certify the fact to the court, and thereupon, if his discharge or going at large is deemed manifestly dangerous to the peace and safety of the community, the court may order him to be committed to one of the state lunatic hospitals; otherwise he shall be discharged.

SECT. 16. In a complaint, prosecution, or other process, founded on a special act of the legislature, an ordinance or by-law of any city or town, or an order of the mayor and aldermen, it shall be sufficient to set forth the offence fully, plainly, substantially, and formally; and no part of such law, ordinance, by-law, or order, need be set forth.

SECT. 17. An offence committed on the boundary of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed, and may be prosecuted and punished, in either county. An offence committed upon the sea within one league of the shore may be prosecuted and punished in the adjacent county.

SECT. 18. If a mortal wound is given, or other violence or injury inflicted, or poison is administered, in one county, by means whereof death ensues in another county, the offence may be prosecuted and punished in either county.

SECT. 19. If a mortal wound is given, or other violence or injury inflicted, or poison is administered, on the high seas, or on land either within or without the limits of this state, by means whereof death

ensues in any county thereof, such offence may be prosecuted and punished in the county where the death happens.

R. S. 133, § 9.

SECT. 20. An indictment for the crime of murder may be found at any period after the death of the person alleged to have been murdered; all other indictments shall be found and filed within six years after the commission of the offence; but any period during which the party charged was not usually and publicly resident within this state, shall not be reckoned as part of the six years.

Limitation of criminal prosecutions.  
R. S. 136, § 16.  
See Ch. 63, § 99.  
Ch. 83, § 3.  
Ch. 84, § 9; 163, § 22; 165, § 2, 20, 25.

SECT. 21. If the grand jury find and return to the court an indictment for a crime punishable with death, process shall be forthwith issued for the arrest of the party charged, if he is not already in custody.

Indictment for a capital offence.  
R. S. 82, § 27.  
R. S. 136, § 17.  
1844, 44, § 4.

SECT. 22. As soon as may be after the finding of such indictment, the party charged, when in custody, shall be served with a copy thereof by the sheriff or his deputy, with an order of the court notifying him, if the indictment is found in the county of Dukes County, that the indictment will be entered at the supreme judicial court next to be held in the county of Barnstable, and if found in any other county, at the term of said court next to be held for the same county, or in either case at any intermediate time before the next term of the court, when the court may be in session in the county.

copy of, to be served upon prisoner, &c.  
R. S. 81, § 46.  
R. S. 82, § 26.  
R. S. 136, §§ 18, 19.  
1844, 44, § 4.  
5 Cush. 397.  
See Ch. 112, §§ 9, 20-25.

SECT. 23. The clerk of the superior court, when such an indictment is found, shall forthwith give notice thereof to the chief or first justice of the supreme judicial court, and shall transmit the indictment to said court, at the next term or any intermediate time, as mentioned in the preceding section, where it shall be entered. The supreme judicial court shall have cognizance and jurisdiction thereof, and proceedings shall be had thereon, in the same manner as if the indictment had been found in that court.

notice of, to chief justice of S. J. C.; entry, &c.  
R. S. 82, § 26.  
R. S. 136, §§ 18, 20.  
1844, 44, § 4.  
1859, 196.  
5 Cush. 397.

SECT. 24. Any prisoner indicted for a crime punishable with death, or imprisonment for life in the state prison, shall, on demand upon the clerk by himself or his counsel, have a list of the jurors returned delivered to him, and shall also have process to summon such witnesses as are necessary to his defence, at the expense of the commonwealth.

prisoner to have copy of, &c.  
R. S. 136, § 23.  
1859, 196, § 21.  
13 Mass. 501.

SECT. 25. Every person indicted for an offence for which he may be imprisoned in the state prison, if he is under recognizance or in custody to answer for such offence, shall be entitled to a copy of the indictment and all indorsements thereon, without paying fees therefor.

What other prisoners entitled to copy of indictment.  
R. S. 136, § 24.

SECT. 26. The attorney-general and other prosecuting officers may in all cases issue subpoenas for witnesses to appear and testify on behalf of the commonwealth, and the subpoena, under the hand of such officer, shall have the same force, and be obeyed in the same manner, and under the same penalties in case of default, as if issued by the clerk.

Prosecuting officers may issue subpoenas.  
R. S. 136, § 25.

SECT. 27. Witnesses summoned in behalf of the commonwealth shall be bound to attend without the payment of fees, and shall be punishable for non-attendance; but if they satisfy the court of their inability to defray their expenses, the court shall order their fees which have accrued to be paid, and may make such further order for the payment of their fees as may be deemed reasonable. The court may at each term pass a general order for the payment of the fees of such witnesses.

Witnesses for state not entitled to fees in advance, &c. Payment of witness fees.  
R. S. 136, § 26.  
1859, 62.

SECT. 28. When an indictment is found against a person for an assault and battery or other misdemeanor for which the party injured may have a remedy by civil action, except where the offence was committed by or upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, or is punishable by imprisonment in the state prison, if the party injured appears in court where the indictment is pending, and acknowledges satisfaction for the injury sustained, the court may, on payment of the costs accrued, order all further pro-

What criminal prosecutions may be stayed upon reparation to party injured.  
R. S. 136, § 27.  
1846, 118.

Prisoner refusing to plead. Need not be asked how he will be tried.  
R. S. 136, §§ 28, 29. 10 Met. 222.

when to be tried.  
R. S. 136, § 30.  
15 Mass. 277.

Plea in abatement, when to be verified.  
R. S. 136, § 31.

Commission to examine witnesses, how granted.  
R. S. 136, § 32.  
5 Met. 427.

Such commissions, how executed, and depositions, how used.  
R. S. 136, § 33.

Civil remedies not barred by proceedings in criminal cases.  
1851, 151, § 6.  
1856, 123, § 6.

ceedings to be stayed, and discharge the defendant from the indictment, which shall forever bar all remedy for such injury by civil action.

SECT. 29. If on arraignment a person refuses to plead or answer, or does not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon the proceedings shall be the same as if he had pleaded not guilty. It shall not be necessary in any case to ask a prisoner how he will be tried.

SECT. 30. Every person held in prison upon an indictment shall, if he requires it, be tried at the next term of the court after the expiration of six months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it appears to the satisfaction of the court that the witnesses on behalf of the government have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident.

SECT. 31. When to an indictment a plea in abatement or other dilatory plea is offered, the court may refuse to receive such plea, until its truth is proved by affidavit or other evidence.

SECT. 32. When upon an indictment an issue of fact is joined, the court may, on application of the defendant, grant a commission to examine any material witnesses residing out of this state, in the same manner as in civil causes; the prosecuting officer may if he sees fit join in such commission, and name any material witnesses to be examined on the part of the commonwealth.

SECT. 33. When such commission is issued, the interrogatories to be annexed thereto shall be settled, and the commission executed and returned, in the manner prescribed by law in relation to commissions in civil cases, and the depositions taken thereon and returned shall be read in the same cases, with the like effect and subject to the same exceptions, as in civil cases: *provided*, that when the defendant declines to use on his trial the deposition so taken, the prosecuting officer shall not make use of any deposition taken on the part of the commonwealth, without the defendant's consent.

SECT. 34. No proceedings against a person for a criminal offence shall prevent or bar any civil action which might otherwise be maintained by a party aggrieved by the commission of the offence.

## CHAPTER 172.

### OF TRIALS.

#### SECTION

1. Issues of fact in indictments, how tried.
2. No grand juror to be on trial jury.
3. Challenges by defendants, attorney-general, &c.
4. peremptory, when allowed.
5. What opinions disqualify jurors in capital cases.
6. Oaths of jurors. Forms of oaths.
7. Affirmation of jurors.
8. When defendant is to be present at trial, &c.
9. Court may order view.
10. Defendant relying upon license, must prove the same.
11. Defence in cases of libel.

#### SECTION

12. Proof of ownership of property by possession, &c.
13. Time included in "night time."
14. Prisoner found insane to be sent to hospital.
15. Jury may decide the law and the fact, &c.
16. Proceedings on conviction of part of offence charged.
17. on acquittal by reason of insanity.
18. Persons acquitted, &c., not liable for fees, or for subsistence while in custody.
19. Certain defects of form not to vitiate indictments.
20. Prosecutions under by-laws may be discontinued by order of selectmen, &c.

Issues of fact, how tried.  
R. S. 137, § 1.

SECTION 1. Issues of fact joined upon indictments shall be tried by a jury drawn and returned in the manner prescribed by law for the trial of issues of fact in civil causes.



SECT. 2. No member of the grand jury which has found an indictment shall be put upon the jury for the trial thereof. R. S. 137, § 2.

SECT. 3. Every person indicted for an offence, and the attorney-general, or other officer prosecuting an indictment on behalf of the commonwealth, shall, when the jury is empanelled for the trial, be entitled to the challenges allowed by law to parties in civil causes. Challenges by defendants, attorney-general, &c. R. S. 137, §§ 3, 4. See Ch. 132, § 30.

SECT. 4. A person put on trial for an offence punishable with death, or imprisonment for life in the state prison, shall be allowed to challenge peremptorily twenty of the persons returned as jurors, and no more. peremptory, when allowed. R. S. 137, § 5. 1859, 196, § 21.

SECT. 5. No person whose opinions are such as to preclude him from finding a defendant guilty of an offence punishable with death, shall be compelled or allowed to serve as a juror on the trial of an indictment for such offence. What opinions disqualify jurors in capital cases. R. S. 137, § 6.

SECT. 6. The following oath shall be administered to the jurors for the trial of all criminal cases not capital: — Oaths of jurors. R. S. 137, § 7. See Ch. 132, § 26.

You shall well and truly try the issue between the commonwealth and the defendant, (or the defendants, as the case may be,) according to your evidence; so help you, God.

In capital cases the following oath shall be administered to the jurors: —

You shall well and truly try, and true deliverance make, between the commonwealth and the prisoner at the bar, whom you shall have in charge, according to your evidence; so help you, God.

SECT. 7. A juror who is conscientiously scrupulous of taking either of the oaths above prescribed, shall be allowed to make affirmation, substituting the words, "this you do under the pains and penalties of perjury," instead of the words, "so help you, God." Affirmation of jurors. R. S. 137, § 8.

SECT. 8. No person indicted for a felony shall be tried unless personally present during the trial; persons indicted for smaller offences may at their own request, by leave of the court, be put on trial in their absence, by an attorney duly authorized for that purpose. When defendant is to be present at trial, &c. R. S. 137, § 9. 1852, 37, § 1.

SECT. 9. The court may order a view by a jury empanelled to try a criminal case. Court may order view. R. S. 137, § 10. 5 Cush. 298.

SECT. 10. In all criminal prosecutions in which the defendant relies for his justification upon any written license, appointment, or certificate of authority, he shall prove the same, and until such proof, the presumption shall be that he is not so authorized. Defendant relying upon license must prove the same. 1859, 160. 10 Cush. 69. 1844, 102.

SECT. 11. In a prosecution for writing or publishing a libel, the defendant may give in evidence in his defence upon the trial, the truth of the matter contained in the publication charged as libellous, and such evidence shall be deemed a sufficient justification, unless malicious intention is proved. Defence in cases of libel. R. S. 133, § 6. 1855, 396. 4 Mass. 163. 3 Pick. 304. 9 Met. 410. 13 Met. 68.

SECT. 12. In the prosecution of offences in relation to or affecting real or personal estate, it shall be sufficient, and shall not be deemed a variance, if it is proved on the trial, that at the time when the offence was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged to be the owner thereof. Proof of ownership of property, &c. R. S. 133, § 11. 1 Mass. 473. 14 Mass. 217. 10 Met. 422.

SECT. 13. When an offence is alleged to have been committed in the night time, the time called night time shall be deemed to be the time between one hour after the sun-setting on one day and one hour before sun-rising on the next day; and in all cases the time of sun-setting and sun-rising shall be ascertained according to mean time in the place where the offence is committed. Time included in "night time." 1847, 13. 2 Cush. 589. 1 Gray, 495.

SECT. 14. When a person indicted is at the time appointed for the trial found to the satisfaction of the court to be insane, the court may cause him to be removed to one of the state lunatic hospitals for such a term and under such limitations as they may direct. Prisoner found insane to be sent to hospital. 1849, 68. 1853, 318. 1856, 247. See Ch. 73, § 8.

Jury may decide the law and the fact, &c. 1807, 140, § 15. 1855, 152. 10 Pick. 406. 20 Pick. 222. 10 Met. 263. 5 Gray, 185. See Ch. 112, § 11, 26, 27.

SECT. 15. The jury shall try, according to established forms and principles of law, all criminal causes committed to them, and after having received the instructions of the court, shall decide, in their discretion, by a general verdict, both the fact and the law involved in the issue, or may at their election find a special verdict. The court shall superintend the course of the trials, decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings, and shall also charge the jury.

Proceedings on conviction of part of offence charged.

R. S. 137, § 11. 12 Pick. 507. 19 Pick. 479. 1 Met. 262. 2 Met. 193.

SECT. 16. When a person indicted for a felony is on trial acquitted by the verdict of part of the offence charged, and convicted of the residue, such verdict may be received and recorded by the court, and thereupon the person indicted shall be adjudged guilty of the offence, if any, which appears to the court to be substantially charged by the residue of the indictment, and shall be sentenced and punished accordingly.

on acquittal by reason of insanity.

R. S. 137, § 12. 1853, 318, § 1. 1856, 247, § 3. 7 Gray, 584.

SECT. 17. When a person indicted for an offence is on trial acquitted by the jury, by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause, and thereupon if his discharge or going at large is deemed manifestly dangerous to the peace and safety of the community, the court may order him to be committed to one of the state lunatic hospitals; otherwise he shall be discharged.

Persons acquitted, &c., not liable for fees, &c. R. S. 137, § 13.

SECT. 18. No prisoner or person under recognizance, who is acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of office, or for any charge for subsistence while he was in custody.

Certain defects of form not to vitiate indictments.

R. S. 137, § 14. 1858, 23. 6 Greenl. 148. 2 Mass. 116. 7 Mass. 9. 11 Mass. 279. 5 Pick. 44. 4 Cush. 141. 11 Cush. 547.

SECT. 19. No indictment, and no complaint before a justice of the peace or police court, shall be quashed or deemed invalid, nor shall the judgment or proceedings thereon be arrested or affected, by reason of the omission or misstatement of the title, occupation, estate, or degree, of the defendant, or of the name of the city, town, county, or place, of his residence; nor by reason of the omission of the words "force and arms," or the words "against the peace," nor by reason of omitting to charge any offence to have been committed contrary to the form of the statute or statutes: *provided*, that such omission or misstatement does not tend to the prejudice of the defendant.

Prosecutions under by-laws may be discontinued by order of selectmen, &c. 1853, 179, § 2.

SECT. 20. In all prosecutions before a police court or justice of the peace, under the by-laws of a city or town, the city solicitor, or other person appointed by the board of aldermen or selectmen of such city or town, may enter a *nolle prosequi*, or do any other matter or thing which may be done by a district-attorney in criminal prosecutions.

## CHAPTER 173.

### OF APPEALS, NEW TRIALS, AND REPORTS.

APPEALS.	
SECTION	
1.	Appeal from conviction before justices of peace, &c.
2.	Witnesses to be recognized, &c.
3.	Justice's duty, &c. Fees, how paid.
4.	Appellant not required to advance fees, &c.
5.	If appeal not prosecuted, appellant to be sentenced.
6.	When on a forfeited recognizance a penalty accrues to a person, it may be awarded by court.

NEW TRIALS.	
SECTION	
7.	New trials, how granted, &c.
REPORTS.	
8.	Reports of cases by judge.
9.	Person convicted to recognize.
10.	If he does not, to remain in prison, until &c. Proceedings in such case. Person not to be deprived of writ of error.



APPEALS.

SECTION 1. Every person convicted of an offence before a justice of the peace or police court, may appeal from the sentence to the superior court then next to be held in the same county. The appellant shall be committed to abide the sentence of said court until he recognizes to the commonwealth in such reasonable sum and with such sureties as the justice or court requires, with condition to appear at the court appealed to, and at any subsequent term to which the case is continued, if not previously surrendered and discharged, and so from term to term, until the final decree, sentence, or order of the court thereon, and to abide such final sentence, order, or decree, and not depart without leave, and in the mean time to keep the peace and be of good behavior.

Appeal from conviction before justices of peace, &c.  
R. S. 85, § 28.  
R. S. 86.  
R. S. 87, § 36.  
R. S. 138, § 1.  
1845, 166, § 2.  
1849, 31.  
1859, 196.  
3 Gray, 476.  
6 Gray, 342.  
7 Gray, 317.

SECT. 2. On such appeal the justice or court shall have the same authority to bind by recognizances witnesses in the case, as they have by chapter one hundred and seventy when a prisoner is admitted to bail or committed.

Witnesses to be recognized, &c.  
1856, 130.

SECT. 3. The justice or court shall on such appeal make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, if any is taken, to the clerk of the court appealed to. The fees of the justice therefor shall be paid from the county treasury in like manner as other costs in criminal prosecutions.

Justice's duty, &c.  
Fees, how paid.  
R. S. 138, § 2.  
2 Met. 18.

SECT. 4. The appellant shall not be required to advance any fees upon claiming his appeal, nor in prosecuting the same, but if convicted in the court appealed to, or if sentenced for failing to prosecute his appeal, he may be required, as part of his sentence, to pay the whole or any part of the costs of prosecution.

Appellant not required to advance fees, &c.  
R. S. 138, § 3.

SECT. 5. If the appellant fails to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the superior court may award sentence against him for the offence whereof he was convicted, in like manner as if he had been convicted in that court; and if he is not then in custody, process may be issued to bring him into court to receive sentence.

If appeal not prosecuted, appellant to be sentenced.  
R. S. 138, § 4.  
1859, 196.

SECT. 6. When upon suit brought on a recognizance to prosecute an appeal, the penalty is adjudged to be forfeited, or when, by leave of court, such penalty has been paid to the county treasurer or the clerk of the court without a suit, or before judgment is given as provided in chapter one hundred and seventy, if by law any forfeiture accrues to a person by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of the forfeiture.

When on forfeited recognizance penalty accrues to a person, it may be awarded by court.  
R. S. 138, § 9.

NEW TRIALS.

SECT. 7. The supreme judicial court and superior court may at the term in which the trial of any indictment is had, or within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted; or when it appears to the court that justice has not been done; and on such terms or conditions as the court shall direct.

New trials, how granted, &c.  
R. S. 82, § 30.  
R. S. 86, § 11.  
R. S. 138, § 11.  
1855, 152.  
1859, 196.  
1 Met. 428

REPORTS.

SECT. 8. If, upon the trial of a person convicted in the superior court, any question of law arises which, in the opinion of the presiding judge, is so important or so doubtful as to require the decision of the supreme judicial court, he shall, if the defendant desires it or consents thereto, report the case, so far as may be necessary to present the question of law arising therein; and thereupon all further proceedings in that court shall be stayed.

Reports of cases by judge.  
R. S. 138, § 12.  
1859, 196.



Person to recognize.  
R. S. 138, § 13.

SECT. 9. Any person for whose benefit a report is made as is provided in the preceding section, or who files exceptions, may recognize to the commonwealth in such sum as the court shall order, with sufficient sureties, for his personal appearance at the supreme judicial court next to be held for the same county, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the mean time to keep the peace and be of good behavior.

if he does not,  
to remain in  
prison until,  
&c. Proceedings  
in such  
case.  
Party may have  
his writ of  
error.  
R. S. 138, § 14.  
1859, 196.  
7 Gray, 317.

SECT. 10. If such person does not so recognize, he shall be committed to prison to await the decision of the supreme judicial court; and in that case, the clerk of the court in which the conviction was had shall file a certified copy of the record and proceedings in the case, in the supreme judicial court. The court shall have cognizance thereof and consider and decide the cause in the same manner as it decides questions of law reserved by one of the justices of that court, shall render such judgment, and award such sentence, or make such order thereon, as law and justice require; and a new trial may be ordered at the bar of the supreme judicial court, or the cause may be remanded to the superior court for a new trial there, as the justices of the supreme judicial court shall direct. But the proceedings herein prescribed shall not deprive any party of his writ of error for any error or defect appearing of record.

## CHAPTER 174.

### OF JUDGMENT AND EXECUTION.

#### SECTION

1. Sentence where no punishment is provided.
2. to imprisonment for assaults, &c., may be with costs.
3. Person convicted under chapter eighty-six to pay costs.
- 4, 5. Courts may sentence to jail or house of correction.
- 6, 7. Conditional sentences.
8. Court may impose fine or imprisonment, except, &c.
9. Magistrate to certify if convict is unable to pay fine, &c.
10. Sureties for peace may be required in certain cases.
11. Proceedings on forfeiture of recognizance.
12. Sentence of female convicts with infants.
13. of boys under sixteen.
14. of females.
15. of juvenile offenders.
16. convicts not before sentenced.
17. No sentence to state prison for less than one year.

#### SECTION

18. Solitary imprisonment to precede hard labor, unless, &c.
19. Offices forfeited by commitment to state prison.
20. Sheriff to execute sentences.
21. Removal of convict to state prison.
22. Officer to return precept to magistrate and leave copy with jailer, &c.
23. When convict imprisoned is again sentenced, warrant to be served by keeper where held.
24. Proceedings on conviction of a capital offence.
25. when convict has become insane, or when female convict is quick with child.
- 26, 27. Sentence of death, how executed.
28. Sheriff's return on warrant for execution.
29. Corporations failing to appear may be defaulted, &c.
30. Warrants of distress may be issued.

Sentence where no punishment is provided.  
R. S. 139, § 1.  
23 Pick. 280.  
2 Met. 411.

SECTION 1. In cases of legal conviction, where no punishment is provided by statute, the court shall award such sentence as is conformable to the common usage and practice in this state, according to the nature of the offence, and not repugnant to the constitution.

to imprison-  
ment for as-  
saults, &c., may  
be with costs.  
1854, 328, § 2.

SECT. 2. Whoever is sentenced to imprisonment for any offence mentioned in section thirty-eight of chapter one hundred and twenty, may in addition to the imprisonment be sentenced to pay the costs of prosecution.

Person convict-  
ed under chap-  
ter 86 to pay  
costs.  
1855, 215.  
Courts may sen-

SECT. 3. Whoever is convicted of an offence under the provisions of chapter eighty-six shall be sentenced to pay the costs of prosecution.

SECT. 4. Whoever is convicted of an offence punishable wholly or in part by imprisonment in the jail, may be sentenced to suffer such

imprisonment in the house of correction instead of the jail, or to suffer solitary imprisonment and be confined at hard labor either in the jail or house of correction.

tence to jail or house of correction.  
R. S. 143, § 17.

2 Met. 419. 4 Met. 361.

SECT. 5. Whoever is convicted of a crime punishable by fine and liable to imprisonment in the jail for the non-payment of fine and costs of prosecution, may be sentenced to suffer such imprisonment in the house of correction instead of the jail, and confined at hard labor either in the jail or house of correction.

Same subject.  
1845, 118.

SECT. 6. When a person is convicted of an offence punishable at the discretion of the court, either by fine or imprisonment in the jail or house of correction, or by fine or imprisonment in the state prison, the court or justice may award against such offender a conditional sentence, and order him to pay a fine with or without the costs of prosecution, within a limited time to be expressed in the sentence, and in default thereof to suffer such imprisonment as is provided by law.

Conditional sentences.  
R. S. 139, § 2.  
23 Pick. 280.  
2 Met. 411, 412.  
5 Met. 560.

SECT. 7. The person against whom any such conditional sentence is awarded shall be forthwith committed to the custody of an officer in court or to the jail, to be detained until the sentence is complied with; and if he does not pay the fine and costs imposed within the time limited, the sheriff shall cause the other part of the sentence to be executed forthwith.

Same subject.  
R. S. 139, § 3.

SECT. 8. When it is provided that an offender shall be punished by imprisonment in the jail and a fine, or by imprisonment in the house of correction and a fine, such offender, unless convicted under chapter eighty-six, may at the discretion of the court be sentenced to be punished by such imprisonment without the fine, or by such fine without the imprisonment.

Court may impose fine or imprisonment, except, &c.  
R. S. 139, § 4.  
1855, 215, § 39.

SECT. 9. When a person is ordered to be imprisoned for non-payment of a fine, or fine and costs, not exceeding twenty dollars, the court or magistrate ordering such commitment shall inquire as to the ability of the defendant to pay the same, and if it appears that he is unable, it shall be so certified upon the mittimus.

Magistrate to certify, if convict is unable to pay fine, &c.  
See Ch. 180, § 7.

SECT. 10. Every court before which a person is convicted upon an indictment for any offence not punishable with death, or by imprisonment in the state prison, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he so recognizes.

Sureties for peace may be required, in certain cases.  
R. S. 139, § 5.

SECT. 11. Such recognizance shall be filed of record in the superior court, and in case of a breach of the condition, the same proceedings shall be had as are prescribed in chapter one hundred and sixty-nine in relation to recognizances to keep the peace and be of good behavior.

Proceedings on forfeiture of recognizance.  
R. S. 139, § 6.

SECT. 12. When a female with a nursing infant is convicted of an offence punishable by imprisonment in the house of correction, the court or justice before whom the conviction takes place may sentence her to some workhouse or house of industry in the county; and for her support and custody there shall be paid from the county treasury two dollars a week to the town in which the sentence is executed.

Sentence of female convicts with infants.  
1854, 416, §§ 1, 4.  
1856, 40.

SECT. 13. If a boy under the age of sixteen years is convicted of an offence punishable by imprisonment in the state prison, he not having been before sentenced to imprisonment in the state prison in this state, or in any state prison or penitentiary within the United States, the court, if sentence of solitary imprisonment and confinement at hard labor for a term not exceeding three years is awarded against him, shall order such sentence to be executed against him in the jail, and not in the state prison.

of boys under sixteen.  
R. S. 143, § 18.  
2 Met. 419.

SECT. 14. When sentence of confinement at hard labor for any term of time is awarded against a female convict of whatever age, the court

of females.  
R. S. 143, § 18.  
12 Cush. 237.



shall order such sentence to be executed either in the house of correction or jail, and not in the state prison.

SECT. 15. Nothing in the General Statutes shall prevent the court from sentencing juvenile convicts to confinement in any place in which they may be by law confined.

SECT. 16. When the punishment of solitary imprisonment and confinement at hard labor for a term not exceeding three years is awarded by the court against a convict who has not been before sentenced to the like punishment by any court in this state or within the United States, such sentence may be executed either in the house of correction, jail, or state prison.

SECT. 17. Convicts shall not be sentenced to imprisonment in the state prison for a less time than one year.

SECT. 18. When the punishment of imprisonment in the state prison is awarded against a convict, the form of the sentence shall be, that he be punished by confinement at hard labor, and he shall also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such sentence, the solitary imprisonment shall precede the punishment by hard labor, unless the court otherwise order.

SECT. 19. When a convict sentenced by any court of this state or of the United States to imprisonment in the state prison, at the time of conviction and sentence holds an office under the constitution or laws of this state, such office shall be deemed to be vacated from the time of his sentence; and if the judgment against him is reversed upon writ of error, he shall be restored to his office with all its rights and emoluments, but if pardoned, he shall not by reason thereof be restored, unless it is so expressly ordered by the terms of the pardon.

SECT. 20. When a person convicted of an offence is sentenced to pay a fine or costs or be imprisoned in the jail or house of correction, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or to some officer in court, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for the sheriff to execute such sentence, and he shall execute it accordingly.

SECT. 21. When a convict is sentenced to imprisonment in the state prison, the clerk of the court shall make out a warrant, under the seal of the court, directed to the warden of the prison, requiring him as soon as may be to cause such convict to be removed from the jail to the state prison; and the clerk shall also annex to the warrant a certified transcript of such conviction and sentence, and shall deliver the warrant and transcript to the sheriff of the county, who shall cause the same to be transmitted and delivered to the warden, to the end that the warden may, by himself or such person as he may appoint for that purpose, cause the warrant to be duly executed, by the removal of the convict to the state prison in the manner prescribed in chapter one hundred and seventy-nine. And unless his sentence is limited to take effect upon the expiration of a previous sentence, it shall be computed from the time he is ordered to remain in the custody of the sheriff.

SECT. 22. An officer who executes sentence in a criminal case shall, without charging travel therefor, return the precept with his doings and fees indorsed thereon to the court or magistrate issuing it, who shall tax, allow, and certify the fees as a part of the costs in the case. In case of commitment the officer shall leave with the jailer or keeper of the prison an attested copy of the precept, with his return thereon, which shall be a sufficient warrant for the detention of the party committed.

SECT. 23. When a convict imprisoned under sentence of a court is again sentenced to confinement in a prison other than that in which he is then held, the warrant for his commitment in pursuance of the second

Sentence of juvenile offenders.  
R. S. 143, § 18.  
1845, 247.  
1852, 258.

of convicts not before sentenced.  
R. S. 143, § 19.  
4 Met. 362, 368.

No sentence to state prison for less than one year.  
R. S. 139, § 9.  
Solitary imprisonment to precede hard labor, unless, &c.  
R. S. 139, § 8.  
4 Met. 361.  
8 Met. 533.  
11 Met. 576.

Offices forfeited by commitment to state prison.  
R. S. 144, § 31.

Sheriff to execute sentences.  
R. S. 139, § 7.

Removal of convict to state prison.  
R. S. 139, § 10.  
1859, 248.  
See Ch. 179, § 24.

Officer to return precept to magistrate, and leave copy with jailer, &c.  
1859, 233.

When convict imprisoned is again sentenced, warrant

1861 Ch. 116.



sentence shall be placed in the hands of the warden or keeper of the prison in which the convict is held, and it shall be the duty of said warden or keeper, upon the expiration of the first sentence, to commit the convict in obedience to said warrant.

to be served by keeper where held.

SECT. 24. When a person is convicted of a crime for which sentence of death is awarded against him, the clerk of the court shall as soon as may be deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor, and the sentence of death shall not be executed upon such convict until a warrant is issued by the governor, with advice of the council, under the great seal, with a copy of the record thereto annexed, commanding the sheriff to cause execution to be done; and the sheriff shall thereupon cause to be executed on such convict the judgment and sentence of the law.

Proceedings on conviction of a capital offence. R. S. 139, § 11.

SECT. 25. If it appears to the satisfaction of the governor and council, that a convict under sentence of death has become insane, the warrant for his execution may be delayed, or if the warrant has been issued, the execution thereof may be respited from time to time, so long as the governor and council think proper. If a female convict under sentence of death is quick with child, the governor and council shall forbear to issue a warrant for her execution, or if such warrant has been issued, the execution thereof shall be respited, until it appears to the satisfaction of the governor and council that she is no longer quick with child.

when convict has become insane, or when female convict is quick with child. R. S. 139, § 12.

SECT. 26. The punishment of death shall in every case be inflicted by hanging the convict by the neck until he is dead, and the sentence shall, at the time directed by the warrant, be executed within the walls of a prison of the county in which the conviction was had, or within the enclosed yard of the prison.

Sentence of death, how executed. R. S. 139, § 13. 5 Cush. 467. 11 Cush. 604.

SECT. 27. The sheriff of such county shall be present at the execution, unless he is prevented by sickness or other casualty, and also two of his deputies, to be designated by him, and he shall request the presence of the district-attorney, clerk or clerks of the county courts, and twelve reputable citizens, including a physician or surgeon. He shall permit the counsel of the criminal, such ministers of the gospel as the criminal desires, and his relations, to be present, and also such officers of the prison, deputies, and constables, military guard, or other assistants, as he sees fit.

Same subject. R. S. 139, § 14.

SECT. 28. When a sheriff inflicts the punishment of death upon a convict in obedience to a warrant from the governor, he shall as soon as may be make return thereof under his hand, with his doings therein, to the secretary's office. He shall also file in the clerk's office of the court where the conviction was had, an attested copy of the warrant and return; and the clerk shall subjoin a brief abstract of such return to the record of the conviction and sentence.

Sheriff's return on warrant for execution. R. S. 139, § 15.

SECT. 29. When a corporation indicted under the statutes of this state fails to appear after being duly served with process, its default shall be recorded, the charges in the indictment taken to be true, and judgment shall be rendered accordingly.

Corporations failing to appear may be defaulted, &c. 1851, 348, § 1.

SECT. 30. When judgment is rendered upon any such indictment against a corporation, the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, together with costs and interest.

Warrants of distress may be issued. 1851, 348, § 2.

CHAPTER 175.

OF INQUESTS ON DEAD BODIES.

SECTION

- 1. Coroners' inquests, when to be taken.
- 2. Warrant on constable to summon jury.
- 3. Penalty on constables or jurors for neglect.
- 4. Talesmen. Oath, &c., of jurors.
- 5. Witnesses, how summoned, &c.
- 6. Inquisition may be secret, and witnesses examined separately.
- 7. Oath of witnesses.
- 8. Testimony, how taken, &c.
- 9. Inquisition, how taken and what to contain.
- 10. Coroner's duty in case of a murder, &c.

SECTION

- 11. Coroner's duty in case of a murder, &c.
- 12. Compensation of clerk, surgeon, &c.
- 13. Expenses of bringing to land bodies found in harbors, &c.
- 14. Coroner, when to bury the body, &c. Expenses, how paid.
- 15. Expenses, how returned, audited, certified, and paid.
- 16. Where no coroner, justices of peace to act.
- 17. Coroners to take charge of money, &c., found on the body.

Coroners' inquests, when to be taken.  
R. S. 140, § 1.  
1849, 172, § 1.  
See Ch. 63, § 100.

SECTION 1. Coroners shall, upon being authorized as provided in the following section, take inquests, upon the view of the dead bodies of such persons only as are supposed to have come to their death by violence: *provided*, that in all cases of death by accident upon a railroad an inquest shall be held.

Warrant to constable to summon jury.  
R. S. 140, § 2.  
1849, 172, § 1.  
1859, 215.

SECT. 2. As soon as a coroner has notice of the dead body of a person found or lying within his county, supposed to have come to his death by violence, he shall repair to the place where the dead body is, and take charge of the same; and if on view of such body, and personal inquiry into the cause and manner of the death, he deems it necessary that an inquest should be taken, he shall, upon being thereto authorized in writing by the attorney-general, or the district-attorney of the district, mayor or chief of police of the city, or selectmen of the town in which such body is found, make his warrant to a constable of the town or city where the dead body is, or to a constable of an adjoining town or city in the county, requiring him forthwith to summon six good and lawful men of the county to appear before such coroner at a time and place expressed in the warrant, which shall be in substance as follows:—

Form of warrant.

\_\_\_\_\_, ss.  
To either of the constables of \_\_\_\_\_ in the county of \_\_\_\_\_. Greeting.  
In the name of the Commonwealth of Massachusetts, you are hereby required immediately to summon six good and lawful men of the county of \_\_\_\_\_ to appear before me, \_\_\_\_\_, one of the coroners of said county, at the dwelling-house of \_\_\_\_\_, (or at a place called \_\_\_\_\_,) within the town of \_\_\_\_\_, at the hour of \_\_\_\_\_, then and there to inquire, upon the view of the body of \_\_\_\_\_, there lying dead, when, how, and by what means, he came to his death. Hereof fail not.  
Given under my hand the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.  
\_\_\_\_\_, Coroner.

Penalty on constables or jurors for neglect.  
R. S. 140, § 3.  
1852, 312.

SECT. 3. The constable shall forthwith execute the warrant, and at the time mentioned therein shall repair to the place where the dead body is, and make return thereof, and of his doings thereon, under his hand to the coroner. A constable who unnecessarily neglects or fails to execute or return such warrant, shall forfeit ten dollars; and whoever summoned as a juror fails to appear, without reasonable excuse therefor, shall forfeit seven dollars; which forfeitures may be recovered to the use of the county, by an action of tort to be brought by the coroner.

Talesmen. Oath, &c., of jurors.  
R. S. 140, § 4.

SECT. 4. If the six jurors returned do not all appear, the coroner may require the constable, or any other person whom he appoints, to return jurors from the bystanders to complete the number, but no person shall serve on such jury oftener than once in twelve months. The coroner, in view of the body, shall administer to the jurors thus summoned and returned the following oath:—

You solemnly swear, that you will diligently inquire and true presentment make, on behalf of this commonwealth, when, how, and by what means, the person whose

body lies here dead came to his death ; and you shall return a true inquest thereof, according to your knowledge and such evidence as shall be laid before you ; so help you, God.

SECT. 5. The coroner may issue subpoenas for witnesses, returnable forthwith or at such time and place as he shall therein direct. The persons served with such subpoenas shall be allowed the same fees, and their attendance may be enforced by the coroner in the same manner, and they shall be subject to the same penalties, as if they had been served with a subpoena in behalf of the commonwealth, to attend a justice's court.

Witnesses, how summoned, &c. R. S. 140, § 5.

SECT. 6. The coroner, with the consent of a majority of the jury, may order the inquisition to be secret ; in which case he may exclude from the place where the inquisition is taken any or all persons other than those required to be present by the provisions of this chapter ; and during the examination of a witness, may exclude from the place of examination all other witnesses, and may also direct the witnesses to be kept separate, so that they cannot converse with each other until they have been examined.

Inquisition may be secret, and witnesses examined separately. 1850, 133, § 1.

SECT. 7. An oath to the following effect shall be administered by the coroner to the witnesses :—

Oath of witnesses. R. S. 140, § 6.

You solemnly swear, that the evidence which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth ; so help you, God.

SECT. 8. The testimony of all witnesses examined before any inquest, shall be reduced to writing by the coroner, or some person by his direction, and subscribed by the witnesses.

Testimony, how taken, &c. R. S. 140, § 7. See § 12.

SECT. 9. The jury, upon the inspection of the dead body, and after hearing the testimony of the witnesses and making all needful inquiries, shall draw up and deliver to the coroner their inquisition under their hands, in which they shall find and certify, when, how, and by what means, the deceased person came to his death, his name if it was known, together with all material circumstances attending his death ; and if it appears that he was murdered, the jurors shall further state who were guilty either as principal or accessory, if known, or in any manner the cause of his death ; which inquisition may be in substance as follows :—

Inquisition, how taken and what to contain. R. S. 140, § 8.

COMMONWEALTH OF MASSACHUSETTS.

—, ss.

An inquisition taken at — in the county of —, on the — day of —, in the year —, before —, one of the coroners of said county of —, upon the view of the body of — (or a person) there lying dead, by the oaths of the jurors, whose names are hereunto subscribed, who, being sworn to inquire on behalf of said commonwealth, when, how, and by what means, said — (or person) came to his death, upon their oaths do say, (insert when, how, and by what persons, means, weapon, or instrument, he was killed.) In testimony whereof, said coroner and the jurors of this inquest have hereunto set their hands, the day and year aforesaid.

Form of inquisition.

SECT. 10. If the jury find that a murder, manslaughter, or assault, was committed on the deceased, the coroner shall bind over by recognizance such witnesses as he thinks proper, to appear and testify at the next court to be held in the same county at which an indictment for such offence can be found, and may commit to the jail any witnesses who refuse to recognize in such manner as he directs. He shall return to the same court the inquisition, written evidence, and all recognizances and examinations by him taken.

Coroner's duty in case of a murder, &c. R. S. 140, § 9.

SECT. 11. If a person charged by the inquest with having committed such offence is not in custody, the coroner shall have the same power as a justice of the peace to issue process for his apprehension, and such warrant shall be made returnable before a justice of the peace, or other magistrate or court having cognizance of the case, who shall proceed therein in the manner required of justices of the peace in like cases.

Same subject. R. S. 140, § 10.

SECT. 12. A person who reduces the testimony to writing by direc-

Compensation



of clerk, snrgeon, &c. 1850, 133, § 2. 1858, 31, § 1.

tion of the coroner pursuant to section eight, shall be allowed for his services such sum as the coroner determines, not exceeding one dollar and fifty cents for each day's actual attendance upon the jury. A surgeon or chemist who aids in the examination on the determination of the coroner that such aid is necessary, shall be entitled to such compensation for his services as the coroner certifies to be just and reasonable, the same being audited and allowed in the manner provided in section fifteen.

Expenses of bringing to land bodies found in harbors, &c. 1850, 133, § 4.

SECT. 13. When services are rendered in bringing to land the dead body of a person found in any of the harbors, rivers, or waters, of this state, the coroner may allow such compensation for said services as he deems reasonable; but this section shall not entitle any person to allowance for services rendered in searching for such dead body.

Coroner, when to bury the body, &c. Costs, how paid. R. S. 140, § 11. 1858, 31, §§ 1, 2.

SECT. 14. When a coroner takes an inquest upon the view of the dead body of a stranger, or being called for that purpose does not deem it necessary on view of such body that an inquest should be taken, he shall cause the body to be decently buried, unless its dissection has been allowed by lawful authority; and if the coroner certifies that, to the best of his knowledge and belief, the person found dead is a stranger not belonging to this state, the expenses of burial and of the inquisition, if any is taken, and other necessary expenses, with the coroner's fees, shall be paid from the state treasury. In all other cases the expenses of the burial shall be paid by the town or city where the body is found, and all other expenses by the county.

Expenses, how returned, audited, certified, and paid. 1858, 31, § 1.

SECT. 15. The coroner shall return an account of the expenses of each inquest, or view, including his fees, to the county commissioners having jurisdiction over the place where the inquest or view is held, or in Boston to the city auditor, and shall annex thereto the written authority under which the inquest was held. Such commissioners or auditor shall audit such accounts and certify to the treasurer of the commonwealth, or the treasurer of the county, as the case demands, what items therein are deemed just and reasonable, which shall be paid by said treasurers to the persons entitled to receive the same.

Where no coroner, justices of peace to act. 1850, 133, § 5.

SECT. 16. When the dead body of a person supposed to have come to his death by violence is found in any town or city in this state in which no coroner duly qualified resides, any justice of the peace, within his county, shall have the like powers, and execute and discharge the same duties as are herein imposed upon coroners, and shall be entitled to the same fees as coroners for like services.

Coroner to take charge of money, &c., found on the body.

SECT. 17. In all cases under this chapter, the coroner shall take charge of any money or other personal property of the deceased, found upon or near the body, and deliver the same forthwith to those entitled to its care or possession, but if not claimed within sixty days, then to the public administrator, to be administered upon according to law.

CHAPTER 176. 1860 Ch. 191. §. 10

OF FINES, FORFEITURES, AND COSTS.

SECTION

1. Fines, &c., to be paid into state treasury.
2. how recovered.
3. Justices of peace to return fines and forfeitures.
4. Two-thirds of eriminal costs paid by state; one-third by counties.
5. Duty of justices of peace in taxing costs.

SECTION

6. Same subject. Justice may retain his own fees.
7. Costs, how certified by justice on appeal, &c.
8. in S. J. C. and superior court, how taxed, certified, and returned.
9. Fines, costs, &c., to be paid to sheriffs,

SECTION  
and by them to be paid to county treasurers.  
10. Sheriff suffering escape, to pay fines, &c.  
11. Remedy against sheriff for neglecting to pay over fines, &c.  
12. Payments to deputy or jailer valid.

SECTION  
13. Sheriffs to make semiannual returns. Penalty.  
14. Semiannual accounts of county treasurers.  
15. Treasurers' accounts, how audited, &c.  
16. Annual returns of, to governor and council.  
17. Costs to be paid by county treasurer if demanded within three years, otherwise, &c.

SECTION 1. All fines and forfeitures recovered in prosecutions of which any part of the costs are paid by the commonwealth, and all fines and forfeitures imposed as a punishment for any offence, or the violation or neglect of any duty imposed by statute, shall, where no other provision is especially made by law, be paid into the treasury of the commonwealth.

Fines, &c., to be paid into state treasury.  
R. S. 133, § 14.  
1829, 135.  
1852, 94, § 24.  
1855, 270, § 5.  
4 Cush. 503.  
2 Gray, 428.

SECT. 2. All fines and forfeitures mentioned in the preceding section, or expressly appropriated to the use of the commonwealth, or any county, city, or town, may, unless otherwise especially provided by law, be prosecuted for and recovered by indictment in the superior court; or when the amount or value thereof does not exceed one hundred dollars, by complaint before a police court, or when it does not exceed fifty dollars, by complaint before a justice of the peace, who shall respectively have such jurisdiction concurrently with the superior court; or the same may be recovered in an action of tort.

how recovered.  
R. S. 118, § 42.  
R. S. 133, § 14.  
1852, 312.  
1858, 45, §§ 1, 2.  
1859, 196.

SECT. 3. Justices of the peace shall, on or before the fifteenth day of October annually, return to the secretary of the commonwealth a specific account of all fines and forfeitures received by them to the use of the commonwealth or other public authority.

Justices of peace to return fines and forfeitures.  
1852, 289, § 1.  
1857, 40.

SECT. 4. Two-thirds of all legal costs and expenses arising in criminal prosecutions, including the fees of grand and traverse jurors for travel and attendance therein, unless paid by the party prosecuted, shall be paid by the commonwealth as hereinafter provided, and the other third by the respective counties in which they occur; but no part of the costs arising under any prosecution for the violation of a by-law of a city or town shall be paid by the commonwealth.

Two-thirds of criminal costs paid by state; one-third by counties.  
1841, 74, § 1.  
1845, 227.  
1850, 68.  
10 Cush. 495.

SECT. 5. In criminal prosecutions instituted before justices of the peace, in which a warrant is duly served and returned before them and they render judgment, they shall tax the legal costs arising therein and certify their allowance of the same, and in cases where the warrant is not served, they may allow to the officer and tax and certify such costs as they deem proper.

Duty of justices of peace in taxing costs.  
R. S. 141, § 2.  
1850, 107, § 1.

SECT. 6. In cases in which justices of the peace exercise final jurisdiction in criminal prosecutions, they shall certify the costs by them taxed and allowed, to the next superior court, which taxation shall be examined by the court or its order, the errors therein corrected, and the costs allowed and made up in the general bill of costs for the same term of the court: *provided*, that when a person convicted before a justice of the peace, and sentenced to pay the costs of prosecution, or a fine and costs, complies with the sentence, the costs, or fine and costs, shall be paid to the justice, who may retain his own fees and pay the residue of the costs to the officer and witnesses or other persons entitled thereto; otherwise such costs and the fine shall be paid to the treasurer of the county, city, or town, in the manner directed in chapter one hundred and twenty.

Same subject. Justice may retain his own fees.  
R. S. 141, § 3.  
1859, 196.

SECT. 7. In criminal prosecutions which are carried to the superior court by appeal, and in cases where a person is bound by recognizance or committed for want of sureties by a justice of the peace or police court, to answer in the superior court, the costs shall be taxed, and certified with the papers to the court, and shall be there allowed and taxed in the costs of prosecution.

Costs, how certified by justice on appeal, &c.  
R. S. 141, § 4.  
1859, 196.

SECT. 8. All costs arising in criminal prosecutions in the supreme judicial court, or superior court, shall be taxed by the prosecuting officer,

in S. J. C. and superior court, how taxed, cer-

tified, and returned.

R. S. 141, § 8.  
1843, 61, § 1.  
1861, ch. 182

and the allowance certified by the clerk, under the direction of the court. The clerks shall make and deliver to the treasurers of the respective counties, cities, or towns, at the end of every term or as soon thereafter as may be, copies of all bills of costs which have been taxed and allowed, and certificates of all fines imposed by the respective courts, to the use of the commonwealth, county, city, or town; and they shall transmit to the treasurer of the commonwealth a certificate of the amount of all such bills of costs, and all sums allowed by the courts as rewards or compensations to prosecutors, with a statement of all fines and forfeitures to the use of the commonwealth imposed or awarded by the court.

Fines, costs, &c., to be paid to sheriffs, and by them to county treasurers.  
1857, 107, § 1.  
1859, 196.  
2 Gray, 430.

SECT. 9. All fines, forfeitures, and costs, imposed or awarded in criminal prosecutions, by the supreme judicial court, or superior court, to the use of the commonwealth or any county, or the city of Boston, and all sums found to be due on forfeited recognizances, shall be certified by the clerks of said courts, under the direction of the court, to the sheriff of the county, who alone is authorized to receive them, and he shall, within one month after the receipt thereof, pay the same without deduction to the county treasurer.

Sheriff suffering escape to pay fine, &c.  
1857, 107, § 1.

SECT. 10. If a sheriff, having a person in his custody by virtue of the sentence of the court, voluntarily or negligently suffers him to escape, he shall be deemed to have received such fines, forfeitures, forfeited recognizances, and costs, at the time of the escape, and held liable to pay the same, with interest and costs of suit, in like manner as if he had received them.

Remedy against sheriff for neglecting to pay over fines, &c.  
1857, 107, § 1.

SECT. 11. If a sheriff neglects to make such payment for thirty days, the county treasurer shall sue for and recover of him, in an action of contract, the amount of such fines, forfeitures, forfeited recognizances, and costs, with interest from the time of receiving the same, at the rate of twelve per cent., and costs of suit.

Payments to deputy or jailer valid.  
1857, 107, § 2.

SECT. 12. Payment to the jailer, or any deputy-sheriff, of any sums mentioned in section nine, shall be deemed a legal and valid payment to the sheriff.

Sheriffs to make semiannual returns.  
Penalty.  
1857, 107, § 3.

SECT. 13. Every sheriff shall twice in each year, on the first days of January and July, render to the treasurer, to whom said sums are made payable, an account on oath of all sums which he has received during the six months preceding, for fines, forfeitures, forfeited recognizances, and costs, and the names of the persons from whom received, and against whom awarded; and if a sheriff neglects for thirty days to render such account, he shall be liable to a penalty of two hundred dollars, to be sued for and recovered of him in the same manner as is provided in section eleven.

Semiannual accounts of county treasurers.  
R. S. 141, § 10.  
1841, 74, § 2.  
1849, 56.  
1859, 253.  
1861, ch. 182

SECT. 14. Every county treasurer shall twice in each year transmit to the auditor of accounts an account upon oath, in which he shall charge the commonwealth with two-thirds and no more of all sums taxed for costs or allowed for rewards or compensations to prosecutors by the courts in his county, and duly certified by the clerk, since the last account rendered by him; and for all such sums, the certificate of the clerk shall be a sufficient voucher. He shall also credit in his account the amount of all fines, forfeitures, and costs, received by him to the use of the commonwealth. If he fails so to present his accounts, he shall forfeit two hundred dollars for every ten days' neglect, to be sued for and recovered by the treasurer in an action of contract.

Treasurers' accounts, how audited, &c.  
R. S. 141, § 10.  
1849, 56.

SECT. 15. His account shall be audited by the auditor of accounts, and he shall forthwith pay over any balance found due to the treasurer of the commonwealth, and if a balance is found in favor of the county treasurer, it shall upon the warrant of the governor be paid from the treasury of the commonwealth.

SECT. 16. He shall annually transmit to the governor and council a



general account, in which he shall credit to the commonwealth all money received by virtue of warrants on the treasury, and all sums received for fines, forfeitures, and costs, with the names of the persons from whom the same are received, and he shall charge all sums actually paid by him on account of the commonwealth, before the time of rendering said account, and the balance shall be credited to the commonwealth in a new account. He shall at the same time transmit to the governor and council a statement of all sums remaining due to any persons on bills of costs or for any other allowance, and certified to him, also a statement of all fines, forfeitures, and costs, remaining due to the commonwealth, together with the names of the persons from whom the same are due.

turns of, to governor and council. R. S. 141, § 11.

SECT. 17. Each county treasurer shall pay over to the persons entitled thereto all sums taxed for costs in criminal prosecutions, or allowed by the courts as rewards or compensations to prosecutors, and duly certified by the clerks: *provided*, that such sums are demanded within three years after the taxing or allowance thereof; and in his general account transmitted to the governor and council, and also in his account transmitted to the treasurer of the commonwealth next after his general account, as before provided, he shall credit to the commonwealth all such costs and allowances as have not been demanded within said three years, or credited by him in any former account, and also all fees returned to him by justices of the peace and police courts under section fifty-seven of chapter one hundred and twenty; and for neglect to comply herewith he shall be subject to a penalty of five thousand dollars, to be recovered by the treasurer of the commonwealth in an action of contract.

Costs to be paid by county treasurer if demanded within three years, otherwise, &c. R. S. 141, § 12. 1847, 274, § 2.

CHAPTER 177.

OF FUGITIVES FROM JUSTICE AND PARDONS.

FUGITIVES FROM JUSTICE.

SECTION

1. Governor may deliver to executive of other states fugitives from justice, and may demand such fugitives from executive of other states.
- 2, 3. Proceedings on such demands from other states.
4. Persons arrested to have opportunity to apply for writ of *habeas corpus*.
5. Penalty on officer not affording such opportunity.
6. Fees, how paid.
7. Persons liable to be demanded by other states may be arrested, &c.
8. and required to recognize.

SECTION

9. May be committed. Proceedings on default of recognizance, and in capital cases.
10. How proceeded with or discharged.
11. Expenses, how paid.

PARDONS.

12. Governor may grant pardons.
13. Terms of pardon, &c., to be set forth in warrant. Bond.
14. Keepers of jails, &c., to arrest convicts at large contrary to terms of pardon, &c.
- 15, 16. Proceedings against convicts charged with violating conditions of pardon, &c.
17. How warrant of pardon executed.

FUGITIVES FROM JUSTICE.

SECTION 1. The governor of this state, in any case authorized by the constitution and laws of the United States, may, on demand, deliver over to the executive of any other state or territory any person charged therein with treason, felony, or other crime; or may, on application, appoint an agent to demand of the executive authority of any other state or territory any such offender fleeing from the justice of this state: *provided*, that such demand or application is accompanied by sworn evidence that the party charged is a fugitive from justice, and by a duly attested copy of an indictment, or a duly attested copy of a complaint made before a court or magistrate authorized to receive the same; such

Governor may deliver to executive of other states fugitives from justice, and may demand such fugitives from executive of other states. R. S. 142, § 6. 1849, 56. 1859, 81.

complaint to be accompanied by affidavits to the facts constituting the offence charged, by persons having actual knowledge thereof, and such further evidence in support thereof as the governor may require.

Proceedings on such demands from other states.  
R. S. 142, § 7.  
5 Met. 546.

SECT. 2. When such demand or application is made, the attorney-general or other prosecuting officer shall, if the governor requires it, forthwith investigate the grounds thereof, and report to the governor all the material facts which may come to his knowledge, with an abstract of the evidence in the case, and especially in case of a person demanded, whether he is held in custody, or is under recognizance to answer for any offence against the laws of this state or of the United States, or by force of any civil process, with an opinion as to the legality or expediency of complying therewith.

Same subject.  
R. S. 142, § 7.  
5 Met. 546.

SECT. 3. If the governor is satisfied that the demand is conformable to law and ought to be complied with, he shall issue his warrant, under the seal of the commonwealth, to some officer authorized to serve warrants in criminal cases, directing him at the expense of the agent making the demand, at a time designated in the warrant, to take and transport such person to the line of this state, and there deliver him over to such agent, and such officer may require aid as in criminal cases.

Persons arrested to have opportunity to apply for writ of *habeas corpus*.  
1857, 289, § 1.

SECT. 4. No person arrested upon such warrant shall be delivered over to such agent of a state or territory, until he has been notified of the demand made for his surrender and had opportunity to apply for a writ of *habeas corpus*, if he claims such right of the officer making the arrest. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the attorney-general or other prosecuting officer for the district within which the arrest is made.

Penalty on officer not affording such opportunity.  
1857, 289, § 2.

SECT. 5. An officer who delivers over to such agent for extradition any person in his custody upon such warrant, without having complied with the provisions of the preceding section, shall forfeit a sum not exceeding one thousand dollars.

Fees, how paid.  
R. S. 142, § 6.

SECT. 6. If the application for the arrest of a fugitive from the justice of the state is complied with, and an agent appointed, his account shall be audited and paid by the state.

Persons liable to be demanded by other states may be arrested, &c.  
R. S. 142, § 8.  
5 Met. 536.

SECT. 7. When a person is found in this state charged with an offence committed in another state or territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the executive of such other state or territory, any court or magistrate authorized to issue warrants in criminal cases may upon complaint under oath, setting forth the offence and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person charged before the same or some other court or magistrate within the state, to answer to such complaint as in other cases.

and required to recognize, &c.  
R. S. 142, § 9.

SECT. 8. If upon the examination of the person charged it appears to the court or magistrate, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the executive, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties in a reasonable sum to appear before such court or magistrate at a future day, (allowing a reasonable time to obtain the warrant of the executive,) and to abide the order of the court or magistrate.

or be committed. Proceedings on default of recognizance, and in capital cases.  
R. S. 142, § 9.

SECT. 9. If such person does not so recognize, he shall be committed to prison and there detained until such day, in like manner as if the offence charged had been committed within this state; and if the person recognizing fails to appear according to the condition of his recognizance, he shall be defaulted, and like proceedings shall be had as in case of other recognizances entered into before such court or magistrate. If the person is charged with a capital crime, he shall be committed to

prison and there detained until the day so appointed for his appearance.

SECT. 10. If the person so recognized or committed appears before the court or magistrate upon the day ordered, he shall be discharged, unless he is demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate sees cause to commit him, or to require him to recognize anew for his appearance on some other day, and if when ordered he does not so recognize, he shall be committed and detained as before: *provided*, that whether the person charged is recognized, committed, or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, and not be deemed an escape.

How proceeded with or discharged. R. S. 142, § 10.

SECT. 11. The complainant in such case shall be answerable for all actual costs and charges, and the support in prison of any person so committed, to be paid in like manner as by a creditor for his debtor committed on execution. If the charge for support in prison is not so paid, the jailer may discharge such person in like manner as if he had been committed on an execution.

Expenses, how paid. R. S. 142, § 11. See Ch. 124.

PARDONS.

SECT. 12. In all cases in which the governor is authorized by the constitution to grant pardons, he may by and with the advice of the council, and upon the petition of the person convicted, grant the pardon, upon such conditions, with such restrictions, and under such limitations, as he deems proper, and he may issue his warrant to all proper officers, to carry such pardon into effect; which warrant shall be obeyed and executed, instead of the sentence originally awarded.

Governor may grant pardons. Const. Ch. 2, § 1, art. 8. R. S. 142, § 12.

SECT. 13. When a pardon is granted to a convict, or any part of the punishment of a convict is remitted by the governor with advice of council, on conditions to be performed by the convict, the terms and conditions upon which the pardon or remission is granted shall be specified and set forth in the warrant thereupon to be issued. And the governor, by and with the advice of the council, may require a bond to be given to the commonwealth, in such sum and with such surety as he may approve, conditioned that the terms upon which the pardon or remission is granted shall by said convict be truly observed and kept. The bond shall be deposited with the treasurer of the commonwealth, and be prosecuted to final judgment and execution when the condition thereof is broken. When such bond is required by the governor, the pardon or remission of punishment shall not take effect until the bond is executed and deposited, as aforesaid.

Terms of pardon, &c., to be set forth in warrant. Bond. 1837, 181, § 1.

SECT. 14. When a convict sentenced to confinement in the state prison, or any jail or house of correction, is pardoned, or his punishment remitted by the governor with the advice of the council, on conditions to be by the convict observed and performed, and it comes to the knowledge of the warden of the state prison, or keeper of the jail or house of correction, where the convict was confined, that he is abroad in violation of the conditions of his pardon or remission of punishment, such warden or keeper shall forthwith cause him to be arrested and detained according to the terms of his original sentence. In computing the period of his confinement, the time between the conditional pardon and subsequent arrest shall not be taken to be any part of the term of sentence.

Keepers of jails, &c., to arrest convicts at large contrary to terms of pardon, &c. 1837, 181, § 2.

SECT. 15. When a convict is arrested and detained for any breach of the condition of his pardon or remission of punishment, the warden or keeper arresting him shall forthwith give notice in writing to the district-attorney for the district where such warden or keeper resides, and

Proceedings against convicts charged with violating conditions of pardon, &c.



1837, 181, § 3.  
1859, 196.

Proceedings  
against con-  
victs charged  
with violating  
conditions of  
pardon, &c.  
1857, 289, § 3.

How warrant  
of pardon exe-  
cuted.  
R. S. 142, § 13.

such attorney shall file an information before the superior court next to be held in said district, in the same manner as other informations are filed, so that it may be judicially ascertained whether the condition of the pardon or remission of punishment has been broken by the convict.

SECT. 16. If it is admitted by the convict, or found by the verdict of the jury, that the condition is broken, the court before whom the information is filed shall sentence the convict to be remanded and confined for the unexpired term of his former sentence, and to a further period of confinement not exceeding one-half the time for which he was sentenced for the offence to which the pardon or remission applied, to take effect from and after the period when he has suffered the whole term of imprisonment to which he was originally sentenced. If the convict was before sentenced to confinement for life, he shall be subjected to such solitary confinement as the court shall order. If it appears to the court, by the verdict of a jury or otherwise, that the convict has not broken the conditions of his conditional pardon or remission, he shall be discharged.

SECT. 17. When a convict is pardoned or his punishment is commuted, the officer to whom the warrant for that purpose is issued shall, as soon as may be after executing the same, make return thereof under his hand, with his doings therein, to the secretary's office; and he shall also file in the clerk's office of the court in which the offender was convicted, an attested copy of the warrant and return, a brief abstract whereof the clerk shall subjoin to the record of the conviction and sentence.

## TITLE III.

### OF PRISONS AND IMPRISONMENT.

CHAPTER 178. — Of Jails and Houses of Correction.

CHAPTER 179. — Of the State Prison.

CHAPTER 180. — Of the Transfer of Lunatics and the Discharge of Poor Convicts.

## CHAPTER 178. *1860 Ch. 161.*

### OF JAILS AND HOUSES OF CORRECTION.

SECTION	JAILS.	SECTION	HOUSES OF CORRECTION.
1.	County jails, for what purposes to be used.	6.	Houses of correction, how provided, &c.
2.	Sheriff may remove prisoners.	7.	to have enclosed yards. Jail may be used for.
3.	may furnish employment to prisoners.	8.	if several in county, convicts classified, &c.
4.	to be reimbursed for damages for escape by reason of insufficiency of jail.	9.	overseers of, how appointed.
5.	Jailers to return list of prisoners to court. Penalty for neglect.	10.	compensation of overseers of.
		11.	materials, &c., for work in; rules and regulations in, &c.

SECTION

- 12. Houses of correction, overseers of, &c., general powers and duties.
- 13. may make contracts for work to be done in the house.
- 14. may make contracts for letting the convicts out for hire.
- 15. Convicts may be employed on public lands, &c.
- 16. Pregnant female may be transferred to workhouse, &c. Cost of her support.
- 17. Certain prisoners supposed to be reformed may be discharged, &c.
- 18. Night-walkers, &c., committed for third offence may be bound out or discharged in certain cases.

PROVISIONS RESPECTING JAILS, HOUSES OF CORRECTION, PRISONERS, &C.

- 19. Sheriff to have custody of jail, prisoners, &c. Master of house of correction in Suffolk.
- 20. Jailer, how removed, except in Suffolk.
- 21. Compensation of sheriff for care of prisoners. Not to receive rent for use of dwellings owned by the county.
- 22. of officers, assistants, &c.
- 23. if inadequate, superior court to determine.
- 24. Jailer, &c., to keep calendar of prisoners. Penalty.
- 25. Warrants, &c., to be filed and delivered to sheriff's successor.
- 26. Burial of deceased prisoner.
- 27. Sheriff to deliver prisoners to successor.
- 28. upon death of, jailer to continue in office until, &c.
- 29. Female convicts may have custody of their children under the age of 18 months.
- 30. How such child may be removed, &c.
- 31. Prisons, &c., to be whitewashed, kept clean, &c.
- 32. Cleanliness of prisoners, their food, &c.
- 33. Classification and separation of prisoners.
- 34. Execution of sentence to solitary imprisonment.
- 35. and to hard labor, but not in engraving or printing. Log and chain may be used.
- 36. Punishment of prisoners refusing to work, &c. Not to be in solitary more than three days, &c.
- 37. of refractory prisoners.
- 38. of poor debtors, &c., who commit depredations.
- 39. Sheriff's and keeper's authority not affected by two preceding sections.

SECTION

- 40. Moral and religious instruction to prisoners, &c.
- 41. Instruction in reading and writing.
- 42. Spirit and strong drink prohibited, unless, &c.
- 43. Penalty for furnishing, or attempting to furnish, spirits, &c., to prisoners.
- 44. for neglect of duty by sheriff, jailer, &c.
- 45. Officers using intoxicating liquors to be removed.
- 46. Punishment for prisoners escaping, &c.
- 47. Record of conduct to be kept and term of imprisonment reduced in certain cases.
- 48. Removal of prisoners in case of pestilence.
- 49. in case of danger from fire.

EXPENSE OF SUPPORTING PRISONERS, &C.

- 50. Commissioners to procure supplies, &c.
- 51. Expense of supporting convicts in jails, &c., how paid.
- 52. Advancement of money for tools and materials, &c.
- 53. Master, &c., to keep account of earnings, &c.
- 54. to supply fuel, &c. Allowance therefor.
- 55. to obey orders for furnishing specific rations. Penalty.
- 56. Compensation of master of house of correction in Suffolk.
- 57. Overseers, &c., to audit accounts for support of convicts, &c.
- 58, 59. Support of poor convicts, how recovered of kindred, town, &c.
- 60. notice to town liable for.
- 61. Jailers, &c., to keep a prison book. Penalty for neglect.

INSPECTORS OF PRISONS.

- 62. Inspectors of prisons, &c.
- 63. Keepers, &c., to make stated returns.
- 64. Inspectors, powers and duties of.
- 65. in Suffolk.
- 66. to have access to books, accounts, prisoners, &c.
- 67. to notify district-attorney of violations of law.

RETURNS.

- 68. Inspectors to make annual returns to governor.
- 69. Blank forms of returns to be furnished by secretary.
- 70. Sheriffs, &c., to make returns. Abstract.
- 71. Penalties for neglect.
- 72. Prosecution of delinquents.

JAILS.

SECTION 1. The jails in the several counties shall be used,—

First. For the detention of persons charged with offences and committed for trial:

Second. For the detention of persons committed to secure their attendance as witnesses on the trial of criminal causes:

Third. For the confinement of persons committed pursuant to a sentence upon conviction for an offence, and of all other persons committed for any cause authorized by law.

The provisions of this section shall extend to persons detained or committed by authority of the courts of the United States, as well as the courts and magistrates of this state, except as is provided in section sixty-one of chapter one hundred and forty-four.

SECT. 2. If there are several jails in a county, the sheriff may cause the prisoners to be confined in either, and may at his discretion remove them from one jail to another for their health or safe keeping, or for their more convenient appearance at court.

County jails, for what purposes to be used. R. S. 143, § 1. 1855, 489, § 19.

Sheriff may remove prisoners.

Sheriff may furnish employment to prisoners.  
1848, 324, § 4.

to be reimbursed for damages for escape, &c.  
R. S. 14, § 92.

Jailers to return list of prisoners, &c., to court.  
Penalty for neglect.  
R. S. 143, §§ 52, 54.  
Act of amend.  
§ 19,  
1859, 196.

Houses of correction, how provided, &c.  
R. S. 14, § 9.  
R. S. 143, §§ 1, 2.  
1848, 324, § 2.  
1854, 448, § 33.  
1859, 489, § 19.

to have enclosed yards.  
Jail may be used for.  
R. S. 143, § 3.

if several in county, convicts classified, &c.  
1859, 249, § 7.

overseers of, how appointed.  
R. S. 143, §§ 11, 12.  
1857, 35.  
1859, 249, § 5.

compensation.  
1857, 35, § 3.  
1859, 249, § 5.

materials, &c., for work in; rules and regulations in, &c.  
R. S. 143, § 14.  
1857, 35.

SECT. 3. The sheriff may furnish to the prisoners employment of such nature and in such places as he deems best, and consistent with their safe keeping; but this section shall not be construed to require the performance of any labor by persons confined in jail.

SECT. 4. In case of the escape of a prisoner by reason of insufficiency of the jail, whereby the sheriff is made liable to any party at whose suit the prisoner was committed, or to whose use any forfeiture was adjudged against him, the county shall reimburse all sums of money recovered by such party of the sheriff on account of the escape.

SECT. 5. At the opening of each term of the superior court at which criminal business may be transacted, the jailers of the county shall return to the court a list of all prisoners in their custody, specifying the causes for which and the persons by whom they were committed, and produce and exhibit therewith, for the inspection of the court, their calendars of prisoners, and return a like list of the persons committed during the session of the court, in order that the court may take cognizance and make deliverance according to law of the prisoners committed for crimes within its jurisdiction. Jailers who neglect to make such returns, or to exhibit their calendars, shall be fined in the discretion of the court.

## HOUSES OF CORRECTION.

SECT. 6. There shall be provided by the county commissioners in each county except the county of Dukes County, and in Suffolk by the aldermen of the city of Boston, at the charge of said counties and city respectively, a fit and convenient house or houses of correction, suitably and efficiently ventilated, with convenient yards, workshops, and other suitable accommodations, adjoining or appurtenant thereto, for the safe keeping, correcting, governing, and employing, of offenders legally committed thereto by authority of the courts and magistrates of this state or of the United States, except as provided in section sixty-one of chapter one hundred and forty-four.

SECT. 7. The yards shall be of sufficient extent for the convenient employment of the persons confined therein, and enclosed by fences of sufficient height and strength to prevent escapes, and also to prevent all persons without from access to or communication with any persons confined therein. When such house of correction is not provided, the jail or a part thereof may be used for that purpose, but when so used it shall be provided with a sufficient yard, so enclosed.

SECT. 8. If there are several houses of correction in a county, the sentence of prisoners shall be to either house of correction therein, and the sheriff and county commissioners may classify the convicts and place them in either house.

SECT. 9. The commissioners in the several counties, except Suffolk, shall annually on the first Wednesday of January appoint to each house of correction two or three suitable persons of the county, other than the sheriff or commissioners, to be overseers thereof, and may remove any overseer and fill vacancies.

SECT. 10. Each overseer shall receive from the county such annual compensation for his services and travel, not exceeding one hundred dollars, as the commissioners determine, and the directors for public institutions in the city of Boston shall receive such compensation as the city council allows.

SECT. 11. The commissioners in the several counties except Suffolk, and the board of directors for public institutions in Boston, shall cause to be provided, at the expense of said counties and city respectively, suitable materials and implements sufficient to keep at work all the persons committed to the house of correction, and may from time to time establish needful rules for employing, reforming, governing, and punish-



ing, the persons so committed, for procuring and preserving such materials and implements, and for keeping and settling all accounts of the cost and expenses of procuring the same, and of all labor performed by each of the persons so committed.

SECT. 12. In the county of Suffolk the board of directors for public institutions, and in other counties the overseers, shall see that the rules established for the management of the house of correction and the government of the persons confined therein are strictly observed, examine all accounts of the master relating to the earnings of the prisoners and all expenses of the institution, and keep a fairly written register of their official proceedings.

Overseers, &c.,  
general powers  
and duties.  
R. S. 143, § 11.  
1857, 35.

SECT. 13. They may make contracts for work to be done in the house, with any person disposed to supply materials to be there wrought, and in such case may stipulate that the contractor shall furnish some person, to be approved by them, to oversee the labor of the convicts and instruct them in business or trades, conforming to all rules of the prison and not interfering with the discipline thereof.

may make  
contracts for  
work to be done  
in house, &c.  
R. S. 143, § 12.  
1859, 249, § 5.

SECT. 14. They may make contracts for letting out to hire during the day time any of the persons there confined, to employers who live so near to the house of correction that the directors or overseers or the master of the house can have the general inspection of the conduct of the persons so let out, and of the treatment they receive.

for letting  
out to hire, &c.  
R. S. 143, § 12.

SECT. 15. The commissioners, or directors, may, with the assent of the master or keeper of any house of correction, employ any of the prisoners to labor upon the public lands and buildings belonging to the county.

Convicts may  
be employed on  
public lands,  
&c.  
1859, 249, § 6.

SECT. 16. When it appears to the physician of a house of correction that a female convict is in a state of pregnancy, any judge of the superior court, or any police court, may, upon application of the master or keeper of the house, or of the convict, revise her sentence so far as to order her to be transferred to any workhouse or house of industry in the same county for such term as is expedient, not exceeding the remainder of her sentence; and may at any time before the expiration of her sentence cause her to be again restored to the house of correction. For the support and custody of each female so transferred, two dollars a week shall be paid by the county to the city or town to which she is transferred.

Pregnant fe-  
male may be  
transferred to  
workhouse, &c.  
Cost of her  
support.  
1854, 416, §§ 2, 3.  
1856, 40.  
1859, 196.

SECT. 17. When it appears to the overseers or directors of a house of correction, house of industry, or workhouse, that a person there confined on conviction before a justice of the peace of either of the offences mentioned in section twenty-eight of chapter one hundred and sixty-five, has reformed and is willing and desirous to return to an orderly course of life, they may, by a written order, discharge him from confinement. Any person committed by the superior court, or any police court, for either of said offences, may be discharged by such courts respectively upon the recommendation of the overseers or directors.

Certain prison-  
ers supposed to  
be reformed  
may be dis-  
charged, &c.  
R. S. 143, § 13.  
1859, 196.  
See Ch. 165, § 34.

SECT. 18. The overseers or directors of any house of correction, workhouse, or house of industry, may, after six months from the time of sentence, discharge any person committed thereto under section thirty-five of chapter one hundred and sixty-five, upon being satisfied that the convict has reformed; or may bind out such person for any term during the period of the sentence, as an apprentice or servant to any inhabitant of this state; and said overseers and directors, and the master, mistress, apprentice, and servant, shall respectively have all the rights and privileges, and be subject to all the duties set forth in chapter one hundred and eleven, in the same manner as if such binding were made by the overseers of the poor; and the relations between the parties shall not be affected by the age of the party bound. If the master or mistress is discharged from the contract of service or apprenticeship as provided in said chapter, the person bound shall be returned to the

Night walkers,  
&c., committed  
for third of-  
fence may be  
bound out or  
discharged in  
certain cases.  
1855, 69, § 2.

place of confinement, and serve out the original sentence, if any portion thereof is unexpired; but the overseers or directors shall not be liable to the costs of the process provided in said chapter.

PROVISIONS RESPECTING JAILS, HOUSES OF CORRECTION, PRISONERS, &c.

Sheriff to have custody of jail, prisoners, &c. Master of house of correction in Suffolk.  
1839, 249, § 1.

SECT. 19. The sheriff shall have the custody, rule, and charge of the jails, and except in the county of Suffolk, the houses of correction in his county, and of all prisoners therein, and shall keep the same by himself, or by his deputy, as jailer, master, or keeper, for whom he shall be responsible. The jailer, master, or keeper shall appoint all subordinate assistants, employees, and officers, for whom he shall be responsible. In the county of Suffolk the city council of Boston shall appoint a suitable person to be master of the house of correction, to hold his office during their pleasure.

Master, how removed.  
1859, 196.  
1859, 249, §§ 1, 8.

SECT. 20. Any master, keeper, or jailer, except in the county of Suffolk, may be removed by the superior court for neglect of duty, or wasteful or extravagant use of supplies, upon complaint of the county commissioners, setting out the facts, and after notice to the sheriff and the person complained of, and a hearing thereon.

Compensation of sheriff for care of prisoners, &c.  
R. S. 14, § 92.

SECT. 21. For the safe keeping of the prisoners committed to his custody, the sheriff shall have such compensation from the county, not less than twenty dollars a year, as the county commissioners, or in the county of Suffolk the mayor and aldermen, order. He shall not receive any rent or emolument from the jailers and keepers of the houses of correction, for the use and occupation of the dwelling-houses provided for them by the county.

of officers, assistants, &c.  
1859, 249, §§ 1, 2.  
1860 Ch. 94.

SECT. 22. The commissioners, (except in the county of Suffolk,) shall establish fixed salaries for all officers, assistants, and employees, of jails and houses of correction, which shall be in full compensation for all their services, and for which they shall devote their whole time to the discharge of their duties, unless released therefrom by the commissioners.

if inadequate, superior court to determine.  
1859, 196.  
1859, 249, § 3.

SECT. 23. If the sheriff, master, keeper, or jailer, deems any such salary inadequate, he may present his petition, showing the facts, to the superior court next to be holden for the county, and the court, after notice to the chairman of the county commissioners, and a hearing, shall fix the salary, and pass such further order in the premises as law and justice require.

Jailer, &c., to keep calendar of prisoners. Penalty.  
R. S. 14, § 83.  
1839, 139, § 5.

SECT. 24. The jailer, keeper, or master, of each jail and house of correction, shall keep in a bound book an exact calendar of all prisoners committed thereto, and shall cause to be distinctly registered therein the names of all prisoners, their places of abode, additions, and the time, cause, and authority, of their commitment, and a description of the persons of such as are committed on criminal prosecutions, together with such facts as, with the entries in the prison book, will enable the sheriff or directors to make the returns required by sections sixty-nine and seventy. When a prisoner is liberated, he shall register in the same book the time and authority of such liberation, and in case of an escape, the time and manner of the escape. Every jailer, master, or keeper, neglecting to keep such calendar, or to enter such facts therein, shall forfeit one hundred dollars, to be recovered by the commissioners or directors in an action of tort, in the name of the county, or in Suffolk in the name of the city of Boston, and expended by them for the relief of discharged prisoners.

Warrants, &c., to be filed, and delivered to sheriff's successor.  
R. S. 14, § 85.  
1839, 135.

SECT. 25. All warrants, mittimus, processes, and other official papers, or attested copies thereof, by which a prisoner is committed or liberated, shall be regularly filed in the order of time, and with the calendar, be safely kept in a suitable box for that purpose, and upon the expiration of the sheriff's commission, his death, resignation, or



removal from office, be delivered to his successor; and in default thereof the sheriff or his executors or administrators shall forfeit two hundred dollars.

SECT. 26. When a person imprisoned for any cause dies in prison, the sheriff or the keeper shall deliver the body to his relations or friends if they request it. If no application is made therefor, the sheriff or keeper shall bury the same in the common burying ground, and the expenses be paid by the city or town in which such person had a legal settlement, if any, otherwise by the county.

Burial of deceased prisoner.  
R. S. 14, § 87.

SECT. 27. Every sheriff, upon the expiration of his commission, or his resignation or removal from office, shall deliver to his successor all prisoners in his custody, and for that purpose shall retain the keeping of the jails and houses of correction under his care, and of the prisoners therein, until his successor is appointed and qualified.

Sheriff to deliver prisoners to successor.  
R. S. 14, § 84.  
1859, 249, § 1.

SECT. 28. In case of the death of the sheriff, the jailer, master, or keeper, by him appointed, shall continue in office and retain the custody, rule, and charge, of the jail or house of correction, and of all prisoners committed thereto, until a successor to the deceased sheriff is appointed or elected and qualified, or until the governor, by and with the advice of the council, removes such jailer, master, or keeper, and appoints another. The jailer, master, or keeper, appointed by the governor, shall give bond with sureties as the governor directs and approves for the faithful performance of the duties of his office.

upon death of jailer to continue in office until, &c.  
R. S. 14, § 86.  
1859, 249.

SECT. 29. When the mother of a child under the age of eighteen months is imprisoned in a house of correction, jail, workhouse, or other place of confinement, and is capable and desirous of taking care of said child, the keeper shall, upon the order of the court or magistrate committing her, or of any overseer of the poor, receive the child and place it under the care and custody of its mother.

Female convicts may have custody of their children under a certain age.  
1858, 57, § 1.

SECT. 30. When the overseers, inspectors, or other like officers, of such institution, are satisfied that the health and comfort of such child call for its removal, or that for any cause it is expedient that it should be removed, they shall give notice to the father or other relatives thereof; and if neither can be found to receive it, to the overseers of the poor of the city or town in which it has a legal settlement, who shall receive it; or if it has no settlement in this state, it shall be sent to one of the state almshouses, as is provided in the case of alien paupers.

How such children may be removed, &c.  
1858, 57, § 2.

SECT. 31. The keeper of each jail and the master of each house of correction shall, at the expense of the county, see that the same is constantly kept in as cleanly and healthful a condition as may be, and shall cause the whole interior thereof, including the floors, to be thoroughly whitewashed with lime at least twice in each year, and the walls and floors of each room, while any person is confined therein, to be so whitewashed once in each month between the first of May and the first of November. No permanent vault shall be used in any apartment. Every room occupied by a prisoner shall be furnished with a suitable bucket with a cover made to shut tight, for the necessary accommodation of such prisoner, and such bucket when used shall be emptied daily and constantly kept in good order.

Prisons, &c., to be whitewashed, kept clean, &c.  
R. S. 143, § 38.

SECT. 32. The keeper and master shall see that strict attention is constantly paid to the personal cleanliness of all prisoners in their custody, and shall cause the shirt of each prisoner to be washed, and the prisoner himself to be shaved, once at least in each week, and to have a weekly bath of cold or tepid water applied to the whole surface of the body, unless by reason of sickness such bath would be hurtful or dangerous. Each prisoner shall be furnished daily with as much clean water as he has occasion for either as drink or for the purpose of personal cleanliness, and with a clean towel once a week. No clothes shall be washed or hung out wet in any room which is occupied by a prisoner

Cleanliness of prisoners, their food, &c.  
R. S. 143, § 39.  
1848, 324, § 1.



during the night. All prisoners not in solitary confinement shall be served three times each day with wholesome food, well cooked, in good order, and in sufficient quantity.

Classification and separation of prisoners.  
R. S. 143, § 35.  
See § 44.

SECT. 33. Male and female prisoners shall not be put or kept in the same room; nor, unless the crowded state of the jail or house of correction requires it, shall any two prisoners, other than debtors, be allowed to occupy the same room, except for work. Persons committed for debt shall be kept separate from felons, convicts, and persons confined upon a charge of felony or other infamous offence, and all conversation between prisoners in different apartments shall be prevented. Minors shall be kept separate from notorious offenders and those convicted of a felony or other infamous crime. Persons committed on charge of an offence shall not be confined with convicts, and prisoners charged with or convicted of an offence not infamous shall not be confined with those charged with or convicted of an infamous crime, except while at labor or assembled for moral or religious instruction, at which times no communication shall be allowed between prisoners of different classes.

Execution of sentence to solitary imprisonment.  
R. S. 143, § 20.  
1854, 393.

SECT. 34. When a convict is sentenced to solitary imprisonment and hard labor in a jail or house of correction, the master or keeper shall execute the sentence of solitary imprisonment by confining the convict in one of the cells, or if there is none, then in the most retired and solitary part of the jail or house, and during the time of solitary imprisonment the convict shall be fed with bread and water only, unless other food is necessary for the preservation of his health. No intercourse shall be allowed with any convict in solitary imprisonment, except for the conveyance of food and other necessary purposes.

and to hard labor; but not in engraving or printing.  
Log and chain may be used.  
R. S. 143, § 21.  
1850, 289, § 4.

SECT. 35. As soon as the term of solitary imprisonment has expired, the master or keeper shall furnish the convict with tools and materials or other means for work in a suitable manner, in which he can be usefully or profitably employed, either in the house of correction or jail, or in the close yard thereof; but no convict shall be employed in engraving or printing of any kind. Such convict may if necessary be confined by a log and chain, or in such other manner as shall prevent his escape without unnecessarily inflicting bodily pain or interrupting his labor. The overseers, or, when the punishment is inflicted in the jail, the sheriff, shall oversee the execution of all such sentences.

Punishment of prisoners refusing to work, &c.; not to be in solitary more than three days, &c.  
R. S. 143, § 22.  
1853, 34.

SECT. 36. If a convict is refractory, or, during the time for which he is sentenced to hard labor, refuses or neglects without reasonable cause to labor in a suitable manner when required, he shall be kept in solitary confinement and fed on bread and water as before provided so long as he is refractory or refuses to labor; but no keeper of a jail or master of a house of correction shall confine in solitary imprisonment any convict for more than three days at one time, without informing the sheriff or overseers thereof and the reasons therefor.

of refractory prisoners.  
R. S. 143, § 46.  
1857, 35.

SECT. 37. If a person confined in a jail or house of correction upon a conviction or charge of an offence against the commonwealth, is refractory or disorderly, or wilfully or wantonly destroys or injures any article of furniture or other property, or any part of such prison, the sheriff, overseers, or board of directors for public institutions, respectively, after due inquiry may cause him to be kept in solitary confinement, not more than ten days for one offence; and during such confinement he shall be fed with bread and water only, unless other food is necessary for the preservation of his health.

of poor debtors, &c., who commit deprecations.  
R. S. 143, § 47.  
1852, 312.

SECT. 38. If a person committed to jail on mesne process or execution, or for any other cause than those mentioned in the preceding section, is on complaint of the keeper convicted before a justice of the peace, or police court, of either of the offences therein specified, he shall be punished by solitary imprisonment as directed in said section, not more than ten days for each offence. He shall also be liable for double

the amount of the damage done to the jail, furniture, or other property, to be recovered in an action of tort, which may be brought by the sheriff or county treasurer in the name and to the use of the county.

SECT. 39. The two preceding sections shall not affect the authority of a sheriff, jailer, or master of a house of correction, to preserve order and enforce strict discipline among the prisoners in his custody.

SECT. 40. The keeper or master shall at the expense of the county provide for each prisoner under his charge, who is able and desirous to read, a copy of the Bible or of the New Testament, to be used by such prisoner at proper seasons during his confinement, and the county commissioners may, in their discretion and at the expense of their county, provide moral and religious instruction for the prisoners confined in the jails and houses of correction of their respective counties. Prisoners in the state prison, or in any jail, house of correction, almshouse, or other place of confinement, may, in their illness, on request to the warden, keeper, or master, receive the visits of any clergyman they may desire.

SECT. 41. The county commissioners of each county, and the aldermen of the city of Boston, with the sheriff of the county, may at the expense of their county or city furnish suitable instructions in reading and writing for one hour each evening, except Sundays, to such prisoners as may be benefited thereby and are desirous to receive the same.

SECT. 42. No sheriff, jailer, master of a house of correction, or other officer, or under keeper of a prison, shall, under any pretence, give, sell, or deliver, or knowingly suffer to be given, sold, or delivered, to any person committed to jail for debt and supported at the charge of the creditor, or to a prisoner in confinement upon conviction or charge of an offence, any spirituous liquor or mixed liquor, part of which is spirituous, or any wine, cider, or strong beer, unless the attending physician of the prison certifies in writing that the health of the prisoner requires it, in which case he shall be allowed the quantity prescribed, and no more.

SECT. 43. Whoever gives, sells, or delivers, to a person confined in a jail, house of correction, house of industry, workhouse, or prison, or to a person in custody of a sheriff, constable, police officer, jailer, master of a house of correction, or warden of a prison, any spirituous or other liquors, as mentioned in the preceding section, or has in his possession, within the precincts of any jail, house of correction, or other place of confinement mentioned in this chapter, any such liquors, with intent to convey or deliver the same to any person or prisoner confined therein, unless under the direction of the physician appointed to attend such prisoner, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the jail or house of correction not exceeding two months.

SECT. 44. If a sheriff, jailer, or master of a house of correction, gives, sells, or delivers, to any prisoner in his custody, or willingly or negligently suffers such prisoner to have or drink any spirituous, fermented, or other strong or mixed liquor, prohibited by section forty-two, or places or keeps together prisoners in his custody of different sexes or classes, contrary to the provisions of section thirty-three, he shall in each case forfeit for the first offence twenty-five dollars, and for any such offence committed after the first conviction fifty dollars, and shall on such second conviction be further sentenced to be removed from office and to be incapable of holding the office of sheriff, deputy-sheriff, or jailer, or master or keeper of any prison, for the term of five years.

SECT. 45. The sheriffs of the several counties, and the board of directors for public institutions in Boston, shall forthwith remove any officer by them respectively appointed to any position of trust or author-

Sheriff's and keeper's authority not affected.  
R. S. 143, § 48.  
Moral and religious instruction to prisoners, &c.  
R. S. 143, § 40.  
1848, 29, § 1.  
1855, 393.

Instruction in reading and writing.  
1848, 324, § 3.  
1854, 418, § 33.

Spirit and strong drink prohibited, unless, &c.  
R. S. 143, § 34.  
See § 44.

Penalty for furnishing, or attempting to furnish, spirits, &c., to prisoners.  
R. S. 143, § 37.  
1854, 93.

for neglect of duty by sheriff, jailer, &c.  
R. S. 143, § 36.  
1839, 135.

Officers using intoxicating liquors to be removed.

1858, 162, § 2.  
1859, 249.

Punishment for  
prisoners es-  
caping, &c.  
R. S. 143, §§ 49,  
50, 51.  
1851, 93.  
4 Met. 371.  
5 Met. 555.

Record of con-  
duct to be kept,  
and term of im-  
prisonment re-  
duced in certain  
cases.  
1857, 284, § 1.  
1858, 77.  
1859, 103

Removal of  
prisoners in  
case of pesti-  
lence.  
R. S. 143, § 41.  
1859, 196.

in case of dan-  
ger from fire.  
R. S. 143, § 42.

Commissioners  
to procure sup-  
plies, &c.  
1859, 249, § 4.

Expense of  
supporting con-  
victs in jails,  
&c., how paid.  
R. S. 143, § 27.  
1839, 156.  
8 Met. 513.

ity in the jails and houses of correction, who is known to use intoxicating liquors as a beverage.

SECT. 46. Whoever lawfully imprisoned in any place of confinement established by law, other than the state prison, breaks therefrom and escapes, or forcibly breaks the same with intent to escape, or by force or violence attempts to escape therefrom, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail or house of correction not exceeding three years, or by fine not exceeding one thousand dollars.

SECT. 47. The keeper of every jail and the master of every house of correction shall keep a record of the conduct of each convict whose term of imprisonment is not less than four months, and for every month that a convict appears by such record to have faithfully observed all the rules and requirements of the prison, and not to have been subjected to punishment, there shall be deducted from the whole term of his sentence, whether in one or more cases, as follows: from a term of less than three years, one day; from a term of three and less than seven years, two days; from a term of seven and less than ten years, four days; and from a term of ten years or more, five days: said record shall be submitted to the sheriff and to the overseers of the house of correction, or board of directors for public institutions in the city of Boston, to be considered by them in recommending prisoners to executive clemency.

SECT. 48. If disease breaks out in a jail or other prison, which in the opinion of the inspectors of the prison may endanger the lives or health of the prisoners to such a degree as to render their removal necessary, the inspectors may designate in writing some suitable place within the same county, or any prison in a contiguous county, as a place of confinement for such prisoners. Such designation being filed with the clerk of the superior court, shall be a sufficient authority for the sheriff, jailer, master, or keeper, to remove all the prisoners in his custody to the place designated, and there to confine them until they can be safely returned to the place whence they were removed. Any place to which the prisoners are so removed shall during their imprisonment therein be deemed a prison of the county in which they were originally confined, but they shall be under the care, government, and direction of the officers of the county in which they are confined.

SECT. 49. If a jail or other prison, or any building near thereto, is on fire, and the prisoners are exposed to danger thereby, the sheriff, jailer, or other person having charge of the prison, may remove such prisoners to a place of safety, and there confine them so long as may be necessary to avoid the danger, and such removal and confinement shall not be deemed an escape of the prisoners.

#### EXPENSE OF SUPPORTING PRISONERS, &c.

SECT. 50. The commissioners, except in the county of Suffolk, shall, without extra charge or commission to themselves or any person, procure, or cause to be procured, all necessary supplies for the jails and houses of correction, to be furnished and purchased under their direction and at the expense of the county.

SECT. 51. All charges and expenses of safe keeping, maintaining, and employing, convicts sentenced to imprisonment in the jail or house of correction, of the safe keeping of persons charged with offences, and, committed for trial or sentence, and, except in the county of Suffolk, of prisoners committed on mesne process or execution, so long as the fees for their board are paid by the defendant or debtor, plaintiff or creditor, shall be paid from the county treasury, the accounts of the keeper or master being first settled and allowed by the commissioners, or in the



county of Suffolk by the board of accounts; and no allowance therefor shall be made by the commonwealth.

SECT. 52. The county commissioners, and the aldermen of the city of Boston, may order such sums of money as may from time to time be necessary, to be advanced out of the treasuries of their counties or city to the master of the house of correction or keeper of the jail, for the purpose of providing such tools, materials, and other things, as may be required for the employment, restraint, and safe keeping of the convicts; and the master or keeper shall appropriate the same under the direction of the officers ordering the advancement, and account to them for the expenditure thereof.

Advancement of money for tools and materials, &c.  
R. S. 143, §§ 23, 24.  
1839, 146, § 1.  
1854, 448, § 33.

SECT. 53. Each master or keeper shall cause the articles manufactured by the prisoners in his custody, or the produce of their labor, to be disposed of to the best advantage, and under the direction of said commissioners or aldermen shall cause accounts to be kept of the proceeds thereof, and shall present such accounts to them for settlement semiannually, and as much oftener as they deem it necessary. He shall pay into the treasury of the county or city, at such time as said officers direct, the amount of sales and other proceeds of the labor and earnings of the prisoners in his custody, or the balance thereof.

Master, &c., to keep account of earnings, &c.  
R. S. 143, § 25.

SECT. 54. The master or keeper shall furnish, at the expense of the county, necessary fuel, bedding, and clothing, for all prisoners in his custody upon charge or conviction of any offence against the commonwealth, and shall present to the county commissioners, or in the county of Suffolk the board of accounts, a full account of his charges so incurred, and also for necessary furniture for the prison; and the commissioners or board of accounts shall make a reasonable allowance therefor, which shall be paid from the county treasury.

to supply fuel, &c. Allowance therefor.  
R. S. 143, § 44.

SECT. 55. When the commissioners or the aldermen of the city of Boston direct specific rations or articles of food, soap, fuel, or other necessaries, to be furnished to the prisoners, the keeper or master shall conform to such direction, and if he refuses or neglects to furnish the same, he shall be subject for a first and second offence to the penalties prescribed by section forty-four for the offences therein mentioned.

to obey orders for furnishing specific rations.  
Penalty.  
R. S. 143, § 45.  
1854, 448, § 33.

SECT. 56. The board of directors for public institutions in Boston shall from time to time determine what sum the master of the house of correction for the county of Suffolk shall receive for the board of the persons committed to his custody, and the master shall in addition to such board receive such further compensation for his services as the city council of Boston deem just and reasonable.

Compensation of master of house of correction in Suffolk.  
R. S. 143, § 14.  
1857, 35.

SECT. 57. In the county of Suffolk the board of directors for public institutions, and in other counties the overseers of the houses of correction, shall, twice in each year, and oftener if necessary, examine and audit the accounts for the care and expense of supporting and employing the persons committed to the houses of correction in their county, and certify what sum is due for supporting and employing each person, after deducting the net profit of his labor. If any of said persons refuse or neglect, for fourteen days after demand in writing by the master or keeper, to pay the sum so certified to be due, the commissioners or directors may commence an action of contract in the name of their county, or in Suffolk in the name of the city of Boston, and recover against such person the sum found to be due; but the defendant may prove on the trial that the whole sum allowed and certified by the directors or overseers was not due, and may, as in other cases, tender, bring into court, or offer judgment for, such sum as he admits to be due.

Overseers, &c., to audit accounts for support of convicts, &c.  
R. S. 143, § 15.  
1852, 140.  
1852, 312.  
1857, 35.

SECT. 58. When they certify that a sum is due for supporting and employing any person who has not sufficient estate to pay the same, such sum may be recovered by the county, or in Suffolk by the city of

Support of poor convicts, how recovered of kindred, town, &c.

R. S. 143, § 16.  
1839, 146, § 2.  
1843, 66, §§ 2, 3.  
18 Pick. 470.  
4 Met. 278.  
5 Met. 54.

Boston, of any parent, master, or kindred, by law liable to maintain him. If he is committed for any offence mentioned in section twenty-one of chapter one hundred and sixty-one, or section twenty-eight of chapter one hundred and sixty-five, and has no parent, master, or kindred, liable by law to maintain him, such sum, to an amount not exceeding one dollar a week, may be recovered of the city or town where he has his lawful settlement.

Support of poor convicts, how recovered of kindred, or town.  
R. S. 143, § 16.  
1846, 154, § 1.  
20 Pick. 112.  
22 Pick. 211.

SECT. 59. Upon refusal or neglect to make payment for thirty days after the same is demanded in writing of the parent, master, or kindred, or of any member of the city council of the city, or any overseer of the poor of the town, respectively liable by law therefor, the county, or in Suffolk the city of Boston, at any time within two years after the account has been so certified, and not afterwards, may commence and maintain an action for the same, against the party so liable, in the form of action and subject to the defence prescribed and allowed in section fifty-seven.

notice to town liable for.  
1843, 66, § 1.  
1857, 35.

SECT. 60. When a person is committed for whose support a city or town may be liable under section fifty-eight, the master or keeper shall immediately give notice thereof in writing, by mail or otherwise, to the mayor and aldermen or selectmen of such city or town.

Jailers, &c., to keep a prison book, &c. Penalty for neglect.  
1848, 276, § 2.  
1859, 139, § 5.

SECT. 61. Jailers and masters of houses of correction shall have a prison book, in which they shall keep an account of the value of labor of the prisoners, and salaries of officers; and also of articles furnished for the support of the prisoners, the quantity, of whom bought, and price paid, classified as follows: First, cost of provisions including the portion consumed by the family of the jailer or master: Second, cost of clothing: Third, cost of beds and bedding: Fourth, cost of medicines: Fifth, cost of medical attendance: Sixth, cost of instruction, religious or otherwise: Seventh, cost of fuel: Eighth, cost of light: Ninth, allowance to discharged prisoners: Tenth, allowance to witnesses in money or clothing. The prison book, verified by the oath of the jailers or masters, shall be exhibited to the commissioners or directors when their accounts are presented for examination, and at other times when demanded. A jailer or master who neglects to keep such book, or to enter therein such facts, or wilfully makes any false entry therein, shall forfeit one hundred dollars, to be recovered by the directors or commissioners in an action of tort in the name of the county, or, in Suffolk, of the city of Boston, and expended by them for the relief of discharged convicts.

## INSPECTORS OF PRISONS.

Inspectors of prisons, &c.  
R. S. 143, § 28.  
1843, 61, § 2.

SECT. 62. The commissioners for the several counties, and in the county of Suffolk the judge of the probate court and the justices of the police court, shall be inspectors of the prisons in their counties.

Keepers, &c., to make stated returns.  
R. S. 143, § 28.  
1843, 61, § 2.

SECT. 63. The keeper, master, or superintendent, of each jail, house of correction, or other place of confinement required to be inspected, shall at least twice in each year make returns to said inspectors, at such time and in such form as they direct, setting forth the name, age, and residence, if known, of each person who is or has been in custody since the last return, the cause of imprisonment, and the manner in which he has been treated and employed, the punishments inflicted, and the names of all persons who have died, escaped, been pardoned, or discharged, with all other circumstances required by the inspectors.

Inspectors, powers and duties of.  
R. S. 143, § 29.  
1843, 221.

SECT. 64. The commissioners shall twice in each year, at intervals not exceeding eight months, by themselves or a committee of not less than two of their members, visit and inspect all the prisons in their county, and fully examine into every thing relating to the government, discipline, and police, thereof. The committee shall as soon as may be after each inspection make and subscribe a detailed report to the commissioners,



stating the condition of each prison as to health, cleanliness, and discipline, at the time of inspection; the number of persons confined there within the six months next preceding, or since the last inspection, and for what causes; the manner in which any convicts have been employed; the number of persons usually confined in one room; the distinction, if any, usually observed in the treatment of the different classes of persons detained in such prisons; the punishments inflicted; any evils or defects in the construction, discipline, or management, of such prisons; the names of the prisoners who have died, escaped, been pardoned or discharged; and whether any of the provisions of law in relation to such prisons have been violated or neglected, with the causes, if known, of such violation and neglect,

Inspectors of prisons, powers and duties of.

SECT. 65. The inspectors in the county of Suffolk shall at the times and in the manner mentioned in the preceding section, by a committee of not less than three of their members, visit and inspect the jail, house of correction, and all other places of imprisonment and confinement established by law in the city of Boston. The committee shall as soon as may be after each inspection make and subscribe such a detailed report to the aldermen, in relation to the prison in the city of Boston, as is required by the preceding section to be made to the commissioners in their respective counties.

in Suffolk.  
R. S. 143, § 30.  
1854, 448, § 33.

SECT. 66. When the inspectors or any of them visit any of said prisons, either for the purpose of inspection or any other cause, the sheriff, master, keeper, or other officer having charge thereof, shall admit them when required into every apartment of such prison, exhibit all books, precepts, documents, accounts, and papers, relating to the concerns of the prison, or to the detention or confinement of any person therein, which may be required, and afford to them such aid as may be requested in the performance of any part of their duties. The inspectors or their committee may examine on oath to be administered by one of them, either by interrogatories in writing to be answered in writing and subscribed, or otherwise as they may direct, any officer, keeper, or other person, in relation to the concerns or management of any prison; they may also apart and without the presence of any officer or keeper converse with any of the prisoners.

to have access to books, accounts, prisoners, &c.  
R. S. 143, § 31.

SECT. 67. If it appears to the inspectors, from the report of their committee or otherwise, that any of the provisions of law in relation to prisons have been violated or neglected in their county, they shall forthwith give notice thereof to the district-attorney.

to notify district-attorney of violations of law.  
R. S. 143, § 32.

RETURNS.

SECT. 68. The inspectors shall on or before the fifteenth day of October in each year cause to be transmitted to the governor authentic copies of any information by them given to the district-attorney in relation to any violation or neglect of the law respecting prisons, and a statement of the expenses incurred in providing moral and religious instruction for the prisoners confined in the jails and houses of correction in their respective counties, with such further statements and suggestions as may in their opinion require the attention of the government.

Inspectors to make annual returns to governor.  
R. S. 143, § 33.  
1840, 15, § 3.  
1848, 29, § 2.  
1857, 40.  
1858, 46.

SECT. 69. The secretary of the commonwealth shall annually in September furnish to the sheriffs and board of directors for public institutions in the city of Boston, blank forms of returns concerning jails and houses of correction, for the year ending on the last day of September, containing the following interrogatories, and with the two following sections printed thereon.

Blank forms of returns to be furnished by secretary.  
1859, 139, §§ 1, 2.

*Jails.*

Number of prisoners in jail October first; committed during the year; males; females; adults; minors; whites; colored; natives of this state; natives of other



Returns respecting jails.

states; natives of other countries; who cannot read nor write; natives of Massachusetts who cannot read nor write; who have been married; who have been intemperate; who have been in prison before; committed as insane; for debt; as witnesses; for trial or examination; sentenced for murder; manslaughter; setting fires; robbery; rape; attempts at rape; adultery; lewd conduct; assault; burglary; perjury; forgery; larceny; making or passing counterfeit money; drunkenness; as common drunkards; for violation of liquor law; keeping houses of ill fame; for all other offences; discharged by writ of *habeas corpus*; by being recognized or bailed; by payment of fines and costs; by expiration of sentence; as poor convicts unable to pay fines and costs; transferred to other jails for trial; sent to court and not returned; executed; sent to the state prison; sent to the house of correction; sent to the state reform school; escaped and not retaken; of debtors discharged on payment of debt; discharged by taking poor debtor's oath; by order of creditor; of witnesses discharged; of prisoners that died; discharged by processes not specified above; remaining in confinement September thirtieth. Average number of prisoners.

Amount expended for provisions; clothing; fuel; light; medicines; medical attendance; beds and bedding; instruction; allowance to discharged prisoners; to witnesses; officers' salaries; expenses of all kinds.

Value of the labor of prisoners.

#### *Houses of Correction.*

respecting houses of correction.

Number in confinement October first; committed during the year; males; females; adults; minors; whites; colored; natives of this state; natives of other states; natives of other countries; who cannot read nor write; natives of Massachusetts who cannot read nor write; who have been married; who have been intemperate; who were insane when committed; who became insane in prison; who have been in prison before; committed for adultery; lewd conduct; keeping houses of ill fame; assault; violation of liquor law; drunkenness; as common drunkards; for larceny; vagrancy; all other offences; discharged on expiration of sentence; on payment of fines and costs; as poor convicts unable to pay fines and costs; on *habeas corpus*; on account of sickness; on account of insanity; by order of overseers; escaped and not retaken; that have died; discharged by processes not specified above; remaining in confinement September thirtieth. Average number of prisoners.

Amount expended for provisions; clothing; fuel; light; medicines; medical attendance; beds and bedding; instruction; allowance to discharged prisoners; officers' salaries; expenses of all kinds.

Value of labor of prisoners.

Sheriffs, &c., to make returns. Abstract.  
1810, 15, § 2.  
1857, 35, § 40.  
1858, 46.  
1859, 139, §§ 1, 2.  
See § 24.

SECT. 70. On or before the fifteenth day of October in each year, in the county of Suffolk, the board of directors for public institutions shall, in relation to houses of correction, and the sheriff in relation to jails, and in each of the other counties the sheriff in relation to both jails and houses of correction, shall make and transmit to the secretary of the commonwealth true answers to the inquiries contained in said blanks. The secretary shall prepare and transmit an abstract thereof, in a printed form, to the legislature at the ensuing session thereof.

Penalties for neglect.  
1857, 35.  
1857, 290, §§ 1-3.  
1859, 139, § 3.

SECT. 71. Every sheriff who omits to make and transmit, according to the preceding section, true answers to such inquiries, and every director, when his board omits to make and transmit such answers, shall forfeit one hundred dollars.

Prosecution of delinquents.  
1859, 139, § 4.

SECT. 72. The secretary, when he finds that a sheriff or director is liable to a forfeiture under the preceding section, shall forthwith notify the district-attorney for the district in which such overseer or director resides, who shall immediately institute a complaint therefor, and the forfeiture recovered shall be applied by the county for the relief of discharged convicts.

CHAPTER 179.

OF THE STATE PRISON.

GENERAL PROVISIONS.

SECTION

1. State prison and penitentiary established.
2. Concurrent jurisdiction of Suffolk and Middlesex.
3. Process, how served within the prison.
4. Governor and council may provide additional cells and buildings.
5. annual visitation by ; duties and powers of.
6. may draw warrants for money appropriated.

OFFICERS AND SALARIES.

7. Officers.
8. Appointment, &c., of inspectors.
9. warden, chaplain, physician, and surgeon.
10. deputy-warden and other officers.
11. Warden to report appointments.
12. Officers to have no other business.
13. Salaries of officers, and how paid. No perquisites except, &c.

INSPECTORS.

- 14, 15. Inspectors, authority and duty of.
16. to examine books, &c., semiannually.
17. to approve bills.
18. to report violations of law, &c., and make detailed report.

CHAPLAIN.

19. Duty of chaplain.

PHYSICIAN AND SURGEON.

- 20, 21. Duty of physician and surgeon.
22. Care and treatment of sick convicts.

WARDEN AND DEPUTY-WARDEN.

23. Warden to give bond.
24. Removal of convicts to state prison.
25. Residence of warden and deputy. Officers to perform duties required by warden, &c.
26. Warden may propose alteration of rules, &c.
27. to have charge of prisoners, &c.
28. to have charge of prison, and be treasurer.
29. accounts of, to be settled annually.
30. Duty of deputy in absence, &c., of warden.
31. Power of inspectors as to deputy-warden when the office of warden is vacant. Warden *pro tempore*.

CONTRACTS.

32. Contracts made by warden, and approved by inspectors. Suits thereon.
33. Warden may submit controversies to arbitration.
- 34, 35. Contracts, how made. Proposals therefor.

SECTION

36. Officers not to be interested in contracts, &c.
37. Bills to be taken of all purchases, services, &c.

DISCIPLINE, &C., OF CONVICTS.

38. Treatment of convicts.
39. Warden's power to maintain order, &c.
40. Convicts, how employed.
41. Solitary labor and corporal punishment.
42. Solitary imprisonment.
43. Sunday school and other instruction.
44. Convicts to be kept separate.
45. interviews of, with their friends.
46. communications between, and friends.
47. Newspapers and visitors.
48. Visitors to have permit.
49. warden to keep register of.
50. Warden may refuse admission to.

RECORD OF CONDUCT.

51. Record of conduct. Deduction from sentence.
52. to be submitted to governor and council.

ESCAPES, &C.

53. Punishment for escape, &c., when sentenced for years.
54. when sentenced for life.
55. Punishment of officer, &c., suffering escape.
56. leaving prisoner at large, or other unlawful indulgence.
57. aiding in escape or rescue.
58. illicit conveyance of articles into prison, &c.

RATIONS, CLOTHING, &C., OF CONVICTS.

59. Warden, &c., to make regulations respecting rations, &c.
60. Subsistence and diet in the hospital.
61. Rations, &c., may be varied, &c.
62. Prison to be ventilated and prisoners furnished with baths.

DISCHARGED CONVICTS.

63. Convicts when discharged, to be decently clothed, &c.
64. Agent for discharged convicts, appointment and duties of.
65. office of.
66. to keep account of expenditures, and present account, not exceeding \$500, to state auditor.
67. may receive from warden money for discharged convicts.
68. returns of. Salary.

GENERAL PROVISIONS.

SECTION 1. The state prison in Charlestown in the county of Middlesex shall be the general penitentiary and prison of the commonwealth for the reformation as well as for the punishment of male offenders; in which shall be securely confined, employed in hard labor, and governed in the manner hereafter directed, all offenders convicted before any court of this state, or, except as provided in section sixty-one of chap-

State prison and penitentiary established.  
 R. S. 143, § 18.  
 R. S. 144, §§ 1, 30.  
 1855, 489, § 19.

ter one hundred and forty-four, any court of the United States held within the district of Massachusetts, and sentenced according to law to the punishment of solitary imprisonment and confinement therein at hard labor.

Concurrent jurisdiction of Suffolk and Middlesex.  
R. S. 144, § 43.  
11 Pick. 28.

SECT. 2. For the purpose of all judicial proceedings, the prison and precincts thereof shall be deemed to be within and a part of the county of Suffolk as well as the county of Middlesex, and the courts and magistrates of the counties of Suffolk and Middlesex shall have concurrent jurisdiction of all crimes and offences committed within the same.

Process, how served within.  
R. S. 144, § 25.

SECT. 3. All process to be served within the precincts of the prison shall be directed to and served and returned by the warden or his deputy.

Governor and council may provide additional cells and buildings.  
R. S. 144, § 50.

SECT. 4. The governor with the advice and consent of the council may from time to time cause additional buildings to be erected, or alterations to be made in the existing buildings of the prison, so that there shall be at all times as many separate cells as there are convicts in the prison. He may in like manner cause such additions or alterations to be made as are found necessary for the accommodation of the officers required by law to reside constantly within the precincts of the prison.

annual visitation by; duties and power of.  
R. S. 144, § 49.

SECT. 5. The prison shall be visited by the governor and council annually, and as much oftener as they may think proper, for the purpose of examining into its concerns and ascertaining its condition. They shall inquire into all alleged abuses or neglects of duty, and may make such alterations in the general discipline of the prison as they find necessary.

may draw warrants for money appropriated.  
R. S. 144, § 51.

SECT. 6. When an appropriation of money is made by the legislature for the support of the prison, the governor with the consent of the council shall draw a warrant in favor of the warden, either for portions thereof from time to time, or for the whole amount at one time, as he thinks proper.

OFFICERS AND SALARIES.

Officers.  
R. S. 144, §§ 2, 6.  
1850, 280, § 2.  
1852, 242.  
1857, 122, § 1.

SECT. 7. The officers of the prison shall consist of three inspectors, one warden, one deputy-warden, one chaplain, one physician and surgeon, one clerk, eleven turnkeys, ten permanent watchmen, and as many additional watchmen, not exceeding seven, as the warden and inspectors may find necessary, and as many assistant watchmen, not exceeding five, as the warden may deem necessary.

Appointment, &c., of inspectors.  
1850, 37, §§ 1, 2, 3, 4.

SECT. 8. The inspectors shall be appointed by the governor with the advice and consent of the council, subject to removal in like manner. Those now in office shall continue so for the terms of their respective appointments unless sooner removed by the governor and council. One inspector shall be appointed annually in April for three years; and the governor shall annually in the same month designate one inspector to act as chairman. Appointments to fill vacancies caused by death, resignation, or removal before the expiration of terms, shall be for the residue only of such terms; and no inspector shall be reappointed until one year after the expiration of his term.

warden, chaplain, physician, and surgeon.  
R. S. 144, § 4.

SECT. 9. The warden, chaplain, and physician and surgeon, shall be appointed by the governor with the advice and consent of the council, and commissioned to hold their offices during the pleasure of the executive.

deputy-warden and other officers.  
R. S. 144, § 5.  
1857, 122, § 1.

SECT. 10. The deputy-warden and all other officers except the assistant watchmen shall be appointed by the warden, subject to the approval of the inspectors, and shall hold their offices during the pleasure of the warden and inspectors; but if the warden thinks any such officer ought to be removed, and the inspectors do not consent thereto, the warden may appeal to the governor and council, who after reason-



able notice to the inspectors may make such removal. The assistant watchmen shall be appointed by the warden, and shall hold office during his pleasure.

SECT. 11. The warden shall immediately report to the inspectors all appointments made by him.

Warden to report appointments.

R. S. 144, § 6.

SECT. 12. Neither the warden nor any officer appointed by the warden and inspectors shall be employed in any business for private emolument, or which does not pertain to the duties of his office.

Officers to have no other business.

R. S. 144, § 7.

SECT. 13. The officers of the prison shall receive the following annual salaries, viz.: each inspector, two hundred dollars; the warden, twenty-five hundred dollars; the deputy-warden, fifteen hundred dollars; the chaplain, eleven hundred dollars; the physician and surgeon, seven hundred dollars; the clerk, twelve hundred dollars; each turnkey, eight hundred dollars; each watchman, seven hundred and fifty dollars; and each assistant watchman, six hundred dollars; payable in monthly payments by the warden out of the treasury of the prison, and in full for all services. No other perquisite, reward, or emolument, shall be allowed to or received by any of them, except that there shall be allowed to the warden and deputy-warden sufficient house room with fuel and light for themselves and families.

Salaries of officers, and how paid. No perquisites, except, &c.

R. S. 144, § 8.

1854, 270, § 1.

1855, 334, § 1.

1857, 122, § 2.

1857, 190, § 1.

1859, 240.

INSPECTORS.

SECT. 14. The inspectors shall from time to time establish rules and regulations consistent with the laws of the state, for the direction of the officers of the prison in the discharge of their duty, the government, employment, and discipline, of the convicts, and the custody and preservation of the public property. As soon as may be after the establishment of any such rules and regulations, they shall cause authentic copies thereof to be laid before the governor and council, who may approve, annul, or modify, the same; and the inspectors shall cause a copy of all rules and regulations so approved to be certified as soon as may be by the clerk of the prison and delivered to the warden.

Inspectors, authority and duty of.

R. S. 144, § 9.

SECT. 15. The inspectors or one of them shall visit the prison at least once in each week, and it shall be visited by the board of inspectors once a month, and oftener if they think necessary, for the purpose of inspecting the books and all the concerns of the prison, and ascertaining whether the laws, rules, and regulations, relating to the prison, are duly observed, the officers competent and faithful, and the convicts properly governed and employed.

same subject. R. S. 144, § 10.

SECT. 16. All books and documents relating to the concerns of the prison shall at all times be open to the examination of the inspectors, who shall semiannually carefully examine said books and compare them with the vouchers and documents relating thereto.

to examine books, &c., semiannually. R. S. 144, § 17.

SECT. 17. All bills contracted by the warden for purchases on account of the prison, shall be approved by one or more of the inspectors, before payment.

to approve bills. 1857, 260.

SECT. 18. The inspectors shall forthwith report to the governor and council all violations of law and omissions of duty by the warden, chaplain, or physician and surgeon, coming to their knowledge; and every officer holding his place at the pleasure of the inspectors and warden, found unfaithful or incompetent, or known to use intoxicating liquors as a beverage, shall be by them forthwith removed: the inspectors shall also on or before the fifteenth day of October in each year make a detailed report to the governor and council for the year ending on the last day of the preceding month, stating therein the names of the officers of the prison, with their several salaries, the name of each contractor in the prison, with the number of convicts employed by him, their daily pay, and the amount of their individual earnings, the num-

to report violations of law, &c., and make detailed report. R. S. 144, § 11. 1857, 40. 1858, 46. 1858, 162, § 1. 1859, 155.

ber of volumes in the prison library, and the cost of each addition to and change in the prison buildings, together with a full statement of all the concerns of the prison.

#### CHAPLAIN.

Duty of chaplain.  
R. S. 144, § 12.

SECT. 19. The chaplain shall perform divine service in the chapel of the prison, instruct the convicts in their moral and religious duties, visit the sick on suitable occasions, and devote his whole time to the performance of the duties of his office.

#### PHYSICIAN AND SURGEON.

Duty of physician and surgeon.  
R. S. 144, § 13.

SECT. 20. The physician and surgeon shall visit the hospital of the prison at least once in each day, and as much oftener as necessary, prescribe for convicts who are sick, and attend to the regimen, clothing, and cleanliness, of such of them as are in the hospital. He shall keep a regular journal, which shall remain at the prison, of all admissions to the hospital, stating the time of admission, the nature of the disease, his prescriptions, the treatment of each patient, and the time of his discharge from the hospital, or of his death. The journal shall also contain entries of all orders given for supplies for the hospital department, specifying the articles ordered. All such orders shall be in writing, and the warden shall provide the supplies so ordered.

Same subject.  
1859, 254.

SECT. 21. He shall attend upon all insane convicts, and, when in his opinion it can be done without detriment or danger to the other patients or inmates of the prison shall direct their removal to the prison hospital, and see that they have sufficient daily exercise outside their cells or places of confinement.

Care and treatment of sick convicts.  
R. S. 144, § 14.

SECT. 22. When a convict complains of such illness as requires medical aid, notice thereof shall be given to the physician, who shall visit the convict, and if in the opinion of the physician the illness is such as to require his removal to the hospital, the warden may order such removal, and the convict shall remain in the hospital until the physician determines that he may leave it without injury to his health.

#### WARDEN AND DEPUTY-WARDEN.

Warden to give bond.  
R. S. 144, § 15.

SECT. 23. Before the warden enters upon the duties of his office, he shall give bond to the commonwealth in the sum of twenty thousand dollars, with sufficient sureties to be approved by the governor and council, conditioned that he shall faithfully account for all money placed in his hands as treasurer, and perform all the duties incumbent on him as warden. Such bond with the approval of the sureties indorsed thereon shall be filed in the office of the treasurer of the commonwealth.

Removal of convicts to state prison.  
R. S. 144, § 16.

SECT. 24. When the warden receives a warrant from a sheriff in the manner prescribed in chapter one hundred and seventy-four, requiring him to cause a convict to be removed from the jail to the state prison pursuant to his sentence, he shall by himself or such person as he appoints for the purpose, as soon as may be, cause such warrant to be duly executed, make return of the manner in which he has caused the same to be executed, file the warrant and the return, with the transcript of the record, in his office, and cause an attested copy of the warrant and of his return thereon to be filed in the office of the clerk from whence it was issued. All sheriffs, jailers, and other officers, are enjoined, if need be, to aid the warden or person by him appointed in the execution of such warrant.

Residence of warden and deputy-warden.

SECT. 25. The warden and deputy-warden shall reside constantly within the precincts of the prison; and the deputy-warden, clerk, watch-

men, and assistant watchmen, shall perform such duties in the charge and oversight of the prison, the care of the property thereto belonging, and the custody, government, employment, and discipline, of the convicts, as is required of them by the warden in conformity to law and the rules and regulations of the prison.

SECT. 26. The warden shall from time to time propose in writing to the inspectors, such alterations as he thinks advisable in the rules and regulations for the direction of the officers and the government of the prison.

SECT. 27. He shall have the charge and custody of all convicts in the prison, and shall govern and employ them in the manner prescribed by law and pursuant to their respective sentences and the rules and regulations of the prison, until their sentences are performed or they are otherwise discharged by due course of law.

SECT. 28. He shall have the charge and custody of the prison, with the lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining thereto or within the precincts thereof. He shall be treasurer of the prison, and shall receive and pay out all money granted by the legislature for the support thereof, and shall cause to be kept in suitable books regular and complete accounts of all the property, expenses, income, business, and concerns, of the establishment.

SECT. 29. He shall, as soon as may be after the last day of September in each year, cause to be made full and detailed accounts, to be closed on that day, of all the disbursements, expenses, receipts, and profits, of the prison, accompanied by sufficient vouchers, which accounts after having been examined and approved by the inspectors shall be deposited and filed in the office of the treasurer of the commonwealth, for the inspection of the legislature.

SECT. 30. When the office of warden is vacant, or the warden absent from the prison or unable to perform the duties of his office, the deputy warden shall have the powers, perform the duties, and be subject to the obligations and liabilities, of the warden.

SECT. 31. If the office of warden becomes vacant when the governor and council are not in session, the inspectors may require the deputy-warden to give a bond to the commonwealth in the sum of ten thousand dollars, with sufficient sureties to be by them approved, conditioned for the faithful performance of the duties incumbent on him as deputy-warden and treasurer until a warden is appointed; and from the time such bond is approved, the deputy shall, so long as he performs the duties of the office, receive the salary of the warden in lieu of his former salary. If the deputy-warden does not give such bond when required, the inspectors may remove him from the office of warden and appoint a warden *pro tempore*, who shall give such bond and shall have the power and authority, perform the duties, and receive the salary, of the warden, until a warden is duly appointed and enters upon the discharge of the duties of the office.

CONTRACTS.

SECT. 32. All contracts on account of the prison shall be made by the warden in writing, and when approved in writing by the inspectors shall be binding; and the warden or his successor may sue or be sued thereon to final judgment and execution. No such suit shall abate by reason of the office of warden becoming vacant, but any successor of the warden, pending such suit, may take upon himself the prosecution or defence thereof, and upon motion of the adverse party and notice he shall be required so to do.

SECT. 33. When a controversy arises respecting any contract made

uty. Officers to perform duties required by warden, &c.  
R. S. 144, § 28.  
1857, 122, § 1.

Warden may propose alteration of rules, &c.  
R. S. 144, § 6.

to have charge of prisoners, &c.  
R. S. 144, §§ 25, 30.

to have charge of prison and be treasurer.  
R. S. 144, § 16.

accounts of, to be settled annually.  
R. S. 144, § 18.

Duty of deputy, in absence, &c., of warden.  
R. S. 144, § 26.

Power of inspectors as to deputy-warden when the office of warden is vacant. Warden *pro tempore*.  
R. S. 144, § 27.

Contracts made by warden and approved by inspectors. Suits thereon.  
R. S. 144, § 19.  
3 Pick. 17.  
9 Pick. 341.  
11 Met. 137.  
11 Cush. 510.  
4 Gray, 535.

Warden may



submit contro-  
versies to arbi-  
tration.  
R. S. 144, § 20.

Contracts, how  
made.  
Proposals  
therefor.  
R. S. 144, § 21.

Same subject.  
R. S. 144, §§ 22,  
23.

Officers not to  
be interested in  
contracts, &c.  
R. S. 144, § 23.

Bills to be taken  
of all pur-  
chases, ser-  
vices, &c.  
R. S. 144, § 24.

Treatment of  
convicts.  
R. S. 144, § 52.

Warden's  
power to main-  
tain order, &c.  
R. S. 144, § 48.

Convicts, how  
employed.  
R. S. 144, § 33.  
1850, 289, § 4.

Solitary labor.  
1850, 289, § 1.

Solitary impris-  
onment.  
R. S. 144, § 32.

by the warden on account of the prison, or a suit is pending thereon, the warden may submit the same to the final determination of arbitrators or referees to be approved by the inspectors.

SECT. 34. When it can be advantageously done, the principal articles purchased for the use of the prison shall be contracted for by the year. The warden shall give previous public notice, in two newspapers at least, of the articles wanted, the quantity and quality thereof, the time and manner of delivery, and the period during which proposals therefor will be received; which notice shall be published a sufficient time for the information of persons who may desire to offer proposals.

SECT. 35. All such proposals shall be in writing and sealed up, and on the day appointed they shall be opened by the warden in presence of the inspectors, who shall cause them to be entered in a book and compared. The person offering the best terms, with satisfactory security for the performance, shall be entitled to the contract, unless it appears to the warden and inspectors that none of the offers are so low as the fair market price; in which case no offer shall be accepted, and the warden, with the consent of the inspectors, may proceed to make contracts for any of the articles wanted for the prison, in the best way he can for the interest of the commonwealth. Every such contractor shall give bond in a reasonable sum with satisfactory surety or sureties for the performance of his contract.

SECT. 36. No officer of the prison shall be concerned or interested directly or indirectly in any contract, purchase, or sale, made on account of the prison.

SECT. 37. The warden shall take bills of the quantity and price of supplies furnished for the prison, at the time of the delivery; and the clerk, or such officer as the warden directs, shall compare the bills with the articles delivered. If the bills are found correct, he shall enter them with the date upon a book to be kept for the purpose. Bills of all services rendered for the prison shall be taken and entered in like manner. If a bill for supplies or services is discovered to be incorrect, the clerk shall omit to enter it, and immediately give notice to the warden, that the error may be corrected.

#### DISCIPLINE, &c., OF CONVICTS.

SECT. 38. The warden and all officers of the prison shall treat the convicts with kindness, so long as they merit such treatment by their obedience, industry, and good conduct.

SECT. 39. All necessary means shall be used, under the direction of the warden, to maintain order in the prison, enforce obedience, suppress insurrection, and prevent escapes, for which purpose he may at all times require the aid and utmost exertions of all the officers of the institution, the inspectors, chaplain, and physician, excepted.

SECT. 40. Convicts sentenced to the punishment of hard labor in the prison shall be constantly employed for the benefit of the state, but no convict shall be employed in engraving or printing of any kind.

SECT. 41. The warden, with the consent of one or more of the inspectors, may, for such time as they deem necessary to produce penitence, or so long as they think expedient for the promotion of good order and discipline, confine to solitary labor such convicts as are obstinate and refractory.

SECT. 42. Convicts against whom the punishment of solitary imprisonment is awarded by sentence of court, or who are subjected to it for violating any of the rules and regulations of the prison, shall be confined in one of the solitary cells, and during such confinement shall be fed with bread and water only, unless the physician of the prison certifies to the warden that their health requires other diet.

SECT. 43. The warden, with the consent of the inspectors, may cause a Sabbath school to be maintained in the prison, for the instruction of the convicts in their religious duties, and permit such persons as they deem suitable to attend the same as instructors, under such rules and regulations as the inspectors may establish. And the warden and inspectors may furnish suitable instruction in reading and writing for one hour each evening except Sundays, to all such prisoners as may be benefited thereby and desirous to receive the same.

Sunday school and other instruction.  
1828, 152, § 3.  
1848, 324, § 3.  
See Ch. 178, § 40.

SECT. 44. No communication shall be allowed between the convicts and any person without the prison. They shall be confined in separate cells in the night time, and in the day time all intercourse between them shall, as far as is practicable, be prevented.

Convicts to be kept separate.  
R. S. 144, § 33.

SECT. 45. The inspectors and warden may make such regulations as they think necessary or expedient in relation to interviews of the convicts with their friends from without the prison; during which interviews the convicts and persons in communication with them shall be under the eye of the warden, or of some officer of the prison designated by him.

Interviews of, with their friends.  
1851, 295, § 1.

SECT. 46. The warden may at such time and under such circumstances as he deems expedient, with the consent of the inspectors, make known to the convicts the whole or parts of any communications received by him from their friends without the prison, and he may in like manner make known to their friends communications made to him by prisoners.

Communications between, and friends.  
1851, 295, § 2.

SECT. 47. The warden and inspectors may adopt such regulations not inconsistent with the laws relating to the government of the prison, in relation to the introduction of newspapers into the prison, and in relation to visitors, as they deem necessary or expedient.

Newspapers and visitors.  
1850, 289, § 3.

SECT. 48. No persons other than the executive government of the commonwealth, members of the legislature, officers of justice, or other persons having business at the prison, shall be allowed to visit it without a special permit from one of the inspectors or the warden.

Visitors to have permit.  
1854, 302, § 1.

SECT. 49. The warden shall cause a register to be kept of the names and residences of all persons so visiting, and of the authority by which they visit; which register shall at all times be open to the inspectors.

Warden to keep register of.  
1854, 302, § 2.

SECT. 50. The warden may refuse admission to any person having a permit, when it appears that such admission would be injurious to the best interests of the prison, but he shall report such refusal to the inspectors at their next monthly meeting.

Warden may refuse admission, &c.  
1854, 302, § 3.

RECORD OF CONDUCT.

SECT. 51. The warden shall keep a record of the conduct of each convict, and for each month that a convict appears by such record to have faithfully observed all the rules and requirements of the prison and not to have been subjected to punishment, there shall, with the consent of the governor and council, be deducted from the term or terms of his sentence, as follows: from a term of less than three years, one day; from a term of three and less than seven years, two days; from a term of seven and less than ten years, four days; from a term of ten years or more, five days.

Record of conduct. Deduction from sentence.  
1857, 284, § 1.

SECT. 52. Said record and scale of deduction, or any part thereof, shall be submitted by the warden to the governor and council when required by them, that the same may be considered in the exercise of such executive clemency on behalf of any convict, as they may deem conducive to the interests of the prison and promotive of the reformation and welfare of the convicts.

Record to be submitted to governor and council.  
1857, 284, § 2.

## ESCAPES, &amp;c.

Punishment for escape, &c., when sentenced for years.  
R. S. 144, § 37.

SECT. 53. If a convict under sentence for any limited time escapes from the prison, or attempts by violence to escape, or assaults the warden, an inspector, or other officer or person employed in the government or custody of the prison, he shall, in addition to his former sentence, be punished by imprisonment in said prison not exceeding ten years, and also by solitary imprisonment not exceeding one year, to be executed forthwith, or at such time or times either before or after the expiration of any former sentence, as the court directs.

when sentenced for life.  
R. S. 144, § 38.

SECT. 54. If a convict under sentence of imprisonment for life escapes from the prison, or attempts by violence to escape, or commits any such assault as is mentioned in the preceding section, he shall be punished by solitary imprisonment not exceeding one year, to be executed at such time or times as the court directs.

Punishment of officer, &c., suffering escape.  
R. S. 144, § 39.

SECT. 55. If an officer or other person employed in the prison voluntarily suffers a convict confined therein to escape, or in any way consents to such escape, he shall be punished by imprisonment in said prison not exceeding twenty years.

leaving prisoner at large, or other unlawful indulgence.  
R. S. 144, § 40.

SECT. 56. If an officer or person employed in the prison suffers a convict under sentence of solitary confinement to be at large or out of the cell assigned to him, or suffers any convict confined in the prison to be at large out of the prison, or to be visited, conversed with, or in any way relieved or comforted, contrary to the regulations of the prison, he shall be punished by fine not exceeding five hundred dollars.

aiding in escape or rescue.  
R. S. 144, § 41.

SECT. 57. Whoever conveys into the prison any disguise, instrument, tool, weapon, or other thing, adapted or useful to aid a convict in making his escape therefrom, with intent to facilitate the escape of any convict there lawfully committed or detained, whether such escape is effected or attempted or not, or by any means aids a convict in his endeavor to escape, and whoever forcibly or fraudulently rescues or attempts to rescue a convict held in custody under sentence of imprisonment in the prison, shall be punished by imprisonment in said prison not exceeding ten years, or by fine not exceeding five hundred dollars.

illicit conveyance of articles into prison, &c.  
1838, 152, § 1.

SECT. 58. Whoever delivers or procures to be delivered, or has in his possession with intent to deliver, to a convict confined in the prison, or deposits or conceals in or about the prison, or the dependencies thereof, or in any boat, carriage, or other vehicle, going into the premises belonging to the prison, any article or thing, with intent that a convict confined in the prison shall obtain or receive the same; and whoever receives from a convict any article or thing with intent to convey the same out of the prison, contrary to the rules and regulations thereof, and without the knowledge and permission of the warden or board of inspectors, shall be punished by imprisonment in the state prison or jail not exceeding two years, or by fine not exceeding five hundred dollars.

## RATIONS, CLOTHING, &amp;c., OF CONVICTS.

Warden, &c., to make regulations respecting rations, &c.  
1859, 101.

SECT. 59. The warden and inspectors may, with the consent of the governor and council, make such regulations in regard to the rations, clothing, and bedding, of the convicts, as the health, well-being, and circumstances of each convict require; but all diet, rations, clothing, beds, and bedding, shall be of good quality, and in sufficient quantity, for the sustenance and comfort of the convicts. No intoxicating liquors shall be furnished to the convicts.

Subsistence and diet in the hospital.  
R. S. 144, § 46.

SECT. 60. The subsistence and diet of the convicts in the hospital shall be under the direction of the physician; but for all articles of comfort or indulgence not included in his regular hospital rations, his order therefor shall be in writing and for a term not exceeding one week.



SECT. 61. The warden and inspectors may make such variations or additions in relation to the rations, clothing, and bedding, of the convicts, as the circumstances of each convict may require.

Rations, &c., may be varied, &c.

SECT. 62. The prison shall be suitably and sufficiently ventilated, and each prisoner shall have a weekly bath of cold or tepid water, which shall be applied to the whole surface of the body, unless, by reason of the sickness of any prisoner, such bath may be hurtful or dangerous.

Prison to be ventilated and prisoners furnished with baths.  
1848, 324, §§ 1, 2.

DISCHARGED CONVICTS.

SECT. 63. The warden may pay to any convict leaving the prison, who in his opinion by good conduct deserves the same, a sum not exceeding five dollars out of the treasury of the prison; and no convict shall leave the prison without being furnished with decent clothing.

Convicts, when discharged, to be decently clothed, &c.  
R. S. 144, § 53.

SECT. 64. The governor with advice of the council may appoint an agent to hold office until another is appointed in his place, who shall counsel and advise, and when and as he deems proper and expedient, furnish with clothing, board, and tools suitable for their employment, such discharged convicts as may seek his aid; and shall take measures to procure employment for such of them as may desire it, by corresponding with persons in mechanical and agricultural pursuits, and with benevolent persons and associations.

Agent for discharged convicts, appointment and duties of.  
1845, 176, § 1.  
1848, 82, § 1.

SECT. 65. The office of the agent shall be located either in Charlestown or Boston.

office of.  
1845, 176, § 3.

SECT. 66. He shall keep an account of the moneys expended by him for the rent and other necessary expenses of his office, for correspondence and travel to procure employment for discharged convicts, for furnishing the clothing, board, and tools, required of him by law, and for conveying discharged convicts to their homes or places of employment when he deems it proper to pay therefor, which being approved by the auditor of accounts, the governor shall at the end of each quarter draw his warrant on the treasury therefor. But the whole amount so paid for such expenditures shall not exceed five hundred dollars in any one year.

to keep account of expenditures, and present account, not exceeding \$500, to state auditor.  
1852, 213, § 2.  
1849, 56.

1861 Ch. 78.

SECT. 67. The warden may in his discretion pay to said agent such sums of money as he is authorized by section sixty-three to pay to convicts. The agent shall expend what he thus receives for the benefit of such convicts, and account therefor to the auditor.

may receive from warden money for discharged convicts.  
1852, 213, § 3.

SECT. 68. He shall, on or before the fifteenth day of October in each year, cause to be made to the governor and council a full and detailed account of his doings as such agent for the year ending on the last day of the preceding month, and he shall receive for his services five hundred dollars a year.

returns of Salary.  
1-46, 78, § 1.  
1852, 213, § 1.  
1857, 46.  
1858, 46.

1861 Ch. 78.

CHAPTER 180.

OF THE TRANSFER OF LUNATICS AND DISCHARGE OF POOR CONVICTS.

- LUNATICS IN THE STATE PRISON.
- SECTION
1. Commissioners to examine insane convicts.
  2. to be notified by warden, &c., of apparent insanity of convicts.
  3. Insane convicts to be removed to hospital, &c.
- LUNATICS IN OTHER PRISONS.
4. Insane persons in prison, how removed to hospital.
  5. if sane before term expires, to be returned.

- DISCHARGE OF POOR CONVICTS.
- SECTION
6. Poor convicts, how discharged from prison after three months.
  7. after thirty days.
  8. at any time in the county of Suffolk, when, &c.
  9. Persons under guardianship, how discharged.
  10. Fine and cost may be recovered of guardian.
  11. Fees for discharge under this chapter.

## LUNATICS IN THE STATE PRISON.

Commission-  
ers.  
1844, 120, § 3.  
1856, 135.

SECTION 1. The physician of the state prison as chairman, with the superintendents of the state lunatic hospitals, shall constitute a commission for the examination of convicts in said prison alleged to be insane. Each commissioner shall receive for his services in such capacity his travelling expenses and three dollars a day for each day he is so employed, which shall be charged to the prison.

to be notified  
by warden, &c.,  
of insanity of  
convicts.  
1844, 120, § 1.

SECT. 2. When a convict in the prison appears to be insane, the warden or inspectors shall give notice thereof to the chairman of said commission, who shall forthwith notify the members thereof to meet at the prison.

Insane convicts  
to be removed  
to hospital, &c.  
1844, 120, §§ 1, 2.  
1853, 318, § 1.  
1856, 247, § 3.

SECT. 3. The commission shall investigate the case, and if, in the opinion of a majority of them, the convict has become insane, and his removal would be expedient, they shall so report, with their reasons, to a judge of the superior court, who shall forthwith issue his warrant under the seal of that court, directed to the warden, authorizing him to remove the convict to one of the state lunatic hospitals, there to be kept till, in the opinion of the superintendent and trustees thereof, he may be recommitted consistently with his health. The superintendent when so satisfied shall certify the fact of such restoration upon the warrant, and give notice to the warden, who shall thereupon cause the convict to be reconveyed to the prison, there to remain pursuant to his original sentence, computing the time of his confinement in the hospital as part of the term of his imprisonment.

## LUNATICS IN OTHER PRISONS.

Insane persons  
in prison, how  
removed to hos-  
pital.  
R. S. 145, § 1.  
1853, 259.  
1853, 318, § 1.  
1855, 449.  
1856, 247, § 3.

SECT. 4. When a convict in a prison other than the state prison, or in the house of correction, appears to be insane, the physician attending the prison or house of correction shall make a report thereof to the jailer or master, who shall transmit the same in the county of Suffolk to a judge of the superior court, and in any other county to the judge of the probate court. The judge shall make inquiry into the facts therein stated, and if satisfied that such convict is insane, he may, at any time he deems necessary, cause such prisoner to be removed to one of the state lunatic hospitals.

if sane before  
term expires, to  
be returned.  
R. S. 145, § 2.  
1853, 259.

SECT. 5. If a person so removed is restored to sanity before the expiration of his sentence, he shall be forthwith returned to the prison or house of correction from which he was removed, there to remain pursuant to his original sentence, computing the time of his confinement in the hospital as part of the term of his imprisonment.

## DISCHARGE OF POOR CONVICTS.

Poor convicts,  
how discharged  
from prison af-  
ter three  
months.  
R. S. 145, § 3.  
1853, 81, § 3.  
1848, 32, § 26.  
1856, 158, § 3.

SECT. 6. When a poor convict has been confined in a prison or house of correction for three months for fine and costs only, or for either of them, the jailer or master shall make a report thereof, in the county of Suffolk to the police court of the city of Boston, and in other counties to any two justices of the peace, one of whom shall be of the quorum, or to any police court. The court or justices shall proceed to make inquiry into the truth thereof, and may require the jailer or keeper to bring the convict before them at the prison or such other convenient place near thereto as they may direct. If satisfied that the statement in the report is true and that the convict since his conviction has not had any estate, real or personal, with which he could have paid the sum for which he is committed, and that he is held for no other cause, they shall make a certificate thereof to the sheriff, directing him to discharge the convict.

SECT. 7. When a poor convict has been confined in a prison or house of correction thirty days for fine, or fine and costs, not exceeding ten

after thirty  
days.

Allen L.

dollars, or forty days for fine, or fine and cost, not exceeding twenty dollars, he shall be discharged if the justice or court has certified on the mittimus upon which he was committed that he is unable to pay the same. When such convict has been confined thirty days and the justice or court has not so certified, the jailer or master shall make report thereof to a justice of the peace and of the quorum, or to a police court, and such justice or court shall proceed therein and may discharge the convict in the manner prescribed in the preceding section.

1842, 59.  
See Ch. 174, § 9.

SECT. 8. The justices of the police court of the city of Boston when assembled, may also at any time discharge from prison or the house of correction in the county of Suffolk, any convict held only for the non-payment of fine and costs, if it appears that he is poor and unable to pay the same: *provided*, that when such person is held under the sentence of any other court, the consent of one of the justices thereof shall be first given in writing. (*Allen L.*)

Poor convicts discharged at any time in the county of Suffolk, when, &c. R. S. 87, § 16.

SECT. 9. A person under guardianship may have the benefit of the provisions of the three preceding sections, although it appears that he has property held under guardianship, if it also appears that such property is beyond his actual control.

Persons under guardianship, how discharged. 1850, 185, § 1.

SECT. 10. When a person is discharged under the preceding section, the commonwealth may, in an action of tort brought within one year after the discharge, recover against his guardian, if he has assets, the amount of fine and costs remaining unpaid.

Fine and cost may be recovered of guardian. 1850, 185, § 2. 1852, 312.

SECT. 11. The fees of the justices for discharging a convict under this chapter, shall be one dollar to each justice, and for travel five cents for each mile going and returning, which shall be taxed, allowed, and paid, in the same manner as other costs arising before justices of the peace in criminal cases.

Fees for discharge. R. S. 145, § 4.



# PART V.

## OF THE GENERAL STATUTES AND THE REPEAL OF EXISTING LAWS.

CHAPTER 181. — Of the General Statutes and their Effect.  
CHAPTER 182. — Of the Express Repeal of existing Laws.

### CHAPTER 181.

#### OF THE GENERAL STATUTES AND THEIR EFFECT.

##### SECTION

1. General Statutes, how cited.
2. when to take effect.
3. repeal by, not to revive former laws, &c.
4. not to affect acts done, &c.
5. nor penalties and forfeitures, &c., except, &c.

##### SECTION

6. Repeal by General Statutes not to affect suits commenced, &c.
7. Periods of limitation to continue to run.
8. Tenure of offices preserved.
9. General Statutes to be construed as continuation of former laws.

General Statutes, how cited.  
R. S. 146, § 2.

SECTION 1. This act shall not in any citation or enumeration of the statutes be reckoned as one of the acts of the present year, but may be designated as the General Statutes, adding when necessary the number of the chapter and section.

when to take effect.  
R. S. 146, § 1.

SECT. 2. The General Statutes aforesaid shall take effect and go into operation from and after the thirty-first day of May, in the year eighteen hundred and sixty.

repeal by, not to revive former laws, &c.  
R. S. 146, §§ 3, 9.

SECT. 3. The repeal of the acts and resolves, and parts of acts and resolves, revised and reënacted herein or repugnant to the provisions hereof, shall not revive any law heretofore repealed or superseded, nor any office heretofore abolished.

not to affect acts done, &c.  
R. S. 146, § 5.  
18 Pick. 419, 532.  
20 Pick. 99.  
21 Pick. 113, 210.  
23 Pick. 280.  
4 Gray, 490.

SECT. 4. It shall not affect any act done, or any right accruing, accrued, or established, or any proceedings, doings, or acts, ratified or confirmed, or any suit or proceeding had or commenced in a civil case, before the repeal takes effect, but the proceedings therein shall when necessary conform to the provisions of the General Statutes.

nor penalties or forfeitures, &c., except, &c.  
R. S. 146, § 6.

SECT. 5. It shall not affect any penalty or forfeiture incurred before it takes effect, under any of the laws repealed, except that where a punishment, penalty, or forfeiture, is mitigated by the provisions of the General Statutes, such provisions may be extended and applied to any judgment pronounced after said repeal.

nor suits commenced, &c.  
R. S. 146, § 7.

SECT. 6. It shall not affect any suit or prosecution pending at the time of the repeal for an offence committed, or for the recovery of a penalty or forfeiture incurred, under any of the acts repealed, except

that the proceedings therein shall when necessary conform to the provisions of the General Statutes.

SECT. 7. When a limitation or period of time prescribed in any of the acts repealed, for acquiring a right, or barring a remedy, or any other purpose, has begun to run, and the same or similar limitation is prescribed in the General Statutes, the time of limitation shall continue to run, and shall have like effect as if the whole period had begun and ended under the operation of the General Statutes.

Periods of limitation to continue to run. 1836, 7, § 4.

SECT. 8. All persons who at the time when said repeal takes effect hold any office under any of the acts repealed, shall continue to hold the same according to the tenure thereof, except those offices which have been abolished, and those as to which a different provision is made by the General Statutes.

Tenure of offices preserved. R. S. 146, § 8.

SECT. 9. The provisions of the General Statutes so far as they are the same as those of existing laws, shall be construed as a continuation of such laws, and not as new enactments, and references in laws not repealed, to provisions of laws incorporated into the General Statutes and repealed, shall be construed as applying to the same provisions so incorporated.

General Statutes to be construed as continuation of former laws.

## CHAPTER 182.

### OF THE EXPRESS REPEAL OF EXISTING LAWS.

The following entitled acts and resolves passed in the several years hereinafter enumerated shall be expressly repealed from and after the day specified in section two of chapter one hundred and eighty-one, subject to all provisions contained in said chapter.

#### One Thousand Eight Hundred and Eleven.

Chapter 64. Resolve for paying the expense of music when the commander-in-chief shall order out an escort.

#### One Thousand Eight Hundred and Nineteen.

Chapter 268. Resolve directing officers of government to render annual accounts.

#### One Thousand Eight Hundred and Twenty-two.

Chapter 28. Resolve authorizing the governor to sell or exchange certain military stores.

#### One Thousand Eight Hundred and Thirty-five.

Revised Statutes. An act for revising and consolidating the general statutes of the commonwealth.

#### One Thousand Eight Hundred and Thirty-six.

Chapter 4. An act to amend the Revised Statutes and to supply certain omissions therein.

Chapter 24. An act to provide for the engrossing of resolves.

Chapter 41. An act authorizing registers of probate to adjourn courts of probate in certain cases.

Chapter 137. An act concerning the returns of county commissioners.

Chapter 223. An act to provide for the confinement of idiots and insane persons.

Chapter 240. An act to prevent fraud in the pressing of hay.

Chapter 241. An act requiring returns from registers of deeds.

Chapter 245. An act to provide for the better instruction of youth employed in manufacturing establishments.

Chapter 247. An act relating to the pay of the watchman of the state house.

Chapter 248. An act to establish jail limits in the county of Worcester.

Chapter 258. An act in addition to the one hundred and forty-fourth chapter of the Revised Statutes "of the state prison and the government and discipline thereof."

Chapter 263. An act relating to the increased capital of banks.

- Chapter 273. An act to abolish special pleading in civil actions.
- Chapter 275. An act relating to certain courts in the county of Middlesex.
- Chapter 277. An act concerning jailers' fees.
- Chapter 278. An act concerning county commissioners.
- Chapter 279. An act relating to contracts for the sale of stocks.

### One Thousand Eight Hundred and Thirty-seven.

- Chapter 13. An act relating to the salary of the sergeant-at-arms.
- Chapter 22. An act concerning pilotage in New Bedford and Fairhaven.
- Chapter 52. An act relating to town meetings.
- Chapter 54. An act relating to the effects of deceased paupers.
- Chapter 56. An act relating to unclaimed dividends and balances.
- Chapter 65. An act relating to the form of bank returns.
- Chapter 78. An act to increase the number of justices of the supreme judicial court.
- Chapter 86. An act concerning the assessment of taxes.
- Chapter 89. An act in addition to an act relating to certain courts in the county of Middlesex.
- Chapter 97. An act to increase the salaries of the judge and register of probate for the county of Nantucket.
- Chapter 98. An act to establish probate courts in the town of Provincetown.
- Chapter 111. An act in relation to the inspection of nails.
- Chapter 141. An act to establish the terms of the court of probate in the county of Worcester.
- Chapter 146. An act relating to the meetings of the county commissioners in the county of Berkshire.
- Chapter 151. An act concerning county commissioners.
- Chapter 157. An act relating to police courts.
- Chapter 158. An act concerning the inspection of salt.
- Chapter 164. An act concerning private ways.
- Chapter 166. An act to regulate the weight of fish.
- Chapter 167. An act relating to the salary of the secretary's second permanent clerk.
- Chapter 168. An act relating to the salary of the treasurer's second permanent clerk.
- Chapter 171. An act relating to guardians.
- Chapter 176. An act relating to the powers of assessors.
- Chapter 177. An act to prevent bonfires and false alarms of fire.
- Chapter 178. An act in relation to the poor of unincorporated places.
- Chapter 179. An act concerning gaming.
- Chapter 180. An act empowering proprietors of real estate held in common to dispose of the same.
- Chapter 181. An act in relation to conditional pardons.
- Chapter 185. An act relating to notices of applications for the appraisal and sale of personal property attached on mesne process.
- Chapter 186. An act to establish a registry of deeds for the southern towns in the county of Bristol.
- Chapter 194. An act providing for a return by overseers of the poor.
- Chapter 198. An act concerning persons imprisoned for debt, and relating to bail.
- Chapter 200. An act relating to the meetings of the Norfolk county commissioners.
- Chapter 205. An act concerning the state prison, and the government and discipline thereof.
- Chapter 207. An act relating to the appointment of provers of fire-arms.
- Chapter 210. An act concerning the service of writs.
- Chapter 217. An act concerning rogues and vagabonds.
- Chapter 221. An act to restore the trial by jury on questions of personal freedom.
- Chapter 224. An act to restrain banks from issuing their notes otherwise than for immediate circulation.
- Chapter 226. An act concerning railroad corporations.
- Chapter 227. An act concerning the return of common schools.
- Chapter 228. An act concerning lunatics.
- Chapter 233. An act concerning auctioneers.
- Chapter 236. An act concerning depositions.
- Chapter 239. An act to reduce the rate of damages on inland bills of exchange.
- Chapter 240. An act concerning the militia.
- Chapter 241. An act relating to common schools.
- Chapter 242. An act concerning licensed houses and the sale of intoxicating liquors.
- Chapter 244. An act concerning the public health.

### One Thousand Eight Hundred and Thirty-eight.

- Chapter 2. An act relating to wills of personal estate.
- Chapter 21. An act concerning juries.
- Chapter 26. An act relating to the probate court in the county of Nantucket.
- Chapter 28. An act relating to the partition of real estate.
- Chapter 30. An act relating to repairs of highways.
- Chapter 31. An act relating to commitments to the state lunatic hospital.
- Chapter 42. An act to authorize justices of the peace, and others, to compel the attendance of witnesses.
- Chapter 43. An act to provide for the appointment of temporary town treasurers and collectors of taxes.
- Chapter 46. An act concerning the election of parish officers.
- Chapter 54. An act relating to the probate courts in the county of Suffolk.
- Chapter 55. An act to defray the expenses of the board of education.
- Chapter 63. An act to increase the salaries of the judge and register of probate for the county of Dukes County.



- Chapter 71. An act to empower the town of Nantucket to raise money for the payment of county expenses and for other purposes.
- Chapter 73. An act in addition to an act to provide for the confinement of idiots and insane persons.
- Chapter 80. An act to provide for the appointment of additional watchmen for the protection of the state house.
- Chapter 92. An act relating to the composition of debts by executors and administrators.
- Chapter 98. An act concerning the ownership of shares in corporations.
- Chapter 99. An act authorizing railroad corporations to make certain contracts.
- Chapter 100. An act concerning the reports of the decisions in the supreme judicial court.
- Chapter 104. An act to exempt towns and other corporations from liability for damages in certain cases.
- Chapter 105. An act concerning schools.
- Chapter 107. An act in addition to an act to provide for the better instruction of youth employed in manufacturing establishments.
- Chapter 108. An act authorizing banks to surrender their charters.
- Chapter 110. An act to protect the shell fishery in Chelsea.
- Chapter 113. An act for the protection of the shell fishery in Ipswich.
- Chapter 121. An act concerning writs and absent defendants.
- Chapter 143. An act for the protection of camp meetings against disturbance.
- Chapter 144. An act relating to the compensation of executors and administrators.
- Chapter 145. An act for an allowance to widows of deceased persons for necessaries.
- Chapter 147. An act concerning police courts and the justices' court in the county of Suffolk.
- Chapter 152. An act concerning the state prison, and the government and discipline thereof.
- Chapter 154. An act to aid in support of common schools among certain tribes of Indians in this commonwealth.
- Chapter 159. An act to prescribe the duties and fix the compensation of the secretary of the board of education.
- Chapter 162. An act concerning masters in chancery.
- Chapter 163. An act for the relief of insolvent debtors and for the more equal distribution of their effects.
- Chapter 165. An act to enlarge the jurisdiction of the court of common pleas.
- Chapter 177. An act concerning manufacturing corporations.
- Chapter 181. An act in addition to an act to establish the city of Lowell.
- Chapter 184. An act concerning suits on probate bonds.
- Chapter 186. An act concerning the attachment of real estate.
- Chapter 189. An act concerning the union of school districts.
- Chapter 190. An act concerning the sale of the real estate of minors.
- Chapter 196. An act concerning banks and banking.

### One Thousand Eight Hundred and Thirty-nine.

- Chapter 16. An act concerning the establishment of limits for the jail yard at Lowell in the county of Middlesex.
- Chapter 27. An act providing for the examination of banks whose charters have been annulled.
- Chapter 28. An act concerning the office of attorney-general.
- Chapter 30. An act regulating appeals of persons adjudged to be common and notorious thieves.
- Chapter 31. An act for the punishment of shop-breaking in certain cases.
- Chapter 42. An act concerning elections.
- Chapter 53. An act concerning dealers in second-hand articles.
- Chapter 54. An act concerning riots.
- Chapter 56. An act concerning schools.
- Chapter 76. An act relating to proceedings of county commissioners.
- Chapter 84. An act for the protection of the shell fishery in Brewster.
- Chapter 85. An act concerning the sea-coast fisheries.
- Chapter 89. An act concerning the attachment of real estate.
- Chapter 90. An act relating to the powers of county commissioners.
- Chapter 93. An act establishing fees of notaries public.
- Chapter 96. An act in relation to contribution among devisees.
- Chapter 107. An act concerning testimony in certain cases.
- Chapter 117. An act establishing additional terms of the court of common pleas in the county of Middlesex.
- Chapter 121. An act concerning notes payable on demand.
- Chapter 127. An act for the punishment of highway robbery and burglary.
- Chapter 132. An act further regulating the inspection of pickled fish.
- Chapter 135. An act relating to criminal prosecutions.
- Chapter 136. An act concerning the salary of the attorney of the commonwealth for the county of Suffolk.
- Chapter 137. An act concerning district schools.
- Chapter 138. An act to regulate fire departments.
- Chapter 139. An act concerning the assessment of taxes.
- Chapter 140. An act concerning the taking of depositions to perpetuate testimony.
- Chapter 142. An act providing for the appointment of public administrators.
- Chapter 144. An act concerning taxes for the repairs of highways.
- Chapter 146. An act concerning houses of correction.
- Chapter 148. An act to prevent the burning of woodlands in certain towns therein named.
- Chapter 149. An act in addition to an act concerning lunatics.
- Chapter 150. An act relating to the courts of common pleas in the county of Essex.
- Chapter 151. An act concerning proceedings at law.
- Chapter 156. An act concerning the maintaining of prisoners in jails and houses of correction.
- Chapter 157. An act to provide for obtaining the statistics of crime.
- Chapter 158. An act concerning suits against foreign corporations.

- Chapter 161. An act concerning appeals in criminal cases.  
 Chapter 164. An act relative to the partition of real estate.  
 Chapter 165. An act in addition to an act concerning elections.

### One Thousand Eight Hundred and Forty.

- Chapter 9. An act for the protection of the shell fishery in the towns of Essex and Hull.  
 Chapter 12. An act relating to turpikiie corporations.  
 Chapter 15. An act concerning jails and houses of correction.  
 Chapter 23. An act concerning the jurisdiction of justices of the peace.  
 Chapter 34. An act to protect Indian lands from trespassers and intruders.  
 Chapter 40. An act in addition to an act providing for the appointment of public administrators.  
 Chapter 59. An act concerning the apportionment of the senate.  
 Chapter 61. An act regulating the use of proxies at the meetings of stockholders of banks.  
 Chapter 62. An act concerning the proprietors of meeting-houses.  
 Chapter 66. An act relating to representative districts.  
 Chapter 69. An act concerning toll-bridges.  
 Chapter 73. An act relating to the inspection of mess beef.  
 Chapter 74. An act concerning grand jurors in the county of Dukes County.  
 Chapter 75. An act concerning the apprehension of criminals.  
 Chapter 77. An act in addition to an act relating to the meetings of the county commissioners in the county of Berkshire.  
 Chapter 80. An act concerning passenger carriers.  
 Chapter 82. An act relating to the sale of Indian meal and cracked corn.  
 Chapter 83. An act concerning certain railroad corporations.  
 Chapter 84. An act relating to the evidence of marriage.  
 Chapter 85. An act in addition to an act concerning railroad corporations.  
 Chapter 87. An act concerning the supreme judicial court and the court of common pleas.  
 Chapter 92. An act in addition to the several acts concerning the militia.  
 Chapter 94. An act in addition to an act for the appointment of bank commissioners.  
 Chapter 97. An act concerning sales by guardians and others.

### One Thousand Eight Hundred and Forty-one.

- Chapter 1. An act relating to the choice of county commissioners in the county of Barnstable.  
 Chapter 17. An act concerning the income of the Massachusetts school fund.  
 Chapter 18. An act in relation to the erection and regulation of mills.  
 Chapter 20. An act in addition to an act relating to the evidence of marriage.  
 Chapter 26. An act concerning timber carried upon adjoining lands by floods.  
 Chapter 33. An act in relation to recompense to prosecutors and officers.  
 Chapter 44. An act concerning savings banks.  
 Chapter 45. An act relating to pilotage.  
 Chapter 55. An act in addition to an act concerning the supreme judicial court and the court of common pleas.  
 Chapter 69. An act concerning the returns of railroad corporations.  
 Chapter 70. An act concerning elections.  
 Chapter 74. An act relative to the cost and expenses of criminal prosecutions.  
 Chapter 77. An act concerning lunatics.  
 Chapter 83. An act to punish collusion in cases of divorce.  
 Chapter 86. An act concerning complaints for damages caused by mill-dams.  
 Chapter 105. An act concerning the expense of making highways.  
 Chapter 106. An act concerning the militia.  
 Chapter 107. An act concerning the election of county commissioners.  
 Chapter 111. An act relating to the court of common pleas.  
 Chapter 113. An act in addition to an act authorizing banks to surrender their charters.  
 Chapter 114. An act concerning cemeteries.  
 Chapter 115. An act in relation to main drains or common sewers.  
 Chapter 116. An act concerning returns by overseers of the poor.  
 Chapter 119. An act providing for the measuring of upper leather.  
 Chapter 124. An act in addition to an act for the relief of insolvent debtors.  
 Chapter 125. An act relating to railroads.  
 Chapter 126. An act requiring county commissioners to furnish blank returns of elections.  
 Chapter 127. An act respecting the taxation of houses of public worship.  
 Chapter 129. An act in relation to bills of discovery.  
 Chapter 130. An act relating to the state house.

### One Thousand Eight Hundred and Forty-two.

- Chapter 1. An act to alter the times of holding the May and September meetings of the county commissioners of Middlesex.  
 Chapter 10. An act for the protection of the shell fishery in the towns of Kingston and Falmouth.  
 Chapter 14. An act concerning petitions for partition.  
 Chapter 15. An act relating to allowance to be made to widows and minor children of deceased persons.  
 Chapter 22. An act relative to railroads.

- Chapter 34. An act in relation to the collection of taxes.
- Chapter 37. An act authorizing the appointment of special constables.
- Chapter 42. An act concerning the duties of the secretary of the board of education.
- Chapter 49. An act relating to bank returns.
- Chapter 50. An act concerning the election of county commissioner.
- Chapter 54. An act concerning writs of error in criminal cases.
- Chapter 59. An act relating to poor convicts.
- Chapter 60. An act concerning the employment of children in manufacturing establishments.
- Chapter 66. An act in relation to toll-bridges.
- Chapter 67. An act concerning the taxation of costs in actions.
- Chapter 73. An act concerning dower.
- Chapter 74. An act concerning devises and wills by married women.
- Chapter 83. An act concerning guardianship of minors.
- Chapter 86. An act relating to the duties of county commissioners.
- Chapter 88. An act relating to the probate court in the county of Bristol.
- Chapter 89. An act relating to surviving of actions.
- Chapter 91. An act relating to trustee process.
- Chapter 93. An act in addition to the several acts concerning the militia.
- Chapter 94. An act in relation to law library associations.
- Chapter 96. An act concerning the state lunatic hospital.
- Chapter 98. An act concerning an allowance of interest by banks to the city of Boston.
- Chapter 99. An act to divide the commonwealth into districts for the choice of representatives in the congress of the United States.
- Chapter 100. An act in addition to an act to provide for the confinement of idiots and insane persons.
- Chapter 101. An act relating to the bank commissioners.

**One Thousand Eight Hundred and Forty-three.**

- Chapter 1. An act to puish larceny in a dwelling-house in the night time and for other purposes.
- Chapter 4. An act relating to the probate court in the county of Nantucket.
- Chapter 7. An act relating to the court of common pleas and municipal court of the city of Boston.
- Chapter 9. An act establishing the salaries of certain public officers.
- Chapter 10. An act relating to the preservation of the bonds and mortgages from the several railroads to the commonwealth.
- Chapter 13. An act to reduce the expenses of the office of adjutant-general.
- Chapter 17. An act relating to the office of adjutant-general.
- Chapter 19. An act relating to trusts created by deed.
- Chapter 21. An act concerning the sale of railroad stock at auction.
- Chapter 29. An act concerning probate courts in the county of Hampden.
- Chapter 38. An act in relation to the subsistence of convicts in the state prison.
- Chapter 40. An act concerning the probate courts in the county of Hampshire.
- Chapter 41. An act relating to the court of common pleas.
- Chapter 55. An act relating to costs in civil actions.
- Chapter 56. An act concerning sureties in probate bonds.
- Chapter 61. An act in addition to an act entitled an act relating to the court of common pleas and municipal court of the city of Boston.
- Chapter 65. An act to establish an aqueduct for the state lunatic hospital, (except section one.)
- Chapter 66. An act in relation to the support of convicts.
- Chapter 68. An act concerning proxies.
- Chapter 69. An act further to protect personal liberty.
- Chapter 71. An act in relation to fees of justices of the peace.
- Chapter 72. An act concerning mortgages of personal property.
- Chapter 75. An act regulating the compensation of sheriffs.
- Chapter 77. An act relating to divorce.
- Chapter 80. An act concerning the additional punishment of convicts recommitted to the state prison.
- Chapter 82. An act authorizing trustees to insure property held in trust in mutual fire insurance companies.
- Chapter 84. An act in addition to the several acts concerning the militia.
- Chapter 85. An act concerning the property of common school districts.
- Chapter 87. An act relating to the poll tax.
- Chapter 92. An act concerning foreign wills.
- Chapter 93. An act to regulate banks and banking.
- Chapter 97. An act concerning executors and administrators.
- Chapter 98. An act for the more equal assessment of taxes.
- Chapter 99. An act abolishing the office of attorney-general.

**One Thousand Eight Hundred and Forty-four.**

- Chapter 9. An act relating to masters in chancery.
- Chapter 24. An act restoring the salaries of the justices of the supreme judicial court.
- Chapter 32. An act concerning the powers of school committees.
- Chapter 36. An act concerning the sale of the stock of manufacturing companies.
- Chapter 44. An act in addition to an act relating to the court of common pleas and the municipal court of the city of Boston.



- Chapter 78. An act relating to elections.  
 Chapter 87. An act relating to the statistics of crime.  
 Chapter 88. An act respecting the appropriation of the property of minors to their maintenance and education.  
 Chapter 90. An act to reduce the tax on sales of teas by importers at auction.  
 Chapter 101. An act in addition to the several acts concerning the militia.  
 Chapter 102. An act concerning prosecutions for the sale of spirituous and fermented liquors.  
 Chapter 104. An act in relation to the registry of deeds.  
 Chapter 107. An act to prevent frauds in the conveyance of real estate.  
 Chapter 115. An act concerning the settlement of estates of persons deceased insolvent.  
 Chapter 120. An act entitled an act for the removal of insane convicts from the state prison.  
 Chapter 127. An act to alter the times of holding probate courts in the town of Medway, in the county of Norfolk.  
 Chapter 129. An act concerning alimony.  
 Chapter 138. An act in addition to an act concerning masters in chancery.  
 Chapter 143. An act concerning the organization of the house of representatives.  
 Chapter 145. An act relating to the poll tax.  
 Chapter 146. An act in addition to an act providing for a return by the overseers of the poor.  
 Chapter 147. An act in addition to an act providing for the more equal assessment of taxes.  
 Chapter 148. An act in addition to an act entitled "an act concerning mortgages of personal property."  
 Chapter 152. An act empowering the inhabitants of villages or districts to establish fire departments within the same.  
 Chapter 153. An act concerning the journals and files of the senate and house of representatives.  
 Chapter 156. An act for the preservation of grouse or heath hen.  
 Chapter 157. An act in addition to "an act in relation to law library associations."  
 Chapter 159. An act relating to the registry and returns of births, marriages, and deaths.  
 Chapter 160. An act making further provision for the observance of the Lord's day.  
 Chapter 162. An act in further addition to "an act concerning the supreme judicial court and the court of common pleas."  
 Chapter 167. An act prescribing the time for making the returns of votes for electors of president and vice-president of the United States.  
 Chapter 168. An act relating to the bonds of pilots.  
 Chapter 171. An act to alter the times of holding the terms of the court of common pleas for the county of Hampden.  
 Chapter 173. An act authorizing the appointment of an additional master in chancery in the county of Worcester.  
 Chapter 174. An act to establish the salary of the sergeant-at-arms.  
 Chapter 178. An act in further addition to the several acts for the relief of insolvent debtors and the more equal distribution of their effects.

### One Thousand Eight Hundred and Forty-five.

- Chapter 44. An act establishing the salary of the district-attorney for the southern district of this commonwealth.  
 Chapter 22. An act authorizing the appointment of an additional master in chancery in the county of Middlesex.  
 Chapter 27. An act to punish unlawful attempts to cause abortion.  
 Chapter 28. An act to punish larceny in shops and other places in the night time.  
 Chapter 36. An act establishing the salary of the district-attorney for the northern district.  
 Chapter 64. An act concerning trust estates.  
 Chapter 67. An act to increase the duties and establish the salary of the attorney of the commonwealth for the county of Suffolk.  
 Chapter 68. An act to amend an act concerning notes payable on demand.  
 Chapter 70. An act requiring constables to give bonds in certain cases.  
 Chapter 73. An act to change the time for holding certain probate courts in the county of Plymouth.  
 Chapter 77. An act to amend an act in addition to the several acts concerning the militia.  
 Chapter 78. An act concerning limited partnerships.  
 Chapter 105. An act establishing the salaries of the first and second clerks in the office of the treasurer and receiver-general of the commonwealth.  
 Chapter 113. An act establishing the salaries of the first and second clerks in the office of the secretary of the commonwealth.  
 Chapter 116. An act establishing the salary of the messenger to the governor and council.  
 Chapter 118. An act concerning the punishment of convicts.  
 Chapter 135. An act establishing the salaries of the judge and register of probate for the county of Nantucket.  
 Chapter 155. An act to increase the number of justices of the court of common pleas.  
 Chapter 158. An act authorizing judges of probate to appoint trustees in certain cases.  
 Chapter 160. An act establishing the salary of the register of probate for Dukes County.  
 Chapter 162. An act in relation to the compensation of sheriffs.  
 Chapter 166. An act concerning bail in criminal cases.  
 Chapter 176. An act relating to discharged convicts.  
 Chapter 178. An act to establish the salary of the judge of probate in the county of Barnstable.  
 Chapter 187. An act concerning pilots and pilotage.  
 Chapter 188. An act in relation to the costs of trustees.  
 Chapter 190. An act relating to returns of clerks of manufacturing corporations.  
 Chapter 191. An act to regulate the use of railroads.

- Chapter 192. An act relating to the survey of the coast of Massachusetts.  
 Chapter 193. An act concerning principals, factors, and agents.  
 Chapter 197. An act regulating the use of steam-engines and furnaces.  
 Chapter 205. An act concerning registers of deeds.  
 Chapter 206. An act to establish the salaries of the assistant watchmen of the state house.  
 Chapter 208. An act in addition to the several acts concerning husband and wife.  
 Chapter 209. An act concerning the laying out turnpike roads as common highways.  
 Chapter 211. An act relating to gaming.  
 Chapter 213. An act relating to religious societies.  
 Chapter 214. An act concerning public schools.  
 Chapter 215. An act relating to embezzlement.  
 Chapter 216. An act to punish abduction.  
 Chapter 217. An act providing in certain cases for the election of city officers.  
 Chapter 221. An act concerning the duties of county commissioners.  
 Chapter 222. An act concerning marriage.  
 Chapter 227. An act concerning the fees of jurors in criminal trials.  
 Chapter 237. An act concerning fire districts.  
 Chapter 242. An act concerning the study of medicine.  
 Chapter 243. An act in addition to the several acts concerning the militia.  
 Chapter 253. An act to establish additional terms of the court of common pleas for the county of Hampden.  
 Chapter 12. Resolves concerning the arsenals in Cambridge and Boston.  
 Chapter 71. Resolve concerning the distribution of equipments and camp equipage.  
 Chapter 126. Resolve relative to the transmission of military documents.

### One Thousand Eight Hundred and Forty-six.

- Chapter 11. An act to provide for the government and management of houses of correction in certain cases.  
 Chapter 40. An act to limit writs of *scire facias* against trustees.  
 Chapter 45. An act concerning manufacturing corporations.  
 Chapter 49. An act respecting the yearly abstracts of the returns of savings banks.  
 Chapter 52. An act concerning wilful and malicious injuries to personal property in certain cases.  
 Chapter 62. An act concerning prosecutions for violations of by-laws.  
 Chapter 78. An act in addition to an act relating to discharged convicts.  
 Chapter 86. An act concerning annual returns of saving banks and institutions for savings.  
 Chapter 88. An act relating to the support of convicts.  
 Chapter 94. An act respecting corporations for mutual improvement and the promotion of education.  
 Chapter 96. An act relating to the erection of furnaces for the making of glass.  
 Chapter 99. An act to establish teachers' institutes.  
 Chapter 122. An act concerning bonds given on dissolving attachments.  
 Chapter 123. An act providing for the appointment of assayers of ores and metals.  
 Chapter 142. An act providing for a recompense to prosecutors and officers in certain cases.  
 Chapter 154. An act in relation to the house of correction and asylum for insane persons in the county of Essex.  
 Chapter 168. An act in addition to "an act for the relief of insolvent debtors and for the more equal distribution of their effects."  
 Chapter 170. An act in addition to "an act regulating the inspection of pickled fish."  
 Chapter 171. An act concerning larceny by bank officers and persons employed in banks.  
 Chapter 193. An act to alter the times of holding the terms of the court of common pleas for the county of Hampshire.  
 Chapter 195. An act concerning the collection of taxes.  
 Chapter 197. An act concerning marriage and divorce.  
 Chapter 198. An act concerning proceedings in criminal cases.  
 Chapter 199. An act concerning usury.  
 Chapter 200. An act for the suppression of horse racing.  
 Chapter 203. An act concerning the dedication of public ways, and for other purposes.  
 Chapter 209. An act for the payment of the wages and deposits of married women.  
 Chapter 211. An act concerning public administrators.  
 Chapter 216. An act concerning guardians and treasurers of Indian tribes and others.  
 Chapter 217. An act establishing the salary of the first clerk in the office of the secretary of the commonwealth.  
 Chapter 218. An act in addition to the several acts concerning the militia.  
 Chapter 219. An act to designate the fund for the payment of the salary of the land agent and of appropriations for educational purposes.  
 Chapter 221. An act relating to the meetings of the county commissioners in the county of Hampshire.  
 Chapter 222. An act to provide for constructing town ways and private ways in certain cases.  
 Chapter 223. An act relating to the duties of school committees and the distribution of the income of the school fund.  
 Chapter 234. An act concerning security for costs in proceedings in the supreme court of probate.  
 Chapter 237. An act concerning the inspection of lime.  
 Chapter 238. An act to establish the salaries of the watchman and assistant watchmen of the state house.  
 Chapter 241. An act for the correction of the state map.  
 Chapter 242. An act concerning the sale of trust estates.  
 Chapter 243. An act to regulate the pilotage in Nantucket.  
 Chapter 244. An act concerning hawkers and pedlers.  
 Chapter 249. An act concerning the appointment of guardians of spendthrifts.

- Chapter 251. An act relating to railroad corporations.  
 Chapter 256. An act to establish the salary of the register of probate for the county of Barnstable.  
 Chapter 260. An act establishing the salaries of the justices of the court of common pleas.  
 Chapter 264. An act establishing the salaries of the district attorneys of the middle and western districts of this commonwealth.  
 Chapter 266. An act concerning warrants in cases of bastardy.  
 Chapter 268. An act to establish the salary of the register of probate for the county of Suffolk.  
 Chapter 271. An act relating to railroads.

### One Thousand Eight Hundred and Forty-seven.

- Chapter 13. An act to define the time of night time in criminal prosecutions.  
 Chapter 14. An act concerning the sale of potatoes in this commonwealth.  
 Chapter 32. An act requiring banks and savings institutions, under settlement, to make annual reports.  
 Chapter 37. An act authorizing the supreme judicial court to restrain the abuses of corporate power by cities and towns.  
 Chapter 51. An act to regulate the keeping of gun-cotton and other like substances.  
 Chapter 59. An act relating to the salaries of the watchmen of the state prison.  
 Chapter 61. An act to establish the salary of the clerk in the office of the adjutant and quartermaster general of the commonwealth.  
 Chapter 69. An act relating to agricultural societies.  
 Chapter 83. An act to suppress injurious publications.  
 Chapter 98. An act concerning the powers of constables.  
 Chapter 102. An act concerning the common lands in the island of Nantucket.  
 Chapter 104. An act concerning wilful disturbance of religious worship.  
 Chapter 107. An act relating to recording officers of joint stock companies, and to the transfer of shares therein.  
 Chapter 153. An act relating to interest on certain judgments.  
 Chapter 160. An act in addition to "an act to provide for the government and management of houses of correction in certain cases."  
 Chapter 165. An act to establish the state reform school.  
 Chapter 166. An act concerning the powers of cities and towns.  
 Chapter 170. An act concerning partitions of real estate.  
 Chapter 181. An act relating to railroad land damages.  
 Chapter 183. An act relating to the abstracts of school returns and the duties of school committees.  
 Chapter 195. An act concerning mortgages held by the commonwealth.  
 Chapter 199. An act relating to returns of county commissioners and other officers.  
 Chapter 209. An act establishing the salary of the first clerk in the office of the treasurer and receiver general of the commonwealth.  
 Chapter 224. An act to prevent obstructions in the streets of cities, and to regulate hackney coaches and other vehicles.  
 Chapter 226. An act concerning taxes on the real estate of deceased persons.  
 Chapter 228. An act to establish the salaries of certain registers of probate.  
 Chapter 237. An act establishing the salary of the messenger to the governor and council.  
 Chapter 242. An act concerning weights, measures, and balances.  
 Chapter 246. An act providing for the inspection of hay.  
 Chapter 254. An act relating to repairs of highways.  
 Chapter 256. An act relating to the employment of convicts.  
 Chapter 259. An act in addition to an act relating to proceedings of county commissioners.  
 Chapter 262. An act concerning the powers of cities.  
 Chapter 263. An act relating to public charities.  
 Chapter 267. An act relating to leasehold estates.  
 Chapter 274. An act to secure the payment of fees into the treasury of the commonwealth in certain cases.  
 Chapter 279. An act in addition to "an act to regulate pilotage."  
 Chapter 280. An act concerning the trustees of methodist episcopal churches.  
 Chapter 282. An act in addition to an act requiring returns from registers of deeds.  
 Chapter 77. Resolve relating to the furnishing of camp equipage to the field officers of the militia.  
 Chapter 88. Resolves for the promulgation of the general laws and resolves.

### One Thousand Eight Hundred and Forty-eight.

- Chapter 4. An act concerning the registry of deeds in the town of Monterey.  
 Chapter 9. An act to increase the number of the justices of the supreme judicial court.  
 Chapter 10. An act in addition to "an act to establish teachers' institutes."  
 Chapter 16. An act to establish an additional district for the administration of criminal law.  
 Chapter 29. An act to provide for the instruction of prisoners in jails and houses of correction.  
 Chapter 35. An act regulating the election of electors of president and vice-president of the United States.  
 Chapter 82. An act in addition to "an act relating to discharged convicts."  
 Chapter 98. An act relating to town and private ways.  
 Chapter 121. An act relating to annual meetings of banks.  
 Chapter 123. An act relating to fees of witnesses in certain cases.  
 Chapter 140. An act in relation to the plans and profiles of railroads.  
 Chapter 142. An act concerning forcible entry and detainer.



- Chapter 144. An act relating to the recording of executions.  
 Chapter 152. An act concerning the planting of oysters.  
 Chapter 164. An act relating to taxation in parishes.  
 Chapter 166. An act further to regulate the sale of real estate for non-payment of taxes.  
 Chapter 173. An act in addition to an act relating to abstracts of school returns, and the duties of school committees.  
 Chapter 192. An act relating to town and county roads.  
 Chapter 193. An act concerning the continuance of civil actions before justices of the peace.  
 Chapter 214. An act for the better establishment of the police court of the city of New Bedford.  
 Chapter 234. An act relating to probate courts in the county of Essex.  
 Chapter 235. An act concerning remedies for the collection of taxes.  
 Chapter 236. An act authorizing the supreme judicial court to adjourn the same in certain cases.  
 Chapter 237. An act to authorize towns to take land for school-houses.  
 Chapter 240. An act imposing a penalty on town or city officers for neglect of certain duties.  
 Chapter 247. An act concerning indigent children.  
 Chapter 251. An act limiting the liabilities of banks that have surrendered their charters.  
 Chapter 252. An act relating to actions against assignees of insolvent estates.  
 Chapter 254. An act concerning the writ of *habeas corpus*.  
 Chapter 255. An act changing the place for holding certain terms of probate courts in the county of Worcester.  
 Chapter 260. An act to establish a police court in the town of Lawrence.  
 Chapter 267. An act in relation to costs in cases of bankruptcy and insolvency.  
 Chapter 270. An act to regulate intelligence offices.  
 Chapter 271. An act concerning the fees of jurors in certain cases.  
 Chapter 272. An act in relation to town pounds.  
 Chapter 274. An act relating to district school-houses.  
 Chapter 276. An act in addition to an act to provide for the government and management of houses of correction in certain cases.  
 Chapter 277. An act authorizing the appointment of an additional master in chancery in the county of Essex.  
 Chapter 278. An act concerning the erection of balustrades upon buildings in cities.  
 Chapter 279. An act to authorize adjacent towns to unite for school purposes.  
 Chapter 289. An act for the appointment of an assistant clerk of the courts in the county of Middlesex.  
 Chapter 291. An act relating to the erection and location of almshouses and houses of correction.  
 Chapter 299. An act in addition to an act for the more equal assessment of taxes.  
 Chapter 301. An act granting aid to county associations of teachers and others.  
 Chapter 304. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.  
 Chapter 305. An act concerning the state reform school.  
 Chapter 308. An act relating to ballast in the city of Boston.  
 Chapter 309. An act to authorize the granting of administration upon the estates of persons deceased intestate in certain cases.  
 Chapter 310. An act in relation to the payment of annuities.  
 Chapter 313. An act concerning alien passengers.  
 Chapter 315. An act for the more effectual suppression of common gaming houses.  
 Chapter 317. An act authorizing sheriffs and their deputies to administer oaths in certain cases.  
 Chapter 318. An act in addition to "an act for the better establishment of the police court of the city of New Bedford."  
 Chapter 320. An act for the removal of insane persons confined in jail for debt.  
 Chapter 324. An act in relation to prisoners.  
 Chapter 327. An act relating to railroad plans and profiles.  
 Chapter 331. An act concerning the compensation of the justices and clerk of the police court in Lowell.  
 Chapter 332. An act in addition to "an act concerning weights, measures, and balances."

### One Thousand Eight Hundred and Forty-nine.

- Chapter 5. An act to restrain printing or circulating shop bills of the similitude of bank bills.  
 Chapter 9. An act establishing the salaries of the justices of the court of common pleas.  
 Chapter 24. An act to protect sidewalks in towns.  
 Chapter 29. An act for the protection of pigeon beds.  
 Chapter 30. An act establishing an annual term of the court of probate at Pawtucket, in the county of Bristol.  
 Chapter 31. An act concerning appeals to the municipal court in the county of Suffolk.  
 Chapter 32. An act concerning stockholders in banks.  
 Chapter 39. An act establishing additional terms of the court of common pleas in the county of Essex.  
 Chapter 47. An act respecting sales by executors and administrators.  
 Chapter 48. An act to regulate the weight of clam bait.  
 Chapter 49. An act to prevent prize fighting.  
 Chapter 53. An act to alter the times of holding certain terms of the court of common pleas for the county of Hampden.  
 Chapter 56. An act to establish the office of auditor of accounts.  
 Chapter 59. An act to prevent disturbances of schools and public meetings.  
 Chapter 62. An act relating to teachers' institutes.  
 Chapter 65. An act concerning the distribution, custody, and preservation of school returns, and other documents relating to schools.  
 Chapter 66. An act in relation to paupers.

- Chapter 68. An act concerning insane persons charged with criminal offences.  
 Chapter 74. An act in addition to an act concerning jails and houses of correction.  
 Chapter 81. An act relating to school libraries and school apparatus.  
 Chapter 86. An act to establish a police court in the town of Lynn.  
 Chapter 87. An act concerning intestate estates.  
 Chapter 93. An act concerning electric telegraph companies and electric telegraphing.  
 Chapter 98. An act concerning the rights of mill owners.  
 Chapter 110. An act in addition to "an act for the more equal assessment of taxes."  
 Chapter 117. An act to amend "an act relating to the duties of school committees, and the distribution of the income of the school fund."  
 Chapter 123. An act in further addition to "an act providing for the appointment of public administrators."  
 Chapter 124. An act in relation to interest on judgments.  
 Chapter 131. An act relating to railroad plans and profiles.  
 Chapter 132. An act to extend the jurisdiction of police courts in certain cases.  
 Chapter 137. An act extending the jurisdiction of justices of the peace in Suffolk county.  
 Chapter 138. An act concerning the tax on sales by auction.  
 Chapter 141. An act to allow women divorced from the bonds of matrimony to resume their maiden names.  
 Chapter 142. An act to increase the salary of the district-attorney of the western district.  
 Chapter 146. An act in relation to the concealment of wills, or testamentary papers, of deceased persons.  
 Chapter 148. An act relating to discharged convicts.  
 Chapter 149. An act concerning the taxation of income.  
 Chapter 151. An act relating to the settlement of certain pauper accounts.  
 Chapter 153. An act concerning railroad corporations.  
 Chapter 155. An act relating to the state library.  
 Chapter 158. An act for the better preservation of useful birds.  
 Chapter 159. An act authorizing railroad corporations to alter the direction of highways.  
 Chapter 161. An act concerning railroads.  
 Chapter 172. An act concerning accidents upon railroads.  
 Chapter 173. An act to abolish corporal punishment in the state prison.  
 Chapter 186. An act to establish the office of attorney-general.  
 Chapter 191. An act to amend an act relating to railroad corporations.  
 Chapter 200. An act in relation to the laying out of highways and other ways.  
 Chapter 202. An act relating to the registration of births, marriages, and deaths.  
 Chapter 205. An act concerning powers of attorney authorizing the conveyance of real estate.  
 Chapter 206. An act in relation to school districts.  
 Chapter 207. An act relative to state lunatic paupers.  
 Chapter 208. An act in relation to the pay of witnesses summoned by the general court.  
 Chapter 209. An act concerning school registers.  
 Chapter 210. An act in addition to an act to establish the city of Worcester.  
 Chapter 211. An act in relation to public health.  
 Chapter 215. An act in relation to the office of the secretary of the board of education.  
 Chapter 216. An act relating to agents and factors.  
 Chapter 218. An act concerning the militia.  
 Chapter 220. An act concerning the employment of children in manufacturing establishments.  
 Chapter 222. An act in relation to railroad crossings.  
 Chapter 231. An act concerning public amusements.

### One Thousand Eight Hundred and Fifty.

- Chapter 5. An act concerning damages for defects in highways and other ways.  
 Chapter 6, § 2. Section two only of an act for the protection of the fisheries in the vicinity of Nantucket.  
 Chapter 21. An act in relation to mortgages.  
 Chapter 27. An act concerning bonds to dissolve attachments.  
 Chapter 31. An act to amend "an act regulating the compensation of sheriffs."  
 Chapter 34. An act in addition to the several acts in relation to the competency of witnesses in certain cases.  
 Chapter 37. An act in addition to the acts relating to the state prison and the government and discipline thereof.  
 Chapter 41. An act in addition to "an act concerning the distribution, custody, and preservation, of school returns and other documents and papers relating to schools."  
 Chapter 44. An act to provide further penalties for wilfully and maliciously obstructing the passing of carriages upon railroads.  
 Chapter 45. An act in addition to an act concerning the sale of the real estate of minors.  
 Chapter 46. An act concerning the duties of the attorney-general.  
 Chapter 48. An act concerning savings banks when summoned as trustees.  
 Chapter 57. An act to extend the power of collectors of taxes.  
 Chapter 68. An act concerning the fees of grand jurors.  
 Chapter 83. An act in addition to "an act relating to the state library."  
 Chapter 88. An act concerning the board of education.  
 Chapter 90. An act to prevent persons from using fraudulent marks and stamps.  
 Chapter 91. An act relating to limited partnerships.  
 Chapter 97. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.  
 Chapter 98. An act concerning the redemption of real estate sold for taxes.  
 Chapter 100. An act relating to divorce.

- Chapter 105. An act relating to alien passengers.  
 Chapter 107. An act concerning costs in criminal prosecutions.  
 Chapter 108. An act in addition to an act in relation to the public health.  
 Chapter 111. An act in relation to dower in testate estates.  
 Chapter 112. An act additional to an act to establish the state reform school.  
 Chapter 114. An act to protect ice intended for merchandise.  
 Chapter 115. An act in relation to the qualification of school teachers.  
 Chapter 121. An act relating to bans of marriage.  
 Chapter 131. An act relating to the branding of foreign pickled fish.  
 Chapter 133. An act in addition to an act concerning coroners' inquests.  
 Chapter 141. An act concerning accounts of the guardians of Indians in this commonwealth.  
 Chapter 143. An act in relation to the compensation of committees and commissioners.  
 Chapter 164. An act in addition to acts for regulating the pilotage of vessels through the Vineyard Sound to Nantucket.  
 Chapter 165. An act to regulate the storage and sale of camphene and other like fluids.  
 Chapter 177. An act concerning the inspection of sole leather.  
 Chapter 179. An act concerning the duties and powers of school committees.  
 Chapter 182. An act in relation to the state library.  
 Chapter 185. An act concerning persons under guardianship imprisoned for non-payment of fines.  
 Chapter 186. An act relating to the powers and duties of the watch in the cities and towns of this commonwealth.  
 Chapter 194. An act in relation to the carrying of slung shot.  
 Chapter 196. An act in relation to bonds to be given to judges of probate.  
 Chapter 199. An act concerning bail in civil actions.  
 Chapter 200. An act in addition to an act concerning devises and wills by married women.  
 Chapter 204. An act relating to probate courts in the county of Plymouth.  
 Chapter 207. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.  
 Chapter 209. An act concerning the return of executions issuing from the supreme judicial court and court of common pleas.  
 Chapter 213. An act prescribing the mode of calling and warning school district meetings.  
 Chapter 230. An act to establish the compensation of the messengers, doorkeepers, and pages.  
 Chapter 232. An act for regulating the sale of intoxicating drinks.  
 Chapter 235. An act allowing fees to judges of probate.  
 Chapter 236. An act to establish the office of assistant-clerk in the courts in the county of Worcester.  
 Chapter 239. An act concerning the partition of lands owned by several persons.  
 Chapter 241. An act to facilitate the settlement of trust estates.  
 Chapter 244. An act concerning the probate court in the county of Franklin.  
 Chapter 249. An act concerning partition of real estate.  
 Chapter 258. An act to establish additional terms of the court of common pleas for the county of Berkshire.  
 Chapter 261. An act regulating the measurement of cranberries and other berries.  
 Chapter 263. An act in addition to the acts for the punishment of drunkards.  
 Chapter 275. An act in addition to an act to prevent obstructions in the streets of cities, and to regulate hackney-coaches and other vehicles.  
 Chapter 276. An act concerning the assessment of taxes.  
 Chapter 277. An act to prevent the explosion of steam-boilers.  
 Chapter 278. An act concerning proceedings for partition of real estate.  
 Chapter 284. An act concerning sales of personal property under mortgage.  
 Chapter 286. An act concerning district school-houses.  
 Chapter 287. An act establishing the times and places for holding the probate court in the county of Hampden.  
 Chapter 288. An act concerning the inspection of beef and pork.  
 Chapter 289. An act in addition to the several acts relating to the state prison.  
 Chapter 291. An act for the better preservation of order at muster-fields, and other places of public gathering.  
 Chapter 292. An act requiring returns from superintendents of alien passengers.  
 Chapter 294. An act concerning truant children and absentees from school.  
 Chapter 295. An act in addition to "an act concerning weights, measures, and balances."  
 Chapter 299. An act providing commissioners for the towns of Chelsea and North Chelsea.  
 Chapter 301. An act relative to school districts.  
 Chapter 303. An act to extend and punish the crime of larceny in certain cases.  
 Chapter 305. An act in addition to an act to establish a police court in the city of Worcester.  
 Chapter 307. An act in relation to commissioners of the public lands.  
 Chapter 308. An act to require certain corporations to make returns to assessors.  
 Chapter 310. An act to establish a police court in the town of Pittsfield.  
 Chapter 315. An act in addition to "an act in relation to the state library."  
 Chapter 319. An act concerning notifications of creditors of insolvent estates.  
 Chapter 65. Resolve concerning teachers' institutes.  
 Chapter 89. Resolve for the promulgation of the general laws and resolves.

### One Thousand Eight Hundred and Fifty-one.

- Chapter 14. An act to enable the owner of equitable estates tail to convey the same in fee simple and unite the legal estate therewith.  
 Chapter 16. An act relating to returns of votes for county commissioners.



- Chapter 24. An act relating to the election of registers of deeds and county treasurers.  
 Chapter 29. An act authorizing notaries public to administer oaths.  
 Chapter 31. An act concerning probate bonds.  
 Chapter 38. An act for the appointment of an assistant-clerk of the courts for the county of Middlesex.  
 Chapter 40. An act concerning the election of representatives in congress and electors of president and vice-president of the United States.  
 Chapter 42. An act relating to accounts for the support of state paupers.  
 Chapter 57. An act concerning mortgages of ships or vessels.  
 Chapter 58. An act to authorize sheriffs and their deputies to administer oaths to appraisers.  
 Chapter 68. An act in further addition to an act concerning weights, measures, and balances.  
 Chapter 70. An act to authorize members of city councils to hold other offices.  
 Chapter 71. An act to provide for the taking of depositions in criminal cases.  
 Chapter 82. An act relating to libels for divorce.  
 Chapter 87. An act relating to writs of error in criminal cases.  
 Chapter 88. An act to protect towns from injury by the neglect of railroad corporations.  
 Chapter 91. An act in addition to an act for the better preservation of order at muster-fields and other places of public gathering.  
 Chapter 92. An act concerning bail in criminal cases.  
 Chapter 93. An act relating to jail breach.  
 Chapter 94. An act concerning constables.  
 Chapter 96. An act concerning prosecutions for the maintenance of bastard children.  
 Chapter 100. An act to regulate the measurement of marble.  
 Chapter 102. An act relating to the annual reports from railroad corporations.  
 Chapter 112. An act to increase the Massachusetts school fund.  
 Chapter 127. An act to establish a board of bank commissioners.  
 Chapter 129. An act concerning malicious mischief.  
 Chapter 133. An act relating to joint stock companies.  
 Chapter 136. An act to facilitate the settlement of estates of deceased persons.  
 Chapter 138. An act regulating the publication of advertisements issued under the authority of probate judges and commissioners of insolvency.  
 Chapter 147. An act concerning effects of passengers transported by railroad corporations and other common carriers.  
 Chapter 151. An act concerning larceny of real property.  
 Chapter 156. An act relating to shop breaking and aggravated larceny.  
 Chapter 158. An act in relation to the clerks of courts.  
 Chapter 161. An act for the better preservation of municipal and other records.  
 Chapter 162. An act providing for the appointment of police officers.  
 Chapter 167. An act concerning vacancies in ward officers.  
 Chapter 186. An act in addition to "an act to authorize towns to take land for school-houses."  
 Chapter 189. An act in further addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.  
 Chapter 190. An act for the appointment of land agent.  
 Chapter 193. An act to prevent disturbances at funerals.  
 Chapter 204. An act exempting the members of the ancient and honorable artillery company from jury duty.  
 Chapter 206. An act to provide further remedy for creditors.  
 Chapter 268. An act to authorize judges of probate to take the proof of the execution of deeds in certain cases.  
 Chapter 211. An act concerning illegitimate children.  
 Chapter 213. An act concerning the levy of executions.  
 Chapter 214. An act concerning the location of highways.  
 Chapter 215. An act to exempt agricultural societies from taxation.  
 Chapter 216. An act providing for returns of moneys received by public officers.  
 Chapter 217. An act to provide for the inspection of belt leather.  
 Chapter 218. An act in relation to easements.  
 Chapter 227. An act to provide for an additional term of the county commissioners for the county of Essex.  
 Chapter 238. An act regulating the measurement of chestnuts and walnuts.  
 Chapter 246. An act concerning arrests for offences committed on the Lord's day.  
 Chapter 247. An act in addition to the "act concerning electric telegraph companies and electric telegraphing."  
 Chapter 252. An act relating to stockholders in corporations.  
 Chapter 253. An act concerning judges of probate.  
 Chapter 255. An act concerning defendants in actions on joint contracts.  
 Chapter 256. An act to provide for change of the names of persons.  
 Chapter 258. An act requiring returns from treasurers of institutions for savings.  
 Chapter 261. An act in addition to "an act concerning the supreme judicial court and the court of common pleas."  
 Chapter 267. An act to authorize the business of banking.  
 Chapter 268. An act concerning the police court of the city of Worcester.  
 Chapter 273. An act concerning the powers and duties of justices of the peace.  
 Chapter 287. An act concerning the powers of the police court of the city of Worcester.  
 Chapter 289. An act concerning the recovery of damages against aqueduct corporations.  
 Chapter 290. An act in relation to damages sustained by the laying out of highways.  
 Chapter 295. An act concerning intercourse with convicts in the state prison.  
 Chapter 298. An act in addition to an act concerning hawkers and peddlers.

- Chapter 302. An act to amend an act concerning the militia.  
 Chapter 303. An act in addition to an act in relation to school districts.  
 Chapter 305. An act to authorize cities and towns to establish and maintain public libraries.  
 Chapter 315. An act concerning stockholders in manufacturing corporations.  
 Chapter 317. An act relating to railroad crossings.  
 Chapter 319. An act relating to the erection and use of buildings for stables and bowling alleys.  
 Chapter 322. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.  
 Chapter 324. An act to provide for the adoption of children.  
 Chapter 325. An act concerning proceedings and practice in civil actions before justices' courts, police courts, justices of the peace, and trial justices.  
 Chapter 327. An act to secure the equal distribution of the property of insolvent corporations amongst their creditors.  
 Chapter 330. An act to increase the number of justices of the court of common pleas.  
 Chapter 336. An act to authorize the county commissioners of Middlesex county to exercise certain powers in Chelsea and North Chelsea, in Suffolk county.  
 Chapter 339. An act in addition to an act concerning banks and banking.  
 Chapter 342. An act to appoint a board of commissioners in relation to alien passengers and state paupers.  
 Chapter 343. An act to secure to mechanics and laborers their payment for labor by a lien on real estate.  
 Chapter 346. An act relating to the punishment for offences mentioned in the one hundred and forty-third chapter of the Revised Statutes.  
 Chapter 348. An act concerning the indictment of corporations.  
 Chapter 349. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.

### One Thousand Eight Hundred and Fifty-two.

- Chapter 1. An act concerning the appointment of appraisers in civil process.  
 Chapter 4. An act relating to shop breaking and aggravated larceny.  
 Chapter 9. An act in addition to an act relating to joint stock companies.  
 Chapter 10. An act concerning the custody of records.  
 Chapter 14. An act to amend the ninth and fourteenth sections of the one hundred and thirty fourth chapter of the Revised Statutes.  
 Chapter 29. An act to remove all disability to take and hold real estate by reason of alienage.  
 Chapter 33. An act concerning bills of expenses against the commonwealth.  
 Chapter 37. An act to define felony.  
 Chapter 41. An act in addition to an act to facilitate the settlement of estates of persons deceased.  
 Chapter 44. An act relating to the state lunatic hospitals.  
 Chapter 46. An act concerning police courts.  
 Chapter 51. An act giving concurrent jurisdiction to the supreme judicial court and court of common pleas, in certain cases.  
 Chapter 54. An act authorizing arbitrators, referees, and auditors to administer oaths.  
 Chapter 55. An act for the voluntary closing of corporations.  
 Chapter 56. An act in addition to an act concerning cemeteries.  
 Chapter 64. An act to prevent the wilful injury of bank bills.  
 Chapter 75. An act concerning judicial proceedings in the county of Dukes County.  
 Chapter 76. An act relating to bonds.  
 Chapter 86. An act to protect titles to real estate derived from aliens.  
 Chapter 104. An act concerning the militia.  
 Chapter 112. An act for the appointment of one additional commissioner of insolvency for the county of Worcester.  
 Chapter 113. An act in relation to the house of correction in the county of Suffolk.  
 Chapter 114. An act to establish additional terms of the court of common pleas for the county of Hampshire.  
 Chapter 115. An act concerning auctioneers.  
 Chapter 119. An act concerning the powers of school districts.  
 Chapter 123. An act concerning the public schools.  
 Chapter 125. An act to authorize reviews of judgments upon recognizances to the commonwealth.  
 Chapter 127. An act to increase the number of justices of the supreme judicial court.  
 Chapter 129. An act in addition to an act relating to the erection and use of buildings for stables and bowling alleys.  
 Chapter 132. An act concerning savings banks and institutions for savings.  
 Chapter 137. An act in addition to an act concerning mutual marine insurance companies.  
 Chapter 140. An act concerning tender in actions at law and suits in equity.  
 Chapter 142. An act to establish a state board of agriculture.  
 Chapter 143. An act to divide the commonwealth into districts for the choice of representatives in the congress of the United States.  
 Chapter 144. An act in relation to easements of light and air.  
 Chapter 154. An act concerning the admission of aliens as attorneys at law.  
 Chapter 159. An act concerning police justices.  
 Chapter 163. An act in regard to the county commissioners for Chelsea, North Chelsea, and Winthrop.  
 Chapter 169. An act concerning the duties of assessors.  
 Chapter 175. An act concerning parishes and religious societies.

- Chapter 181. An act for the better establishment of the police court of the city of Newburyport.
- Chapter 186. An act in regard to obstructing engines or carriages on railroads.
- Chapter 187. An act concerning the support of defendants committed to prison under the provisions of the forty-ninth chapter of the Revised Statutes.
- Chapter 189. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 191. An act to regulate the use of steam engines.
- Chapter 195. An act to authorize the manufacture of silk and other goods.
- Chapter 196. An act to establish an additional district for the administration of the criminal law.
- Chapter 199. An act in relation to district school-houses.
- Chapter 200. An act in addition to an act to establish the office of assistant clerk of the courts in the county of Worcester.
- Chapter 209. An act concerning returns of elections.
- Chapter 211. An act respecting bail bonds in civil actions.
- Chapter 212. An act concerning trustees.
- Chapter 213. An act relating to discharged convicts.
- Chapter 216. An act concerning teachers' institutes.
- Chapter 232. An act concerning disturbances of schools and public meetings.
- Chapter 234. An act to prevent and punish fraudulent arrests.
- Chapter 234. An act concerning the assessment of taxes.
- Chapter 236. An act in addition to an act entitled an act to authorize the business of banking.
- Chapter 238. An act concerning the powers of county commissioners.
- Chapter 240. An act concerning the attendance of children at school.
- Chapter 241. An act concerning inventories in the courts of probate.
- Chapter 242. An act concerning the state prison at Charlestown.
- Chapter 245. An act in addition to an act concerning arrests for offences committed on the Lord's day.
- Chapter 246. An act concerning agricultural societies.
- Chapter 247. An act further to guard against the explosion of steam boilers.
- Chapter 248. An act concerning the powers of guardians.
- Chapter 249. An act to establish an additional term of the probate court in the county of Plymouth.
- Chapter 254. An act in addition to the act to punish abduction.
- Chapter 256. An act in regard to appraisers of real estate taken on execution.
- Chapter 259. An act to punish the crimes of treason, rape, and arson.
- Chapter 262. An act in addition to an act to provide for the adoption of children.
- Chapter 267. An act in addition to an act to establish the office of assistant clerk of the courts in the county of Middlesex.
- Chapter 269. An act relating to the treasurer of the state lunatic hospital.
- Chapter 275. An act in relation to paupers having no settlement in this commonwealth.
- Chapter 279. An act concerning alien passengers.
- Chapter 282. An act concerning certificates of elections.
- Chapter 283. An act in addition to an act concerning truant children and absentees from school.
- Chapter 287. An act concerning the counties in which actions may be brought.
- Chapter 288. An act relating to the court of common pleas in the county of Essex.
- Chapter 289. An act relating to returns by justices of the peace and other officers.
- Chapter 291. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 292. An act relating to trust estates.
- Chapter 293. An act in addition to the several acts for the relief of insolvent debtors.
- Chapter 294. An act to facilitate the settlement of the estates of deceased persons.
- Chapter 296. An act in addition to an act in relation to the carrying of slung shot.
- Chapter 298. An act relating to the police court of Worcester.
- Chapter 299. An act in relation to the jurisdiction of justices of the peace and police courts in regard to offences against property in cemeteries.
- Chapter 302. An act to regulate the measurement of charcoal.
- Chapter 303. An act concerning railroad corporations.
- Chapter 304. An act to establish a police court in the town of Fall River.
- Chapter 307. An act in addition to an act to secure to mechanics and laborers their payment for labor by a lien on real estate.
- Chapter 312. An act relating to the proceedings, practice, and rules of evidence in actions at law.
- Chapter 314. An act to extend the jurisdiction of justices of the peace in civil actions.
- Chapter 318. An act to allow the auditor a further sum for clerk hire.
- Chapter 319. An act relating to parishes and religious societies.
- Chapter 321. An act to protect the right of suffrage.
- Chapter 17. Resolve for the compilation of a manual for arms with percussion locks.
- Chapter 27. Resolve concerning Scott's System of Infantry Tactics.

### One Thousand Eight Hundred and Fifty-three.

- Chapter 5. An act relating to railroad and highway damages in certain cases.
- Chapter 23. An act concerning decrees of alimony.
- Chapter 27. An act to prevent gambling in and about muster fields and places of public gathering.
- Chapter 31. An act concerning the adoption of children.



- Chapter 33. An act to secure more equal taxation.
- Chapter 34. An act in relation to the powers and duties of jailers and masters of houses of correction.
- Chapter 36. An act concerning the manner of voting at certain elections.
- Chapter 49. An act in addition to an act in relation to the office of secretary of the board of education.
- Chapter 57. An act for the better establishment of the police court of Salem.
- Chapter 69. An act in relation to sheriffs' bonds.
- Chapter 74. An act altering the times and places of holding certain probate courts in the county of Barnstable.
- Chapter 78. An act in addition to an act for the more equal assessment of taxes.
- Chapter 90. An act for the more speedy trial of actions by law.
- Chapter 93. An act concerning lunatics furiously mad.
- Chapter 116. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 119. An act to establish the pay of watchmen of the state house.
- Chapter 122. An act to provide for the taxation of certain real estate belonging to the commonwealth.
- Chapter 127. An act in relation to agricultural societies.
- Chapter 149. An act in addition to an act to authorize towns to take lands for school-houses.
- Chapter 155. An act to prevent the transaction of business under unauthorized names.
- Chapter 160. An act to amend the laws for the regulation of the inspection of pickled fish.
- Chapter 174. An act concerning the militia.
- Chapter 179. An act concerning the police court of the city of Boston, and the justices' court for the county of Suffolk.
- Chapter 184. An act relating to receivers and concealers of stolen and embezzled property.
- Chapter 188. An act concerning armories for the use of the volunteer militia.
- Chapter 193. An act establishing state scholarships.
- Chapter 194. An act concerning implements of burglary.
- Chapter 196. An act to extend the jurisdiction of police courts in cases of assault and battery.
- Chapter 253. An act concerning illegitimate children whose parents intermarry.
- Chapter 256. An act concerning the rights of pew owners.
- Chapter 257. An act concerning partition of real estate.
- Chapter 259. An act concerning insane persons confined in houses of correction.
- Chapter 269. An act relating to the levy of justices' executions.
- Chapter 275. An act establishing the salaries of the first and second clerks in the office of the secretary of the commonwealth.
- Chapter 281. An act relating to returns of justices of the peace and other officers.
- Chapter 284. An act relating to the salaries of certain officers of the state prison.
- Chapter 295. An act concerning the powers of commissioners of Middlesex county in the towns of Chelsea, North Chelsea, and Winthrop.
- Chapter 305. An act to regulate the measurement of charcoal.
- Chapter 310. An act concerning county debts.
- Chapter 312. An act to regulate agricultural, horticultural, and ornamental tree associations.
- Chapter 315. An act in relation to the grades of certain streets and ways.
- Chapter 316. An act to define the commencement of suits in equity in certain cases.
- Chapter 318. An act concerning the state lunatic hospital at Taunton.
- Chapter 319. An act for the equalization of taxes.
- Chapter 325. An act for the correction of the county maps.
- Chapter 335. An act in addition to an act relating to banns of marriage.
- Chapter 337. An act relating to artillery companies.
- Chapter 347. An act in addition to an act entitled an act to authorize towns to take lands for school-houses.
- Chapter 351. An act in addition to the several acts relating to county commissioners, and also in relation to railroads.
- Chapter 352. An act concerning the state pauper establishments within this commonwealth.
- Chapter 360. An act concerning the transit of alien passengers.
- Chapter 366. An act relating to the commutation of bonds taken by superintendents of alien passengers.
- Chapter 369. An act relating to costs in civil actions.
- Chapter 371. An act giving equitable remedies in suits at law.
- Chapter 378. An act to facilitate the detection and to prevent the circulation of counterfeit bank bills.
- Chapter 380. An act establishing the salaries of the judges of probate for the counties of Worcester, Essex, Norfolk, and Plymouth.
- Chapter 388. An act in relation to pauper convicts.
- Chapter 389. An act relative to trust funds of parishes and religious societies.
- Chapter 392. An act to restrain the issue or circulation of bank bills for any fractional part of a dollar.
- Chapter 393. An act relating to the filing of affidavits of notice of sale of real estate.
- Chapter 394. An act to prevent the adulteration of drugs and medicines.
- Chapter 401. An act concerning bank directors.
- Chapter 402. An act concerning the adoption of children.
- Chapter 405. An act defining the liability of innkeepers for losses of their guests.
- Chapter 407. An act concerning probate courts in the county of Essex.
- Chapter 409. An act for the sale of the public lands in Maine.
- Chapter 410. An act concerning the partition of real estate.
- Chapter 412. An act to punish the offence of obtaining money by threats.
- Chapter 413. An act to change the jurisdiction of cases within the county of Suffolk, under the acts for the relief of poor debtors and for the approval of bail.

- Chapter 414. An act concerning the liability of railroad corporations for loss of life in certain cases.  
 Chapter 418. An act to prevent carelessness and neglect of common carriers of persons.  
 Chapter 419. An act in further addition to an act providing for the appointment of public administrators.

### One Thousand Eight Hundred and Fifty-four.

- Chapter 2. An act authorizing the supreme judicial court to restrain railroad corporations by injunction from entering upon and using land in certain cases.  
 Chapter 7. An act concerning loans by banks to the commonwealth.  
 Chapter 11. An act concerning the militia.  
 Chapter 12. An act relating to the obtaining of property by false pretences.  
 Chapter 17. An act relating to commissioners to take depositions and acknowledgments in other states.  
 Chapter 23. An act relating to the transportation of baggage on railroads.  
 Chapter 24. An act concerning the adoption of children, and the change of name of persons.  
 Chapter 34. An act to establish a police court in the town of Haverhill.  
 Chapter 39. An act concerning the election of city, town, and county officers.  
 Chapter 45. An act relating to the state reform school and the state board of agriculture.  
 Chapter 59. An act in addition to an act concerning the manner of voting at certain elections.  
 Chapter 60. An act to establish a police court in the town of Milford.  
 Chapter 70. An act relating to the election of representatives in the congress of the United States.  
 Chapter 74. An act in relation to the division of water-rights.  
 Chapter 77. An act concerning county commissioners.  
 Chapter 81. An act to establish the salary of the clerk in the office of the adjutant and quartermaster-general of the commonwealth.  
 Chapter 87. An act in addition to an act in relation to public health.  
 Chapter 88. An act concerning truants in the city of Boston.  
 Chapter 92. An act relating to notices of meetings of commissioners upon the insolvent estates of deceased persons.  
 Chapter 93. An act in relation to delivering intoxicating liquors to persons in custody.  
 Chapter 95. An act in addition to an act entitled "an act in addition to an act to provide for the confinement of idiots and insane persons."  
 Chapter 97. An act in addition to "an act relating to the state library."  
 Chapter 129. An act in addition to an act to establish the police court in the town of Milford.  
 Chapter 131. An act establishing the salaries of certain public officers.  
 Chapter 189. An act in addition to an act concerning the state pauper establishments within this commonwealth.  
 Chapter 206. An act relating to contracts for public works.  
 Chapter 215. An act concerning the salary of the assistant-clerk of the courts of the county of Worcester.  
 Chapter 219. An act in addition to an act concerning the transit of alien passengers.  
 Chapter 238. An act in addition to an act concerning county debts.  
 Chapter 258. An act relating to religious societies.  
 Chapter 262. An act in relation to the hospital on Rainsford Island for state paupers.  
 Chapter 270. An act establishing the salaries of the warden, deputy-warden, chaplain, and inspectors of the state prison.  
 Chapter 277. An act to establish a police court in the town of Adams.  
 Chapter 286. An act to authorize railroad companies to issue bonds.  
 Chapter 300. An act providing for the increase of the Massachusetts school fund, and for the disposition of its income.  
 Chapter 302. An act in relation to visiting at the state prison.  
 Chapter 307. An act concerning the publication of the condition of banks.  
 Chapter 308. An act establishing the salary of the governor of the commonwealth.  
 Chapter 309. An act concerning the returns of banks, made on the requisition of the governor.  
 Chapter 314. An act relative to superintendents of schools.  
 Chapter 318. An act changing the place for holding certain terms of the probate court in the county of Worcester.  
 Chapter 322. An act relating to the venue of transitory actions.  
 Chapter 326. An act concerning fees of witnesses in cases of contested elections of members of the house of representatives.  
 Chapter 327. An act relating to mill and reservoir dams.  
 Chapter 328. An act to authorize justices of the peace to impose imprisonment instead of fine in certain cases.  
 Chapter 329. An act in addition to the several acts for the relief of insolvent debtors, and for the more equal distribution of their effects.  
 Chapter 335. An act to establish a police court within the city of Cambridge.  
 Chapter 339. An act for the better security of property in logs, masts, spars, and other timber.  
 Chapter 341. An act to establish the compensation of the messengers and door-keepers of the senate and house of representatives and assistant-messenger to the governor and council.  
 Chapter 346. An act relative to the police court in Worcester.  
 Chapter 354. An act in addition to an act relating to the annual reports of railroad corporations.  
 Chapter 358. An act to protect the property of the Humane Society of Massachusetts.  
 Chapter 361. An act to regulate the inspection and measurement of bark.  
 Chapter 367. An act in relation to the militia.  
 Chapter 372. An act establishing the salaries of judges and registers of probate.  
 Chapter 373. An act concerning the salary of the adjutant-general.  
 Chapter 377. An act relating to sales under powers in mortgage deeds.

- Chapter 378. An act to prevent the obstruction of streets by railroads.  
 Chapter 380. An act to prevent extortion by witnesses.  
 Chapter 389. An act concerning witness fees.  
 Chapter 400. An act in further addition to the act concerning the manufacture and sale of spirituous and intoxicating liquors.  
 Chapter 401. An act in relation to county commissioners.  
 Chapter 406. An act relating to the descent and distribution of the estate of intestates.  
 Chapter 416. An act in relation to female convicts.  
 Chapter 419. An act in relation to prosecutions for fines inuring to the use of cities.  
 Chapter 423. An act in addition to the acts relative to the returns to be made by railroad corporations.  
 Chapter 424. An act to prevent incendiarism.  
 Chapter 428. An act to make further provisions for widows in certain cases.  
 Chapter 429. An act to authorize cities and towns to appropriate money for certain purposes.  
 Chapter 437. An act concerning lunatic state paupers, and admission to the state pauper establishments.  
 Chapter 438. An act in addition to an act relating to joint stock companies.  
 Chapter 439. An act in addition to the acts for the relief of poor debtors.  
 Chapter 440. An act relating to actions at law.  
 Chapter 450. An act concerning the possession and use of billiards, bowls, and other like implements, for other purposes than gaming.  
 Chapter 454. An act to authorize the business of loan and fund associations.  
 Chapter 32. Resolve authorizing the adjutant-general to enlarge the "manual of arms."

### One Thousand Eight Hundred and Fifty-five.

- Chapter 3. An act in addition to an act concerning county commissioners.  
 Chapter 4. An act to amend the two hundred and first section of the twenty-eighth chapter of the Revised Statutes.  
 Chapter 8. An act to amend the fifteenth chapter of the Revised Statutes, as to the election of selectmen.  
 Chapter 9. An act to amend the sixty-first section of the thirty-ninth chapter of the Revised Statutes and providing further remedies for persons whose lands are taken by railroad corporations.  
 Chapter 10. An act in relation to laying out town ways, and land taken for school-houses.  
 Chapter 12. An act to amend the three hundred and twenty-second chapter of the statutes of eighteen hundred and fifty-four, "in relation to transitory actions."  
 Chapter 15. An act relative to the numbering of persons between the ages of five and fifteen years.  
 Chapter 23. An act to amend the second section of the two hundred and twenty-third chapter of the acts of eighteen hundred and forty-six, "concerning the duties of school committees."  
 Chapter 26. An act to establish a police court in the town of Chelsea.  
 Chapter 27. An act relating to the jurisdiction of the supreme judicial court in cases of divorce.  
 Chapter 28. An act restricting the several courts established by the laws of this commonwealth from exercising jurisdiction in cases of naturalization.  
 Chapter 43. An act to authorize cities and towns to establish sidewalks.  
 Chapter 45. An act to aid police officers and watchmen in the discharge of their duties.  
 Chapter 53. An act concerning the punishment of drunkenness.  
 Chapter 56. An act in relation to the trial of libels for divorce.  
 Chapter 64. An act in addition to an act to prevent incendiarism.  
 Chapter 65. An act to amend the first section of the eighty-second chapter of the acts of eighteen hundred and fifty-one respecting libels for divorce.  
 Chapter 66. An act to amend the fifth section of the one hundred and twenty-fourth chapter of the acts of eighteen hundred and forty-one relative to the dissolution of attachments.  
 Chapter 68. An act in addition to an act relating to joint stock companies.  
 Chapter 69. An act to punish and prevent the crime of night-walking.  
 Chapter 79. An act to establish a registry of deeds in the northern district of Middlesex.  
 Chapter 83. An act to establish a police court in the town of Williamstown.  
 Chapter 92. An act concerning the election of county treasurers and registers of deeds.  
 Chapter 93. An act in relation to school reports and returns.  
 Chapter 95. An act to compel the erection of bounds at the termination and angles of roads.  
 Chapter 101. An act to amend an act entitled "an act concerning the publication of the condition of banks."  
 Chapter 104. An act to authorize the making of roads and drains in certain cases  
 Chapter 111. An act relating to filing executors' bonds.  
 Chapter 116. An act further to prevent and punish fraudulent arrests.  
 Chapter 118. An act respecting watchmen.  
 Chapter 120. An act relating to the fees of jurors and witnesses.  
 Chapter 121. An act to regulate the business of pawn-brokers.  
 Chapter 122. An act to make pews personal property.  
 Chapter 124. An act to establish a board of insurance commissioners.  
 Chapter 126. An act concerning the payment of teachers' wages.  
 Chapter 128. An act to authorize towns to establish fire departments.  
 Chapter 132. An act to perpetuate evidence of the appointment of executors and administrators.  
 Chapter 135. An act to punish certain frauds and cheats.  
 Chapter 137. An act in relation to libels for divorce.  
 Chapter 140. An act relating to the organization of corporations.  
 Chapter 146. An act relating to gas light companies.



- Chapter 151. An act relative to state paupers.
- Chapter 152. An act concerning the duties and rights of jurors.
- Chapter 153. An act to establish a police court in the city of Roxbury.
- Chapter 157. An act relating to the limitation of actions.
- Chapter 161. An act relating to volunteer fire engine companies.
- Chapter 163. An act in furtherance of the discipline of academics.
- Chapter 168. An act for the prevention of counterfeiting.
- Chapter 172. An act in addition to the acts relating to state almshouses and the support of paupers.
- Chapter 177. An act concerning sales of real estate encumbered by mortgage or otherwise.
- Chapter 180. An act to prevent delays and expense in criminal proceedings.
- Chapter 185. An act relative to new trials in the supreme judicial court.
- Chapter 188. An act regulating the sale of anthracite, bituminous or mineral coal.
- Chapter 192. An act relating to the court of common pleas when held in and for the county of Bristol.
- Chapter 194. An act relating to jurisdiction and proceedings in equity.
- Chapter 197. An act for the better preservation of useful birds.
- Chapter 213. An act to prevent the sale or disposition of collateral security.
- Chapter 214. An act relating to the time of holding courts in the county of Worcester.
- Chapter 215. An act concerning the manufacture and sale of spirituous and intoxicating liquors.
- Chapter 222. An act relating to ordinances and by-laws of cities and towns.
- Chapter 223. An act in relation to seals of corporations.
- Chapter 224. An act establishing the pay of assessors and selectmen.
- Chapter 226. An act in relation to proceedings in insolvency.
- Chapter 231. An act concerning liens on ships and vessels.
- Chapter 232. An act to regulate the sale of wheat, corn, and other grain, and meal.
- Chapter 233. An act authorizing the sale of real estate held by married women, who are insane, in certain cases.
- Chapter 236. An act concerning loan fund associations.
- Chapter 239. An act concerning offences against public health.
- Chapter 244. An act concerning the duties of school committees in signing school returns.
- Chapter 245. An act in addition to an act to protect the Indian lands from trespassers and intruders.
- Chapter 247. An act concerning the assessment of damages for mortgaged land taken for railroads.
- Chapter 249. An act concerning arrest in cases of tort.
- Chapter 256. An act in amendment of "an act concerning public schools," passed March twenty-fifth, eighteen hundred and forty-five.
- Chapter 257. An act concerning burials and burying-grounds.
- Chapter 265. An act concerning bail in criminal cases.
- Chapter 270. An act in addition to "an act to establish a police court in the city of Lawrence."
- Chapter 274. An act empowering the inhabitants of villages to establish watch districts within the same.
- Chapter 275. An act to establish an additional district for the administration of the criminal law.
- Chapter 276. An act in relation to persons committed to prison on warrants of distress.
- Chapter 280. An act requiring guardians to render their accounts as provided for in the fifth section of the seventy-ninth chapter of the Revised Statutes, as often as once in three years.
- Chapter 283. An act concerning suits against executors and administrators.
- Chapter 287. An act relating to by-laws of cities and towns.
- Chapter 290. An act concerning manufacturing corporations.
- Chapter 294. An act in relation to savings banks.
- Chapter 302. An act concerning trustees of charitable funds given or bequeathed to cities and towns.
- Chapter 304. An act to protect the property of married women.
- Chapter 307. An act in addition to "an act concerning executors and administrators, guardians and trustees."
- Chapter 309. An act in addition to "an act concerning the attendance of children at school."
- Chapter 311. An act regulating the fees of registers of deeds and other recording officers.
- Chapter 312. An act to establish a police court in the town of Lee.
- Chapter 314. An act in relation to conveyances and devises of estates for religious purposes.
- Chapter 318. An act to amend an act to authorize towns to take land for school-houses.
- Chapter 320. An act to change the place for holding certain probate courts in the county of Plymouth.
- Chapter 321. An act for the better establishment of the police court of Newburyport.
- Chapter 323. An act concerning the study of anatomy.
- Chapter 328. An act to establish the salary of the attorney of the commonwealth for the county of Suffolk.
- Chapter 329. An act in further addition to the several acts concerning husband and wife.
- Chapter 334. An act relating to the salaries of certain officers in the state prison.
- Chapter 340. An act in relation to the accounts of committees of the legislature.
- Chapter 350. An act to prevent obstructions to highways and town ways by railroads.
- Chapter 355. An act to prohibit the use of poisonous substances in the manufacture of spirituous and intoxicating liquors.
- Chapter 361. An act relating to savings banks and institutions for savings.
- Chapter 363. An act in addition to various acts in relation to insolvent debtors, and for the more equal distribution of their effects.
- Chapter 364. An act relating to summoning in defendants in real and mixed actions.
- Chapter 366. An act relating to the registration of births, marriages, and deaths, in the state almshouse.
- Chapter 369. An act in addition to an act in relation to public health.
- Chapter 374. An act relative to the specific performance of written contracts.
- Chapter 379. An act in addition to an act concerning the employment of children in manufacturing establishments.

- Chapter 391. An act in relation to offensive trades.  
 Chapter 395. An act in relation to trials for libels.  
 Chapter 397. An act to authorize certain forms under "an act concerning the manufacture and sale of spirituous and intoxicating liquors."  
 Chapter 399. An act concerning the places of holding certain terms of the supreme judicial court and the court of common pleas in the county of Essex.  
 Chapter 405. An act for the suppression of certain common nuisances.  
 Chapter 410. An act to secure the daily reading of the Bible in the public schools of the commonwealth.  
 Chapter 413. An act in relation to the houses of correction in the county of Essex.  
 Chapter 414. An act to secure general vaccination.  
 Chapter 416. An act in relation to voting lists.  
 Chapter 418. An act in addition to an act relative to "proprietors of lands, wharves, general fields and other real estate lying in common."  
 Chapter 421. An act to establish a board of pilot commissioners for this commonwealth.  
 Chapter 422. An act supplementary to an act entitled "an act to regulate the sale of wheat, corn, and other grains and meals."  
 Chapter 426. An act relating to divorce.  
 Chapter 427. An act relative to the justices of the court of common pleas.  
 Chapter 428. An act for the better establishment of the police court in the city of Fall River.  
 Chapter 429. An act to regulate billiard rooms and bowling alleys.  
 Chapter 431. An act to secure to mechanics and others payment for labor and materials by them expended.  
 Chapter 432. An act in addition to the several acts concerning executors, administrators, guardians and trustees.  
 Chapter 434. An act regulating the passing of vessels through railroad drawbridges.  
 Chapter 438. An act in relation to the action of dower.  
 Chapter 439. An act to secure a decennial census.  
 Chapter 440. An act in addition to an act entitled "an act establishing the salaries of certain public officers."  
 Chapter 442. An act to establish a state reform school for girls.  
 Chapter 445. An act relative to state paupers.  
 Chapter 446. An act to prevent and punish incendiarism.  
 Chapter 449. An act to establish the superior court of the county of Suffolk.  
 Chapter 451. An act concerning filling vacancies in the office of prudential committee.  
 Chapter 452. An act to secure the safety of passengers at railroad crossings.  
 Chapter 453. An act relating to the attachment of real estate conveyed in fraud of creditors.  
 Chapter 457. An act for the better protection of orchards, nurseries, gardens, &c.  
 Chapter 463. An act to establish a police court in the town of Chicopee.  
 Chapter 464. An act relative to lunatics or insane persons.  
 Chapter 466. An act in addition to "an act to require certain corporations to make returns to assessors."  
 Chapter 469. An act for abating nuisances.  
 Chapter 470. An act concerning the purchase of spirituous and intoxicating liquors for town agents.  
 Chapter 477. An act in addition to an act to establish a police court in the town of Chelsea.  
 Chapter 478. An act in further addition to "an act relating to joint stock companies."  
 Chapter 486. An act in addition to "an act to appoint a board of commissioners in relation to alien passengers and state paupers."  
 Chapter 487. An act for the punishment of embezzlement by county, city, and town officers.  
 Chapter 489. An act to protect the rights and liberties of the people of the commonwealth of Massachusetts.

### One Thousand Eight Hundred and Fifty-six.

- Chapter 1. An act establishing a probate court in North Andover, in the county of Essex.  
 Chapter 4. An act in addition to an act to establish a police court in the town of Pittsfield.  
 Chapter 10. An act to establish the salaries of the justices of the supreme judicial court.  
 Chapter 13. An act in addition to an act to establish a police court in the town of Chicopee.  
 Chapter 18. An act requiring a new promise of an insolvent debtor, after his discharge, to be in writing.  
 Chapter 24. An act respecting the custody of minor children whose parents are living separate.  
 Chapter 34. An act amending the forty-ninth chapter of the Revised Statutes respecting the manner of sureties surrendering their principals in bail bonds.  
 Chapter 37. An act to establish the office of assistant clerk of the supreme judicial court in the county of Suffolk.  
 Chapter 38. An act giving further remedies in equity.  
 Chapter 39. An act relating to the unlawful use of private property.  
 Chapter 40. An act in addition to an act in relation to female convicts.  
 Chapter 47. An act respecting naturalization.  
 Chapter 53. An act to authorize county commissioners to administer oaths and affirmations.  
 Chapter 60. An act to change the name of the state reform school for girls.  
 Chapter 63. An act in addition to "an act to establish a state reform school for girls."  
 Chapter 67. An act to establish the office of assistant attorney for the county of Suffolk.  
 Chapter 68. An act in relation to lands mortgaged to the commonwealth.  
 Chapter 70. An act relating to the venue of certain actions.  
 Chapter 71. An act in further addition to an act in relation to law library associations.  
 Chapter 95. An act in relation to the Boston clearing house.  
 Chapter 96. An act relating to the return of writs in civil actions before justices of the peace and police courts.  
 Chapter 99. An act concerning husband and wife.

- Chapter 102. An act in addition to "an act suppressing horse racing," approved on the eighth day of April, in the year eighteen hundred and forty-six.
- Chapter 108. An act relating to lunatics and idiots.
- Chapter 113. An act concerning the observance of certain days.
- Chapter 116. An act concerning the registry of deeds in the town of Littleton.
- Chapter 118. An act to provide for the election of a register of deeds for the county of Suffolk.
- Chapter 121. An act to prevent the evasion of the laws for the suppression of lotteries.
- Chapter 122. An act establishing a probate court in North Bridgewater, in the county of Plymouth, and changing the time of holding the probate court at Middleborough, in said county.
- Chapter 123. An act to punish frauds in officers of corporations, and other persons.
- Chapter 125. An act relating to lists of jurors.
- Chapter 130. An act in relation to appeals in criminal cases.
- Chapter 135. An act in addition to an act entitled "an act for the removal of insane convicts from the state prison."
- Chapter 136. An act in relation to ordering a stay or supersedeas of executions.
- Chapter 142. An act relative to the house of correction and jail in the county of Plymouth.
- Chapter 150. An act relating to the support of certain inmates of the state reform school for boys and the state industrial school for girls.
- Chapter 151. An act in relation to the salary of the physician and surgeon of the state prison.
- Chapter 152. An act concerning the jurisdiction of justices of the peace.
- Chapter 157. An act concerning the election of civil officers.
- Chapter 158. An act in addition to an act to establish the city of Springfield.
- Chapter 162. An act in relation to probate courts in the county of Worcester.
- Chapter 164. An act in relation to the rights of children under guardianship to attend the public schools.
- Chapter 165. An act in addition to the acts relating to the annual reports of railroad corporations.
- Chapter 169. An act authorizing the release of dower in behalf of married women who are insane.
- Chapter 170. An act in relation to the court of common pleas in and for the county of Middlesex.
- Chapter 171. An act concerning state paupers.
- Chapter 172. An act concerning the police court of the city of Worcester.
- Chapter 173. An act concerning the election of clerks of courts and other county officers.
- Chapter 174. An act in addition to an act concerning mortgages of personal property.
- Chapter 177. An act concerning the salary of the register of probate for the county of Dukes County.
- Chapter 181. An act in addition to an act concerning agricultural societies which receive the bounty of the state.
- Chapter 184. An act in addition to an act in relation to law library associations.
- Chapter 185. An act in relation to sheriffs and their deputies.
- Chapter 186. An act concerning idle and disorderly persons.
- Chapter 202. An act to authorize the appointment of auditors, and defining their powers.
- Chapter 208. An act in relation to certain proceedings in probate courts.
- Chapter 209. An act relating to the record of attachments.
- Chapter 214. Section two only of an act for the protection of the fisheries on the south side of the town of Barnstable and district of Marshpee.
- Chapter 216. An act concerning general fields.
- Chapter 222. An act to punish fraud by the sale of adulterated milk.
- Chapter 234. An act concerning the election of representatives in congress.
- Chapter 232. An act in addition to an act relative to superintendents of schools.
- Chapter 239. An act in relation to the assessment and collection of taxes.
- Chapter 245. An act for the better protection of the public at railroad crossings.
- Chapter 246. An act to secure uniformity of fees in the courts of this commonwealth.
- Chapter 247. An act establishing boards of trustees for the state lunatic hospitals and in addition to the acts concerning lunatic hospitals.
- Chapter 249. An act in relation to the salary of the district-attorney of the middle district.
- Chapter 252. An act concerning insurance companies.
- Chapter 253. An act to authorize the governor to appoint commissioners of deeds in foreign countries.
- Chapter 254. An act relating to the registry of deeds for the northern district of Middlesex.
- Chapter 255. An act in relation to the returns of votes.
- Chapter 256. An act concerning the planting of shade trees.
- Chapter 257. An act in relation to insolvent debtors.
- Chapter 262. An act in addition to an act to establish a police court in the town of Milford.
- Chapter 264. An act limiting the time for the organization of corporations.
- Chapter 265. An act in addition to an act concerning probate courts in the county of Dukes County.
- Chapter 266. An act changing the time of holding a term of the probate court in the county of Bristol.
- Chapter 268. An act in addition to "an act concerning judges of probate."
- Chapter 271. An act concerning the sale of onions in this commonwealth.
- Chapter 277. An act to fix the salary of the district-attorney for the south-eastern district.
- Chapter 278. An act to prevent waste.
- Chapter 284. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 292. An act concerning the indexing of deeds.
- Chapter 294. An act relating to the board of commissioners on alien passengers and state paupers.
- Chapter 298. An act to establish additional terms of the court of common pleas in the county of Worcester.
- Chapter 307. An act to divide the commonwealth into districts for the choice of councillors.
- Chapter 308. An act concerning the superior court of the county of Suffolk, and the court of common pleas.



One Thousand Eight Hundred and Fifty-seven.

- Chapter 1. An act concerning clerks of county commissioners.
- Chapter 13. An act concerning the police court of the city of Worcester.
- Chapter 15. An act to amend the twenty-first section of the eighty-third chapter of the Revised Statutes, relative to the bonds of registers of probate.
- Chapter 16. An act concerning probate courts in the county of Berkshire.
- Chapter 24. An act to amend the four hundred and seventy-eighth chapter of the acts of eighteen hundred and fifty-five.
- Chapter 26. An act for the better establishment of the police court of the city of Springfield.
- Chapter 30. An act to amend chapter fifty-five of the Revised Statutes relating to fisheries.
- Chapter 34. An act in addition to an act relating to banns of marriage.
- Chapter 36. An act to change the place of holding the September meeting of the county commissioners of Middlesex.
- Chapter 38. An act to amend "an act concerning the indexing of deeds."
- Chapter 40. An act in relation to public reports and documents.
- Chapter 48. An act concerning the trustees of African Methodist Episcopal churches.
- Chapter 50. An act concerning loan fund associations.
- Chapter 51. An act concerning police courts.
- Chapter 55. An act in addition to an act relating to leasehold estates.
- Chapter 56. An act to amend chapter two hundred and fifteen of the laws of one thousand eight hundred and fifty-six, entitled "an act relating to the organization of corporations for educational, charitable, and religious purposes."
- Chapter 60. An act for taking the census of the legal voters and inhabitants of this commonwealth.
- Chapter 64. An act in relation to the removal of snow and ice from the sidewalks of cities.
- Chapter 65. An act concerning the state house.
- Chapter 66. An act in relation to the jurisdiction of the supreme judicial court.
- Chapter 71. An act in relation to the accounts of executors, administrators, and guardians, and the examination of persons suspected of embezzlement in certain cases.
- Chapter 78. An act to establish the terms of the court of probate in the county of Middlesex.
- Chapter 80. An act concerning the offence of obtaining property under false pretences.
- Chapter 82. An act relating to the pasturing of cattle or other animals in streets or ways.
- Chapter 84. An act authorizing transcripts of town or city records.
- Chapter 88. An act in relation to the form of bond to be given by executors who are residuary legatees.
- Chapter 97. An act for the better preservation of municipal records.
- Chapter 105. An act in addition to an act entitled "an act in relation to mortgages."
- Chapter 107. An act regulating the payment of fines and forfeitures in criminal cases.
- Chapter 111. An act to establish the salary of the assistant-clerk of the superior court of the county of Suffolk.
- Chapter 113. An act to establish terms of the probate court for the county of Barnstable.
- Chapter 115. An act to authorize cities and towns to set out shade trees.
- Chapter 122. An act concerning the state prison at Charlestown.
- Chapter 125. An act concerning the criminal courts in the county of Worcester.
- Chapter 132. An act to define the rights of the children of non-resident parents to attend public schools.
- Chapter 133. An act relating to land taken for public ways.
- Chapter 139. An act to protect mariners and ship-owners from imposition.
- Chapter 141. An act to amend and consolidate the several acts concerning imprisonment for debt and the punishment of fraudulent debtors.
- Chapter 149. An act concerning petitions for partition.
- Chapter 153. An act to authorize the overseers of the poor to remove destitute and neglected children to almshouses.
- Chapter 156. An act to prevent the fraudulent sale of personal property leased or hired.
- Chapter 157. An act concerning the jurisdiction of police courts.
- Chapter 159. An act establishing terms of the probate court for the county of Bristol.
- Chapter 160. An act concerning wilful and malicious injuries to dams and reservoirs.
- Chapter 163. An act in addition to an act relating to mill and reservoir dams.
- Chapter 168. An act concerning railroad returns.
- Chapter 171. An act concerning election returns.
- Chapter 178. An act relating to trustees under railroad mortgages.
- Chapter 185. An act in addition to "an act concerning the election of civil officers."
- Chapter 189. An act relating to common schools.
- Chapter 191. An act concerning the appointment of members of the legislature to certain offices.
- Chapter 194. An act in relation to gaming, billiard tables, and bowling alleys.
- Chapter 196. An act relating to the salaries of certain officers of the state prison.
- Chapter 198. An act concerning the location of horse railroads.
- Chapter 200. An act relating to the trustee process.
- Chapter 206. An act concerning the branches to be taught in the public schools, and for other purposes.
- Chapter 209. An act relating to persons committed to the state lunatic hospitals, not having a known settlement in this commonwealth.
- Chapter 213. An act in relation to crossings.
- Chapter 214. An act in addition to the several acts giving jurisdiction in equity to the supreme judicial court.
- Chapter 215. An act concerning the donation of Henry B. Rogers to the state industrial school for girls at Lancaster.

- Chapter 221. An act exempting certain classes of vessels from compulsory pilotage.  
 Chapter 222. An act concerning school-houses and other public buildings.  
 Chapter 224. An act authorizing passports.  
 Chapter 225. An act concerning drains and sewers in the city of Boston.  
 Chapter 228. An act relating to divorce.  
 Chapter 229. An act to perpetuate the evidence of title to real property obtained under mortgage deeds containing a power of sale.  
 Chapter 231. An act in relation to worthless bank bills.  
 Chapter 232. An act relating to auctioneers.  
 Chapter 233. An act concerning the crime of embezzlement.  
 Chapter 235. An act to exempt certain articles from attachment and execution.  
 Chapter 237. An act in relation to common carriers.  
 Chapter 240. An act concerning the annual returns of railroads.  
 Chapter 243. An act to regulate the use of proxies in banks.  
 Chapter 247. An act to amend the sixty-sixth chapter of the acts of eighteen hundred and fifty-five relative to the dissolution of attachments.  
 Chapter 248. An act relating to the inspectors of the hospital on Rainsford Island.  
 Chapter 249. An act in addition to an act to protect the property of married women.  
 Chapter 255. An act in relation to the trial of libels for divorce.  
 Chapter 258. An act relating to imprisonment on execution.  
 Chapter 259. An act in addition to an act concerning insurance companies.  
 Chapter 260. An act to provide for the approval of bills of purchases for the state prison.  
 Chapter 261. An act relating to applications to the general court.  
 Chapter 264. An act concerning the police court of the town of Milford.  
 Chapter 265. An act concerning the police court in Lowell.  
 Chapter 266. An act concerning vacancies in school committees.  
 Chapter 267. An act respecting trials by the court.  
 Chapter 269. An act in addition to an act establishing the salaries of certain public officers.  
 Chapter 270. An act providing for the election of school committees.  
 Chapter 272. An act establishing the salary of the clerk of the courts for the county of Hampden.  
 Chapter 274. An act establishing the salaries of the judges and registers of courts of insolvency.  
 Chapter 276. An act in addition to an act relating to joint stock companies and for other purposes.  
 Chapter 277. An act in addition to an act concerning the indexing of deeds.  
 Chapter 280. An act relating to the sale of deadly poisons.  
 Chapter 284. An act concerning the discipline of the state prison.  
 Chapter 287. An act in relation to the powers of county commissioners in laying out ways across railroads.  
 Chapter 289. An act in relation to fugitives from justice.  
 Chapter 290. An act to secure returns from keepers of jails and overseers of houses of correction.  
 Chapter 291. An act in addition to "an act to regulate the use of railroads."  
 Chapter 292. An act concerning the draining of low lands.  
 Chapter 293. An act concerning the purchase and sale of spirituous liquors by city and town agents.  
 Chapter 294. An act in addition to an act to establish a police court in the town of Adams.  
 Chapter 295. An act in relation to the returns of votes.  
 Chapter 298. An act to exempt from levy on execution the homestead of a householder.  
 Chapter 300. An act concerning cases arising under the forty-ninth chapter of the Revised Statutes concerning the maintenance of bastard children.  
 Chapter 301. An act in relation to the taxation of horses.  
 Chapter 305. An act to enable parties in civil actions and proceedings to be witnesses therein.  
 Chapter 306. An act for the equalization of taxes.  
 Chapter 307. An act relating to elections.  
 Chapter 308. An act to apportion representatives to the several counties.  
 Chapter 309. An act to divide the commonwealth into forty districts for the choice of senators.  
 Chapter 310. An act to arrange the senatorial districts into eight districts for the choice of the council.  
 Chapter 311. An act concerning elections of representatives in the general court.  
 Chapter 19. Resolve for the payment of certain general expenses not otherwise provided for.  
 Chapter 49. Resolves in aid of the state library.

### One Thousand Eight Hundred and Fifty-eight.

- Chapter 1. An act to establish a better system for the administration of the finances of this commonwealth.  
 Chapter 2. An act to regulate the compensation of members, officers, and attendants of the legislature.  
 Chapter 3. An act to perpetuate the evidence of foreclosure of mortgages of personal property.  
 Chapter 5. An act concerning the branches to be taught in the public schools.  
 Chapter 6. An act in addition to an act concerning elections of representatives to the general court.  
 Chapter 7. An act relating to the distribution of the annual reports of railroad corporations.  
 Chapter 10. An act in addition to "an act to regulate the use of railroads."  
 Chapter 12. An act relating to the state lunatic hospitals.  
 Chapter 23. An act concerning complaints before justices of the peace and police courts.  
 Chapter 25. An act in addition to an act entitled "an act to establish the state reform school."  
 Chapter 26. An act relating to the estates of deceased paupers.  
 Chapter 31. An act relating to costs of coroners' and fire inquests.

- Chapter 32. An act concerning the records of courts of insolvency.
- Chapter 33. An act in addition to an act entitled "an act relating to the descent and distribution of estates of intestates."
- Chapter 34. An act to amend the two hundred and sixth chapter of the acts of the year eighteen hundred and fifty-one, to provide further remedy for creditors.
- Chapter 40. An act relating to the trustee process.
- Chapter 43. An act relating to the exemption of the property of widows and unmarried females from taxation.
- Chapter 44. An act to amend the forty-seventh chapter of the acts of the year eighteen hundred and fifty-six respecting naturalization.
- Chapter 45. An act relating to police courts and justices of the peace.
- Chapter 46. An act in addition to "an act in relation to public reports and documents."
- Chapter 47. An act in relation to alimony.
- Chapter 48. An act concerning investments of savings banks and mutual insurance companies.
- Chapter 49. An act in relation to returns by agents of foreign insurance companies.
- Chapter 54. An act to amend the thirty-first section of the two hundred and eighty-fourth chapter of the acts of the year eighteen hundred and fifty-six.
- Chapter 55. An act to amend the four hundred and thirty-first chapter of the acts of eighteen hundred and fifty-five relating to liens of mechanics and others.
- Chapter 56. An act relating to dower.
- Chapter 57. An act concerning the care of infant children of female convicts.
- Chapter 61. An act to amend "an act in relation to the office of the secretary of the board of education."
- Chapter 62. An act in addition to an act entitled "an act to exempt from levy on execution the homestead of a householder."
- Chapter 64. An act concerning the commitment of lunatics to hospitals.
- Chapter 67. An act to prevent the use of blanks for counterfeiting bank bills, certificates, and notes.
- Chapter 68. An act concerning the measurement of fruit and vegetables.
- Chapter 69. An act to increase the amount of specie in the commonwealth.
- Chapter 70. An act concerning notes payable on demand.
- Chapter 71. An act to amend the act providing for trial by jury before justices of the peace in certain cases.
- Chapter 72. An act relating to executors' bonds.
- Chapter 73. An act relating to the sale of property of insolvent debtors.
- Chapter 76. An act concerning proxies.
- Chapter 77. An act concerning the discipline of jails and houses of correction.
- Chapter 78. An act to establish the compensation of the lieutenant-governor, and the members of the executive council.
- Chapter 83. An act concerning the employment of children in manufacturing establishments.
- Chapter 84. An act to establish a police court in the town of Taunton.
- Chapter 85. An act to abolish the land office.
- Chapter 93. An act to change the jurisdiction in matters of probate and insolvency.
- Chapter 103. An act in addition to the several acts in relation to the police court of the city of New Bedford.
- Chapter 104. An act concerning officers attending on the supreme judicial court in the county of Suffolk.
- Chapter 106. An act to provide for the preservation of books, reports, and laws received by cities and towns from the commonwealth.
- Chapter 107. An act in addition to "an act concerning the duties of assessors."
- Chapter 109. An act concerning the writ of certiorari.
- Chapter 110. An act concerning the state industrial school for girls.
- Chapter 111. An act to establish the salary of the district-attorney for the middle district.
- Chapter 114. An act in addition to an act to punish frauds in officers of corporations.
- Chapter 115. An act requiring certain additional bank returns.
- Chapter 116. An act concerning the officers of the Protestant Episcopal church.
- Chapter 117. An act concerning guardians and wards.
- Chapter 118. An act to fix the salaries of the district-attorneys for the northern, eastern, and southern districts.
- Chapter 119. An act concerning the preferred claims of operatives against insolvent debtors and corporations.
- Chapter 120. An act in relation to the court of common pleas for the county of Worcester.
- Chapter 121. An act concerning discharges in insolvency.
- Chapter 122. An act in relation to special administrators.
- Chapter 132. An act defining the salary of the superintendent of alien passengers.
- Chapter 133. An act in relation to conveyances and devises of estates for religious purposes.
- Chapter 135. An act relating to criminal jurisdiction in Boston harbor.
- Chapter 136. An act to establish a police court in the town of Gloucester.
- Chapter 137. An act concerning the partition of real estate.
- Chapter 138. An act to provide for the better administration of the criminal law.
- Chapter 141. An act concerning the assignees of insolvents.
- Chapter 142. An act concerning fees in certain cases in insolvency.
- Chapter 143. An act in relation to limited partnerships.
- Chapter 144. An act to protect the rights of stockholders in corporations.
- Chapter 145. An act in relation to school districts.
- Chapter 150. An act to amend an act concerning insurance companies.
- Chapter 151. An act relating to public diversions.
- Chapter 152. An act in addition to an act concerning public amusements.
- Chapter 154. An act in relation to the crime of murder.
- Chapter 155. An act to amend the two hundred and eighty-ninth chapter of the acts of the year eighteen hundred and fifty-two, concerning returns by justices of the peace.



- Chapter 156. An act to define the salary of the adjutant-general.  
 Chapter 158. An act to regulate certain matters of finance, (except sections two, four, five, six, seven, eight, nine, and sixteen.)  
 Chapter 159. An act for the appointment of watchmen and fireman to the state house.  
 Chapter 161. An act in addition to an act relating to persons committed to the state lunatic hospitals, not having a known settlement in this commonwealth.  
 Chapter 162. An act relating to the government of prisons.  
 Chapter 164. An act concerning the survey of lumber, ornamental wood, and ship timber.  
 Chapter 165. An act to amend the act to increase the amount of specie in the commonwealth.  
 Chapter 166. An act concerning the militia.  
 Chapter 168. An act in relation to the state almshouses.  
 Chapter 170. An act in relation to delinquent agents of foreign insurance companies.  
 Chapter 172. An act concerning the purchase and sale of spirituous and intoxicating liquors for town agents.  
 Chapter 175. An act to amend "an act to protect the rights and liberties of the people of the commonwealth of Massachusetts."  
 Chapter 177. An act for the better establishment of the board of insurance commissioners.  
 Chapter 2. Resolve relating to the state library.

### One Thousand Eight Hundred and Fifty-nine.

- Chapter 7. An act concerning the mileage of members of the council.  
 Chapter 16. An act extending the time for taking out executions.  
 Chapter 22. An act relating to the printing of the documents of the public series.  
 Chapter 25. An act to amend an act to authorize cities and towns to establish and maintain public libraries.  
 Chapter 27. An act relating to returns of elections.  
 Chapter 36. An act relative to the specific performance of written contracts.  
 Chapter 37. An act concerning real actions.  
 Chapter 39. An act to amend an act entitled "an act to secure the safety of passengers at railroad crossings."  
 Chapter 56. An act in addition to the several acts concerning courts of probate in the county of Dukes County.  
 Chapter 57. An act relating to school reports.  
 Chapter 60. An act concerning the selection and employment of teachers in public schools.  
 Chapter 61. An act in addition to an act to provide for the adoption of children.  
 Chapter 62. An act relating to paying fees of witnesses.  
 Chapter 64. An act to increase the salary of the assistant-librarian and clerk of the secretary of the board of education.  
 Chapter 67. An act relating to damages from alterations in highways.  
 Chapter 69. An act in relation to assignees of insolvent debtors.  
 Chapter 80. An act in addition to "an act providing for the election of school committees."  
 Chapter 81. An act relating to fugitives from justice.  
 Chapter 89. An act concerning the attendance of children at school in adjoining towns.  
 Chapter 91. An act to revive the land office.  
 Chapter 93. An act relating to school books and changes in the same.  
 Chapter 96. An act to prevent cruelty to animals.  
 Chapter 101. An act in relation to the diet, clothing, and bedding of convicts in the state prison.  
 Chapter 102. An act relating to a return of pickled and smoked fish.  
 Chapter 103. An act establishing the pay of members of school committees.  
 Chapter 104. An act concerning issues of stock by corporations.  
 Chapter 106. An act to amend an act relating to the fisheries.  
 Chapter 107. An act concerning the state lunatic hospitals.  
 Chapter 108. An act to amend an act concerning the discipline of jails and houses of correction.  
 Chapter 110. An act in relation to judges of probate and insolvency.  
 Chapter 114. An act relating to the taxation of ships.  
 Chapter 116. An act to punish and remedy the wrongful detention of bank bills.  
 Chapter 118. An act to equalize taxation.  
 Chapter 119. An act concerning the investment or deposit of money belonging to the estates of insolvent debtors.  
 Chapter 121. An act concerning elections.  
 Chapter 125. An act in relation in railroad crossings.  
 Chapter 126. An act relative to horse and steam railroad crossings.  
 Chapter 127. An act to secure the payment of rents.  
 Chapter 128. An act relating to the division of water rights.  
 Chapter 131. An act relating to bail in criminal cases.  
 Chapter 132. An act providing for the registration of surveys made in laying out highways.  
 Chapter 133. An act to establish the salary of the second clerk in the office of the secretary of the commonwealth.  
 Chapter 136. An act concerning school districts.  
 Chapter 138. An act concerning the police court in Pittsfield.  
 Chapter 139. An act in relation to returns from jails and houses of correction.  
 Chapter 142. An act exempting certain articles from execution.  
 Chapter 143. An act in addition to the several acts concerning special administrators.  
 Chapter 146. An act in addition to an act concerning insurance companies.  
 Chapter 148. An act establishing the compensation of bank commissioners.  
 Chapter 155. An act relating to the reports of the warden and inspectors of the state prison.  
 Chapter 157. An act relating to poll taxes.  
 Chapter 158. An act relating to exhibitions of the fighting of birds and animals.

- Chapter 160. An act relating to proof in criminal cases.  
 Chapter 161. An act relating to the probate court in the county of Nantucket.  
 Chapter 162. An act relating to the removal of actions.  
 Chapter 163. An act fixing the salaries of county commissioners.  
 Chapter 164. An act to establish the salary of the clerk in the office of the adjutant and quartermaster-general of the commonwealth.  
 Chapter 166. An act relating to the collection of money fraudulently withheld by attorneys at law.  
 Chapter 167. An act in addition to an act to establish a police court in the town of Chicopee.  
 Chapter 170. An act concerning the state reform school for boys.  
 Chapter 171. An act concerning collectors of taxes.  
 Chapter 172. An act in addition to the acts in relation to law library associations.  
 Chapter 174. An act regulating the manufacture and sale of bread.  
 Chapter 176. An act to establish the pay of the watchmen of the state house.  
 Chapter 177. An act concerning the public charitable and reformatory institutions of the commonwealth.  
 Chapter 178. An act relating to the salary of the register of probate and insolvency for the county of Dukes County.  
 Chapter 183. An act relating to attachments of real estate.  
 Chapter 185. An act concerning actions on judgments.  
 Chapter 188. An act in addition to the several acts concerning the attendance of children at school.  
 Chapter 189. An act in relation to dividends by savings banks.  
 Chapter 190. An act extending the jurisdiction of the justices' court of the county of Suffolk.  
 Chapter 193. An act relating to the titles of justices of the peace designated and commissioned to try criminal cases.  
 Chapter 194. An act concerning the liability of assignees for costs in certain cases.  
 Chapter 196. An act establishing the superior court.  
 Chapter 199. An act in relation to the carrying of dangerous weapons.  
 Chapter 200. An act relating to the attorney's fee in certain criminal prosecutions.  
 Chapter 201. An act relating to returns of police justices.  
 Chapter 203. An act relating to farmers' clubs.  
 Chapter 205. An act in addition to an act to punish fraud by the sale of adulterated milk, and to provide for sealing measures used in the sale of milk.  
 Chapter 207. An act to abolish the office of crier of the courts.  
 Chapter 209. An act concerning the delivery of freight to connecting railroads.  
 Chapter 214. An act in addition to an act to establish the state industrial school for girls.  
 Chapter 215. An act relative to coroners' and fire inquests.  
 Chapter 216. An act fixing the salaries of district-attorneys.  
 Chapter 218. An act to amend the sixty-ninth and the one hundred and sixty-fifth chapters of the acts of the year eighteen hundred and fifty-eight.  
 Chapter 219. An act relating to billiard rooms and bowling alleys.  
 Chapter 221. An act in addition to an act to regulate certain matters of finance.  
 Chapter 223. An act in relation to conveyances of land or flats belonging to the commonwealth.  
 Chapter 224. An act to authorize the appointment of a surveyor-general of lumber, and the establishment of a lumber district.  
 Chapter 225. An act concerning dogs.  
 Chapter 226. An act relating to military accounts.  
 Chapter 227. An act concerning taxation and returns of corporations to assessors.  
 Chapter 228. An act concerning applications for juries to assess damages.  
 Chapter 229. An act relating to boarding-house keepers.  
 Chapter 230. An act concerning the competency of witnesses.  
 Chapter 231. An act to limit the contracting of county debts.  
 Chapter 232. An act relating to agricultural societies.  
 Chapter 233. An act concerning returns by officers of precepts in criminal cases.  
 Chapter 234. An act to prevent the infringement of trade marks.  
 Chapter 235. An act in addition to an act to protect mariners and ship-owners from imposition.  
 Chapter 236. An act relating to police courts.  
 Chapter 237. An act to regulate proceedings in equity.  
 Chapter 238. An act relating to schools, school committees, and school returns.  
 Chapter 239. An act relating to the bastardy process.  
 Chapter 240. An act relating to officers in the state prison.  
 Chapter 241. An act relating to blank writs.  
 Chapter 245. An act in addition to an act to authorize the business of loan and fund associations.  
 Chapter 246. An act concerning mortgages of personal property.  
 Chapter 247. An act to define the right to take kelp and other sea-weed between high and low water mark.  
 Chapter 248. An act concerning persons sentenced to the state prison.  
 Chapter 249. An act in relation to the control and management of jails and houses of correction.  
 Chapter 250. An act in addition to an act entitled "an act to regulate the measurement of charcoal," passed May fourth, eighteen hundred and fifty-three.  
 Chapter 252. An act to abolish the school district system.  
 Chapter 253. An act relating to county treasurers.  
 Chapter 254. An act in relation to insane convicts in the state prison.  
 Chapter 255. An act concerning state paupers.  
 Chapter 257. An act relating to the compensation and duties of sheriffs.

- Chapter 258. An act concerning the taxation of minors.  
 Chapter 259. An act to regulate the use of steam-boilers.  
 Chapter 260. An act in addition to "an act concerning electric telegraph companies and electric telegraphing."  
 Chapter 261. An act for the further protection of trees on highways.  
 Chapter 262. An act relating to the annual returns of railroad corporations.  
 Chapter 263. An act relating to schools.  
 Chapter 264. An act in addition to "an act providing for the election of school committees."  
 Chapter 267. An act in addition to an act to authorize the business of banking.  
 Chapter 269. An act establishing the salary of the messenger in the office of the secretary of the commonwealth.  
 Chapter 274. An act concerning the terms of the supreme judicial court in the county of Worcester.  
 Chapter 275. An act relating to terms of courts.  
 Chapter 276. An act in addition to an act to authorize the appointment of a surveyor-general of lumber, and the establishment of a lumber district.  
 Chapter 282. An act relating to the jurisdiction in criminal cases.  
 Chapter 284. An act concerning the supreme judicial court.  
 Chapter 285. An act for the establishment of a nautical school.  
 Chapter 286. An act concerning the reform school, and the nautical branch of the same.  
 Chapter 289. An act declaring the territorial limits of the commonwealth and establishing the limits of certain counties.  
 Chapter 291. An act relating to the writ of habeas corpus.  
 Chapter 294. An act for the removal of constables for cause in cities.

HOUSE OF REPRESENTATIVES, *December 28, 1859.*

Passed to be enacted.

CHARLES HALE, *Speaker.*

IN SENATE, *December 28, 1859.*

Passed to be enacted.

CHARLES A. PHELPS, *President.*

*December 28, 1859.*

Approved.

NATH. P. BANKS.



# GENERAL ACTS

PASSED SUBSEQUENTLY TO THE PASSAGE OF THE REVISED  
STATUTES, AND EXPRESSLY REPEALED BEFORE THE  
PASSAGE OF THE GENERAL STATUTES.

Statutes		Expressly repealed by Statutes of			Statutes		Expressly repealed by Statutes of		
Year	Chapter	Year	Chapter	Section	Year	Chapter	Year	Chapter	Section
1836	154	1846	170	3	1843	79	1846	196	1
"	208	1854	453	44	1844	42	1846	170	3
"	231	1846	128		"	82	1854	453	44
"	238	1856	163		"	154	1857	141	31
"	255	1837	224	3	1845	17	1854	453	44
"	256	1843	40	2	"	55	1854	453	44
1837	128	1840	68	5	"	76	1848	313	11
"	147	1849	81	2	"	100	1849	65	3
"	165	1844	127	1	"	111	1847	69	7
"	170	1855	102	1	"	153	1845	248	1
"	183	1840	66	9	"	157	1849	209	2
"	192	1854	453	44	"	252	1846	190	
"	238	1848	313	11	1846	82	1856	252	56
1838	14	1843	43		1847	137	1857	189	3
"	23	1839	120		"	150	1855	479	
"	35	1854	453	44	"	248	1854	453	44
"	124	1840	63	6	"	264	1857	232	3
"	126	1857	228	4	"	273	1854	453	44
"	157	1840	1		1848	81	1854	453	44
"	178	1854	453	44	"	85	1849	29	2
"	182	1856	113	3	"	134	1848	255	2
1839	75	1857	235	2	"	168	1857	141	31
1840	63	1844	51		"	210	1857	78	1
"	68	1857	60	5	"	286	1857	141	31
"	76	1848	283		"	290	1855	231	7
"	90	1848	262		1849	41	1857	16	2
"	96	1848	313	11	"	104	1854	453	44
1841	7	1855	102	1	"	127	1855	305	
"	123	1843	11	1	"	139	1850	277	4
1842	9	1854	453	44	"	143	1850	25	
"	21	1854	453	44	"	144	1857	266	4
"	31	1847	69	7	"	213	1856	239	6
"	46	1843	70		1850	42	1857	232	3
"	56	1844	154	13	"	212	1857	141	31
"	95	1844	159	9	"	218	1856	239	6
1843	22, § 2	1847	208	2	"	229	1858	5	3
"	39	1844	161		"	245	1859	225	15

Statutes		Expressly repealed by Statutes of			Statutes		Expressly repealed by Statutes of		
Year	Chapter	Year	Chapter	Section	Year	Chapter	Year	Chapter	Section
1850	269	1851	308	2	1853	355	1858	43	2
"	272	1851	92	3	"	376	1854	453	44
"	274	1857	206	3	"	399	1854	450	2
"	279	1854	453	44	1854	63	1855	249	3
"	296	1855	197	5	"	72	1856	81	1
"	314	1851	328	1	"	295	1856	39	3
1851	90	1854	453	44	"	317	1855	192	1
"	157	1854	453	44	"	345	1856	81	1
"	165	1854	453	44	"	453	1856	252	56
"	170	1854	453	44	1855	33	1857	16	2
"	226	1853	36	3	"	37	1855	432	2
"	233	1852	312	86	"	52	1859	129	
"	239	1852	318	2	"	78	1859	89	2
"	257	1852	1	1	"	91	1856	113	3
"	262	1857	235	2	"	106	1859	258	2
"	281	1854	453	44	"	119	1855	398	2
"	301	1857	150		"	167	1856	125	3
"	307	1852	185	1	"	219	1857	262	2
"	309	1856	101	3	"	220	1855	466	2
"		1857	266	4	"	238	1857	298	18
"	325	1852	312	86	"	264	1857	235	2
"	331	1854	453	44	"	296	1856	181	3
"	340	1855	238	7	"	300	1857	200	3
"		1857	298	18	"	412	1856	171	4
1852	197	1859	234	4	"	436	1857	206	3
"	227	1854	453	44	"	437	1857	151	
"	231	1854	453	44	"	444	1857	141	51
"	274	1857	37	1	"	448	1857	157	3
"	281	1857	141	31	"	453	1856	99	2
"	284	1853	36	3	"	480	1856	1	1
"	286	1857	232	3	1856	101	1857	266	4
"	301	1857	275		"	188	1857	305	3
"	311	1854	453	44	"	215	1857	56	6
"	322	1855	215	39	"	273	1857	78	1
1853	153	1857	254		"	291	1857	262	2
"	283	1856	179	1	1857	192	1858	70	2
"	286	1857	37	1	"	226	1858	118	2
"	333	1854	453	44	"	303	1858	166	8
"	343	1854	88	6	1858	139	1859	225	15
"	349	1855	426	2	"	167	1859	104	2

# A GLOSSARY

OF SUCH WORDS AND PHRASES CONTAINED IN THESE STATUTES AS BELONG TO FOREIGN LANGUAGES, AND THE MORE OBSCURE OF SUCH OTHERS AS ARE MERELY TECHNICAL.\*

PREPARED BY VIRTUE OF CHAPTER 138 OF THE RESOLVES OF 1859.

## A.

**ABATEMENT**, plea of, is when for any default the defendant prays that the writ or plaint do abate; that is, cease against him for that time. *Bowrier*.

**AD DAMNUM**, (*to the damage*.) The declaration of the plaintiff's case in all personal and mixed actions concludes with the words "to the damage of the plaintiff, as he says, the sum of—;" and this is called the "*ad damnum*."

**ALIAS**, (*another*.) When prefixed to writ or execution, it means the second; as, *alias execution*, *alias writ of capias*, the second execution, the second writ of capias.

**ALIEN**. A subject of *another* government. An unnaturalized foreigner.

**ALIENATION**, an act by which the property and possession of real estate is transferred from one person to another, which may be done by deed, devise, or by matter of record.

**ALIMONY**, the allowance which is made by order of court to a woman for her support out of her husband's estate, upon being separated from him by divorce, or pending a suit for divorce.

**ANSWER** is in this state used technically to mean the statement of the matter intended to be relied upon by the defendant in avoidance of the plaintiff's action, and takes the place of special pleas in bar, and the general issue, except in real and mixed actions and actions before justices of the peace and police courts. (See p. 656.)

In equity cases defences may be made by answer. (See p. 559.)

**ASSUMPSIT**, action of, a form of action for the recovery of damages for the non-performance of a contract not under seal, nor of record. This action is abolished in this state, and the cases to which it

applied may now be brought by action of contract. (See p. 653.)

**ATTAINDER**, the stain, forfeiture, and corruption of blood which followed upon being condemned for certain crimes. The consequences of attainder were, 1st, forfeiture of all the felon's estate, real and personal; 2d, the corruption of his blood by which his posterity were prevented from inheriting property from him, or through him for any remote ancestor.

**BILL OF ATTAINDER**, a bill brought into parliament for attainting persons condemned for high treason.

By the constitution of the United States, art. 1, sect. 10, states are prohibited from passing any bill of attainder; and by art. 3, sect. 3, congress has "power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."

**AUDITA QUERELA**, a writ applicable to the case of a defendant against whom a judgment has been recovered, and who is therefore in danger of execution, or perhaps actually in execution, grounded on some matter of discharge which happened after the judgment, and not upon any matter which might have been pleaded as a defence to the action. *Bowrier*.

**AVOIRDUPOIS**, a weight of which a pound contains sixteen ounces; its proportion to a pound Troy being as seventeen to fourteen. It is the weight of larger and coarser commodities. *Webster*.

## B.

**BONA FIDE**. *In good faith*.

**BONUS**, a premium.

**BOTTOMRY**, a contract in the nature of a mortgage of a ship, on which the owner borrows money to enable him to fit out the ship, or to purchase a cargo for a

\* In the preparation of this glossary, the editors have endeavored to give the ordinary meaning of the words and phrases as they are used in this volume, in concise language, and with such illustrations and citations as may be useful to the general reader. Many of them have also other significations when used in different connections; and the general definitions to most of them, probably, are subject to limitations and modifications which cannot well be given in a glossary, but may be found in dictionaries, and in treatises on the various subjects.



voyage proposed, and he pledges the keel or bottom of the ship as a security for the repayment; and it is stipulated that if the ship should be lost in the course of the voyage by any of the perils enumerated in the contract, the lender also loses his money; but if the ship should arrive in safety, then he shall receive back his principal and also the interest agreed upon, which is generally called marine interest, however this may exceed the legal rate of interest. Not only the ship and tackle, if they arrive safe, but also the person of the borrower, is liable for the money lent and the marine interest. *Bowvier*.

## C.

**CAPIAS**, (*take you, or that you take.*) A writ or process commanding the officer to take the body of a person is called a "capias," or a "writ of capias." A writ directing the officer to "attach the goods and estate of the defendant, and for want thereof to take his body," is called, a "writ of capias and attachment."

**CAPITAL CRIME**, a crime punishable with death.

**CERTIORARI**, the name of a writ issued by the supreme court to certain courts of inferior jurisdiction, commanding them to certify and return to the supreme court their records in a particular case, in order that any errors or irregularities which appear in the proceedings may be corrected. It is the proper process by which to bring before the supreme court for investigation the doings of county commissioners. It lies for the purpose of correcting errors in proceedings which are not according to the course of the common law. (See p. 743.)

It does not lie to the probate court. (8 Cush. 529.)

**CIVIL LAW**, the municipal code of laws of the Romans. Degrees of kindred are by statute, in this state, to be computed according to the rules of the civil law. (See p. 474.)

Such computation is from one of the persons whose relationship is sought, up to the common ancestor, and then from the common ancestor, down to the other of such persons.

**COCULUS INDICUS**, (*Indian berry.*) A poisonous fruit, sometimes used in the adulteration of liquors.

**COMMON LAW**, in England, the unwritten law, founded on custom and deriving its force and authority from the universal consent and immemorial practice of the people.

In Massachusetts, "Our ancestors, when they came into this new world, claimed the common law as their birthright, and brought it with them, except such parts as were judged inapplicable to their new state and condition."

"So much of the common law of England as our ancestors brought with them, and of the statutes then in force, altering or amending it; such of the more recent statutes as have been since [before the revolution] adopted in practice; and the ancient usages aforesaid, may be considered as forming the body of the common law of Massachusetts." (8 Pick. 316, 317.) (See also 2 Met. 123. 16 Pick. 182.)

**CONTINGENT REMAINDER**, the remainder of an estate in lands limited to take effect on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding particular estate; in which case such remainder never can take effect.

**CONUSOR**. As used in the statutes of Massachusetts, *conusor* means the party entering into a recognizance for debt, and *conusee* the party to whom the debt is payable in such recognizance. (See p. 771.)

**CORRUPTION OF BLOOD**. See **ATTAINER**.

**COPARCENARY**. **COPARCENERS**. In England, an estate in coparcenary arose where a person seized of lands and tenements in fee-simple or in tail died, leaving only daughters, sisters, aunts, or other *female heirs*; in which case the estate descended to all such daughters, sisters, &c., jointly. By custom, in certain cases, an estate descended to all the male heirs, who became coparceners.

In this state, lands descend to all the children equally, and there is no substantial difference between coparceners and tenants in common. *Greenleaf's Cruise*.

**COUNT**, derived from the French *conte*, a narrative. The statement of each cause of action included in the plaintiff's suit. The declaration which includes the statement of the plaintiff's whole case may include one or more counts for the same or different causes of action.

**COURT OF RECORD**, technically, a court having common law jurisdiction, with a clerk or other officer required by law to keep a record of its proceedings. Such are the supreme judicial and superior courts.

Police courts, having clerks, are courts of record. (8 Met. 108.)

Courts of insolvency are so named by statute. (See p. 581.)

Probate courts are not courts of record. (14 Mass. 227.)

**COVERTURE**, the state or condition of a married woman.

**CROZED**. Crozing is the making of that place in casks into which the head is fitted, being done with a cooper's instrument called a "croze."

**CURTESY**. When a married woman is, during coverture, seized of real estate, her husband is entitled to hold the same after her death, for his life, if, during their marriage, they had issue born alive. This is called an "estate by the curtesy." The rights given to married women to hold property to their sole and separate use do not take away the husband's estate by the curtesy. (See pp. 471, 538, 539.)

**CURTILAGE**, the open space situated within a common enclosure of a dwelling-house and the buildings connected therewith. (See 10 Cush. 480.)

## D.

**DE BONIS NON**, (*of the goods not.*) When upon the death, resignation, or removal of an executor or administrator before the estate is fully settled, another person is appointed to administer *the estate not already administered*, he is called "administrator de bonis non," or if there is a will, "administrator de bonis non with the will annexed."

**DEBT**, action of. A form of action for the recovery of money due upon certain liabilities of record, under seal or on penalties; also for moneys due on contracts "whenever the demand for a sum is certain, or is capable of being reduced to a certainty." It is now abolished in this state. The cases to which it applied may be brought by action of contract or tort. (See p. 653.)

**DEFEASANCE.** A collateral deed, made at the same time with a conveyance, containing conditions upon the performance of which the estate may be defeated.

The terms of the condition of a mortgage, if made by a separate instrument at the same time with the deed, would be a defeasance, and the two instruments constitute a mortgage. (See p. 716.)

To be valid against third parties, the defeasance must, in this state, be recorded in the registry of deeds. (See p. 467.)

**DEMURRER, (to wait or stay.)** When the declaration, plea, or replication, &c., appears on the face of it, and without reference to extrinsic matter to be defective either in substance or form, the opposite party may in general demur, which has been defined to be a declaration that the party demurring will 'go no further,' because the other has not shown sufficient matter against him." *Chitty*.

"It confesses the facts to be true, as stated by the opposite party, but denies that, by the law arising upon these facts, any injury is done to the plaintiff, or that the defendant has made out a legitimate excuse." *Blackstone*.

For particular cases, in which by statute parties may raise issues in law by demurrer, see p. 655.

**DISCLAIMER, (to abandon, to renounce.)** A plea in a real action, by which the defendant declares that he has nothing and claims nothing in the demanded premises, and wholly disavows and disclaims to have any thing therein.

"It resembles a plea of tender of the whole sum demanded in an action of debt or assumpsit, in which case the defendant admits the plaintiff's right to the thing in controversy, but shows that he had no right of action for it." (13 Mass. 442.)

**DISCONTINUANCE, respecting real estate.**

An alienation made or suffered by the tenant in tail, or other tenant seised in right of another, by which the issue in tail, or heir, or successor, or those in reversion or remainder, are driven to their action and cannot enter. It is used to distinguish those cases where a party, whose freehold is ousted, can restore it only by action, from those in which he may restore it by entry. *Bowrier*.

By statute, in this state, a discontinuance does not take away or defeat any right of entry, or of action for recovery of real estate. (See p. 692.)

**DISSEISIN.** See **SEISIN**.

**DISTRAIN, DISTRESS.** A distress is the taking of personal property, without process of law, from the possession of a wrong doer, as a pledge to a party injured for redress of the injury, or the performance of some duty, or for the satisfaction of some claim.

Collectors may distrain for payment of taxes. (See pp. 81, 82.)

Field drivers and others may distrain cattle going at large or doing damage. (See p. 185.)

**DURESS.** "An actual or threatened violence of a man's person contrary to law, to compel him to enter into a contract, or to discharge one." *Bowrier*.

## E.

**EASEMENT.** A liberty, privilege, or advantage in land without profit, distinct from ownership of the soil; such as a right of way over the land of another, or in a public highway, &c.

**ESCHEAT.** The falling or passing of real estate to the government in the nature of reversion, by reason of there being no person legally entitled to hold the same.

In this state only two causes of escheat have ever been recognized—one when an alien purchased land, and could not hold against the government; and the other, when a person died without heirs, seised of land which he had not devised by will. (9 Mass. 368.) The first of these is abolished by statute. (See p. 473.) The second is still the law. (See p. 474.)

**EX OFFICIO.** *By virtue of office.*

**EX PARTE, (of the one part.)** Any thing done when only one party is present is said to be done *ex parte*.

**EX POST FACTO.** Something done after, and in relation to, a former act. After the deed is done, Retrospective. *Worcester*.

An *ex post facto law* is, technically, one which renders an act punishable in a manner in which it was not punishable when it was committed. *Fletcher v. Peck*, 6 Cranch, 87.

By article 1, section 10, of the constitution of the United States, the states are prohibited from passing such a law. (See p. 5.)

It applies to laws respecting crimes only. (9 Mass. 363.)

**EXECUTORY DEVISE.** An executory devise of lands is such a disposition of them by will, that thereby no estate vests at the death of the devisor, but only on some future contingency. It differs from a remainder in three very material points: First, that it needs no particular estate to support it. Second, that by it a fee-simple or other less estate may be limited after a fee-simple. Third, that by this means a remainder may be limited of a chattel interest, after a particular estate for life created in the same. *Blackstone*.

It is a limitation by will of a future contingent interest in lands, contrary to the rules of limitation of contingent estates in conveyances at law. *Bowrier*.

## F.

**FEE, inheritance; FEE-SIMPLE, a simple inheritance.** An estate in fee, or fee-simple, is an estate in lands held to a person, to him and his heirs forever, generally, absolutely, and simply, without mentioning what heirs.

**FEE-TAIL.** An estate in tail, or in fee-tail, is an estate in lands descendible to some particular heirs only of the person to whom it is granted, and not to his heirs general. *Blackstone. Cruise*.

**FELONY.** By statute in this state, any crime punishable by death or imprisonment in the state prison, and no other, is a felony. (See p. 825.)

**FEME COVERT.** A married woman.

**FORMEDON, writ of.** Upon an alienation of the tenant in tail, by which the estate in tail was discontinued, and the remainder or reversion is, by the failure of the particular estate, displaced and turned into a mere right, the remedy was by action of formedon, because the writ comprehends the *form* of the gift. *Bowrier*.

This writ is abolished in this state. (See p. 696.)

**FREEHOLD.** A freehold estate is an interest in lands held in fee, for life, or for some other uncertain period. An estate for years, however long the time,



is not, by common law, a freehold, because its duration is certain.

But by statute, in this state, whoever holds lands under a lease for one hundred years or more, so long as fifty years thereof remain unexpired, is regarded as a freeholder. (See p. 471.)

## G.

**GENERAL ISSUE.** A form of plea by a defendant making a general denial of the whole of the allegations in the declaration, indictment, or complaint against him.

This plea is abolished in this state in all civil actions, except real and mixed actions and actions before justices of the peace and police courts, and an answer substituted. (See p. 656.)

## H.

**HABEAS CORPUS**, (*have the body*.) The writ of habeas corpus is a writ issued by a judge, magistrate, or court, commanding that some person held in custody or under restraint shall be brought before the same or some other judge, magistrate, or court at a certain time or place for the purpose of inquiry into the legality of the restraint, or of having the person in court, for trial as a party, or as a witness, or for some other cause making his personal attendance necessary.

**HEREDITAMENTS.** An inheritance or an estate which descends to one by succession.

**Incorporeal Hereditament** is such a right issuing out of, or concerning, or annexed to, or exercisable within a thing corporate or tangible, such as an annuity charged on lands, and granted to a person and his heirs.

**HYPOTHECATION**, a certain kind of pledge of personal property without delivery to the pledgee, originally peculiar to the civil law.

In the common law, cases of hypothecation, in the strict sense of the civil law, that is, of a pledge of a chattel, without possession by the pledgee, are scarcely to be found. Cases of bottomry bonds, and claims for seamen's wages against ships, are the nearest approach to it; but these are liens and privileges rather than hypothecation. *Story*.

## I.

**INNUENDO.** An averment which explains the meaning, or points out the application of some words or matters expressed, commonly used in actions of slander, but now, by statute, not necessary. (See p. 666.)

**INSIMUL COMPUTASSENT**, (*they had accounted together*.) The technical name of a count in the plaintiff's declaration for a balance found due him by the parties on accounting together. (See p. 664.)

**INTERLOCUTORY.** Intermediate. An interlocutory judgment, decree, or order, is one entered between the commencement and the end of a suit, deciding some particular point, without making a final decision of the matter in issue.

**ISSUE.** In relation to kindred, it means all persons who have descended from a common ancestor.

In pleading, it is the close or result of the pleadings, by which the single material point depending in the suit is presented for determination.

## J.

**JOINT TENANTS, ESTATES IN JOINT TENANCY.** Applied to real estate. The peculiar incident of an estate in joint tenancy, distinguishing it from an estate in common, is the right of survivorship, by which, upon the death of any joint tenant, the entire estate goes to the survivors or survivor, and the last survivor holds it to himself and his heirs. It is a life estate to all but the last survivor.

## L.

**LEVY.** A seizure. Commonly used in the statutes to express the taking of property on executions to satisfy judgments, or on warrants for the collection of taxes.

**LIEN.** In its most extensive signification, it includes every case in which real or personal property is charged with or held for the payment of any debt or duty. In a more limited sense, it is the right of detaining the property of another until some claim is satisfied. *Bowyer*.

## M.

**MANDAMUS**, (*we command*.) A mandamus is a writ issuing in the name of the commonwealth, from the supreme judicial court, and is directed to some inferior court, or to some person or corporation exercising a public authority, commanding them to do some particular thing specified in the writ, which it belongs to their office or their duty to perform. And generally in all cases of omissions or mistakes where there is no other adequate specific remedy, resort may be had to this writ.

**MAYHEM** is the unlawfully and violently depriving another of the use of such of his members as may render him the less able in fighting either to defend himself or to annoy his adversary. And therefore, the cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye or fore tooth, are held to be mayhems. But the cutting off his ear, or nose, or the like, are not held to be mayhems at common law, because they do not weaken but only disfigure him. *Blackstone*. *Bowyer*. (For the punishment of this offence, see p. 792.)

**MESNE PROCESS.** *Intermediate* process, which issues pending the suit upon some collateral interlocutory order, as to summon juries, witnesses, and the like. *Blackstone*.

It includes any process between original and final process; that is, between the original writ and the execution. *Bowyer*.

With us, mesne process in common speech, seems to denote the original writ, or *first* process, by virtue of which the proper officer attaches property, arrests the body, or makes service on the defendant.

**MESNE PROFITS.** The value of the premises during the time that the owner has been wrongfully kept out of the possession of his estate.



**MESSAGE.** Dwelling-house. A grant or devise of a message will pass a house and the buildings belonging to it, its curtilage, garden, and orchard, and the close on which the house is built. *Bowyer.*

**MINOR.** In England and the United States, a person, whether male or female, who has not attained the age of twenty-one years. Minors are also in law called *infants.*

**MISPRISION OF TREASON** is the bare knowledge and concealment of treason by being merely passive, and without any degree of assent thereto. Any assent makes the person a principal traitor.

**MITTIMUS, (we send.)** It is the name of a precept in writing, under the hand and seal of a justice of the peace, or, if issued by a court, under the seal of the court and signed by the clerk, directed to the jailer, commanding him to receive and safely keep the person named therein until he shall be delivered by due course of law.

## N.

**NISI, (unless.)** This word is used in legal proceedings to indicate that any order, &c., shall take effect at a given time, *unless* before that time the order, &c., is modified, or something else is done to prevent its taking effect.

*Nisi prius, (unless before.) Nisi prius,* applied to terms of court, denotes those terms at which jury trials are heard.

Cases in court are sometimes said to be *continued nisi*, which means that they are continued for a special purpose, and that they will be entered on the docket of the next term, *unless* they are before that time otherwise disposed of.

**NOL. PROSSED, NOLLE PROSEQUI, (is not desirous of prosecuting further.)** *Nol. prosced,* applied to indictments and criminal prosecutions, indicates that the prosecuting officer has discontinued them.

**NOLO CONTENDERE, (I do not wish to contend.)** The name of a plea by a defendant to an indictment or criminal complaint, the legal effect of which is to admit the truth of the charges in the indictment or complaint, and upon which the defendant may be sentenced.

**NON COMPOS.** Not of sound mind, memory, or understanding. This is a generic term, and includes all the species of madness, whether arising from idiocy, sickness, lunacy, or drunkenness. *Bowyer.*

In this state, by statute, a person *non compos* is included in the words "insane person" and "lunatic." (See p. 51.)

**NON TENURE.** A plea in a real action, by which the defendant asserts that he does not hold either the whole land, or some part of the land mentioned in the plaintiff's declaration. (See **DISCLAIMER.**)

**NUNCUPATIVE WILL.** A will made verbally. A nuncupative will or testament is a verbal declaration by a testator of his will before a competent number of legal witnesses. *Bowyer.*

In this state, by statute, a "soldier in actual military service, or a mariner at sea, may dispose of his wages and other personal estate by a nuncupative will." (See p. 477.)

## O.

**OLEOMETER.** An instrument for testing the quality or purity of oil.

**OUSTER, OUSTED.** An ouster is the actual turning out, or keeping excluded, the party entitled to possession of any real property corporeal. Any continuing act of exclusion from the enjoyment constitutes an ouster.

Ousted indicates the condition of the party so kept excluded.

**OYER, (to hear; the hearing.)** It is a term used in pleading, and denotes that the person making the plea asks that he may hear the bond, or deed, or instrument, read, which is declared on.

## P.

**PETIT TREASON, (little treason.)** This offence was formerly the killing of a master by his servant; of a husband by his wife; of his superior by an ecclesiastical person, either secular or regular. It was called *petit* (little) treason because of the civil or ecclesiastical connections between the person killed and the one taking his life. In this state, there is no distinction between *petit treason* and murder. (See p. 791.)

**PLEA.** A term in pleading denoting the defendant's answer by matter of fact to the plaintiff's declaration. The word is sometimes erroneously used to denote the argument or address of counsel, either to the jury or the court.

**POSTHUMOUS, (after the death of.)** A posthumous child is one born after the death of its parent. Posthumous children by our statutes are considered as living at the death of their parents, for the purpose of inheritance of property. (See p. 475.)

**PRIMA FACIE, (on the first view or appearance; at first sight.)** *Prima facie* evidence of a fact, is that which in law is sufficient to establish the fact, unless rebutted.

"*Prima facie* evidence is competent evidence tending to prove a proposition of fact, and if it is not rebutted or controlled by other evidence, will stand as sufficient proof of such proposition of fact." (1 Gray 500.)

**PROCHEIN AMI, (next friend.)** Where one as a minor, cannot sue in his own name, he may sue in the name of some person competent to sue, who is called his *prochein ami*, and he is then said to bring the suit by his *prochein ami*, or next friend.

**PROFERT, (produces,) PROFERT IN CURIA, (produces in court.)** Where a plaintiff declares on a deed, or a defendant pleads a deed and makes title under it, he does it with a *profert*, or *profert in curia*, by declaring that he "brings here into court the said writing obligatory."

**PRO RATA.** Proportional.

**PRO TEMPORE, PRO TEM.** For the time

**PROVOST MARSHAL.** An officer of the army, whose duties are to take steps for the prosecution of

crimes and offences against military discipline, to seize and secure deserters, to punish marauders, &c., to take charge of prisoners, and superintend the execution of punishments.

## Q.

**QUARANTINE.** The space of time (*forty days*, more or less) during which a ship or vessel, coming from a port or place infected, or supposed to be infected with a contagious or epidemic disease, is detained, after her arrival, within certain designated limits, generally called the quarantine ground, and during which time her crew and passengers are required to remain on board, without intercourse with those on shore.

The word *quarantine*, by the law of England, indicated the space of forty days, during which the widow of a landed man had a right to remain in her husband's principal mansion immediately after his death. The right of the widow was also called her *quarantine*.

**QUARE CLAUSUM.** This is an abbreviation for *quare clausum fregit*, "wherefore he broke the close." It is generally used in connection with actions of tort or trespass; as, "*trespass quare clausum*." In such connection, it means an action to recover damages for breaking and entering the *close* (or premises) of the plaintiff.

**QUASHED, QUASH,** (*overthrown, annulled, made void*.) Where proceedings in courts, whether civil or criminal, are clearly irregular and void, the court will *quash* them; that is, declare them void.

**QUORUM** signifies the number of persons belonging to a legislative assembly, or corporation, or a society, or other body, required to transact business.

The word is also used to designate a class of justices of the peace, as justices of the peace *and of the quorum*, to which class of justices of the peace some special duties are assigned, and without whose presence, or the presence of one of them, such duties cannot be transacted.

The duties imposed by statute, in this state, upon justices of the peace and of the quorum, are the discharge of poor debtors arrested on mesne process or execution, and the approval of bail bonds.

**QUO WARRANTO,** (*by what authority or warrant*.) A writ issued from the supreme judicial court, in the name of the commonwealth, against any person or corporation that usurps a franchise or office, commanding the sheriff of the county to summon the defendant to appear before the court from which the writ issued to show by what authority (*quo warranto*) he claims the franchise, or office mentioned in the writ.

## R.

**RECOGNIZANCE.** An obligation of record, entered into before a court, or officer duly authorized for that purpose, with a condition to do some act required by law which is therein specified, or pay the sum of money therein mentioned. In criminal cases, the condition is, that the defendant shall appear before the proper court to answer there to the charges against him, and meanwhile to keep the peace, and be of good

behavior. Witnesses are required to recognize to testify.

In civil cases, recognizances are entered into by bail, conditioned that they will pay, upon certain contingencies, the debt, interest, and costs recovered by the plaintiff. There are also recognizances under the authority of statutes. (See pp. 770, 772.)

**REMAINDER.** An estate in remainder is an estate limited to take effect and be enjoyed after another estate is determined. As if a man seised in fee simple granteth lands to A for twenty years, and after the determination of the said term, then to B and his heirs forever; here A is tenant for years, and B has the remainder in fee. *Blackstone*.

Contingent or executory remainders are where the estate in remainder is limited to take effect either to a dubious and uncertain person, or upon a dubious and uncertain event; so that the particular estate may chance to be determined, and the remainder never take effect. *Blackstone*.

Vested remainders are where the estate is invariably fixed, to remain to a determinate person after the particular estate is spent. *Blackstone*.

**REPLEVIN.** An action of replevin lies for the recovery *specifically* (in specie) of any personal chattel which has been wrongfully taken and detained from the owner's possession, together with damages for the detention.

**REPLICATION.** A term of pleading. It is the reply which the plaintiff makes to the defendant's plea or answer.

**REPRISAL,** writ of. (See WITHERNAM.)

**RES JUDICATA,** (*a matter adjudged*.) A question settled by judicial decision.

**RESPONDENTIA.** A loan of money on maritime interest, on goods laden on board of a ship, which in the course of the voyage must from their nature be sold or exchanged, upon this condition, that if the goods should be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender shall lose his money; if not, that the borrower shall pay him the sum borrowed, with the interest agreed upon. The contract is called *respondentia*, because the money is lent on the personal responsibility of the borrower. *Bouvier*. (See BOTTOMRY.)

**REVERSION.** An estate in reversion is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. *Blackstone*.

## S.

**SCIRE FACIAS,** (*that you make known or show cause*.) The name of a judicial writ, founded upon some record and requiring the defendant to show cause why the plaintiff should not have the advantage of such record.

**SEISIN.** The possession of an estate of freehold. In the absence of other evidence, a deed of land duly acknowledged and recorded, raises a presumption that the grantor had sufficient seisin to enable him to convey, and also vests the legal seisin in the grantee. (15 Pick. 185.)

Disseisin is an ouster of the rightful owner from the seisin or estate in the land and the commencement

of a new estate in the wrong doer. Notorious and exclusive adverse possession without right, constitutes a disseisin. (5 Met. 33.)

**Disseised**, unlawfully ousted, or expelled from, and kept out of the possession of, an estate of freehold.

**SEVERAL TENANCY.** A tenant in severalty is he who holds lands and tenements in his own right only, without any other person being joined or connected with him in point of interest during his estate therein. *Blackstone.*

**SOLE CORPORATION.** A sole corporation consists of only one person, to whom and his successors belongs that legal perpetuity, the enjoyment of which is denied to all natural persons.

**SOLE TENANCY.** A sole tenant is one who holds lands in his own right, without being joined with any other. *Bowyer.*

**SUBORNATION OF PERJURY.** Procuring another person to commit perjury. (p. 812.)

"To constitute subornation of perjury, the party charged must have procured the commission of the perjury, by inciting, instigating, or persuading the guilty party to commit the crime." (5 Met. 245.)

**SUBPŒNA, (under penalty; at your peril.)** It is a summons issued by a court or magistrate to compel a witness to attend before a court or magistrate, or some person or persons named in the process at the time and place therein mentioned, to testify what he may know relating to the cause or matter described therein. It usually concludes with words similar to these: "Hereof fail not, at your peril."

**Subpœna duces tecum, (at your peril bring with you.)** This is a process issued by a court for compelling the attendance of a witness, with a direction requiring the witness to "bring with him" and produce to the court the books, papers, &c., named in the process, that are in his possession, or under his control, tending to elucidate the matter in issue.

**Subpœna, in equity practice.** A mandatory writ or process from the court, directed to and requiring the person or persons, or corporation, &c., named therein, to appear at the time and place mentioned therein, and answer the matters charged against it, him, or them.

**SUMMONS.** The name of a writ commanding the sheriff, or other authorized officer, to notify a party to appear in court to answer a complaint made against him and in the said writ specified, on a day therein mentioned. *Bowyer.*

**SUPERSEDEAS, (that you stay or supersede.)** The name of a writ containing a command to stay the proceedings at law. *Bowyer.*

## T.

**TAIL, ESTATE.** (See **FER TAIL**.)

**Tenant in tail.** The holder of an estate tail is called a tenant in tail.

**TALESMAN.** A person returned by order of the court from among the bystanders, or from the county at large, to serve as a juror in order to complete the panel. In this state, not more than five talesmen can be returned for one jury, as the statutes provide that there must be on the jury "not less than seven of the

jurors who were originally drawn and summoned." (See p. 682.)

**TERMINI.** Limits, boundaries.

**TORT.** A legal injury, a wrong. In this state, actions of tort include actions of trespass, trespass on the case, trover, and actions for penalties. (See p. 653.)

**TRESPASS.** An unlawful act committed with force directly applied to the person or property.

**Trespass on the case.** The name of an action instituted for the recovery of damages caused by an injury unaccompanied with force, or where the damages sustained are only consequential. *Bowyer.*

**TROVER, (to find.)** The name of an action brought to recover the value of personal chattels wrongfully converted by another to his own use. *Bowyer.*

**TROY WEIGHT.** A scale of weight used for weighing gold, silver, diamonds, &c. The pound contains twelve ounces, or five thousand seven hundred and sixty grains.

## V.

**VENIRE, VENIRE FACIAS, (to come, that you cause to come.)** The name of a writ issued by the clerk of the court, directed to the sheriff, commanding him to cause to come before the court on a specified day, from certain towns of the county named in the writ, a certain number of persons qualified to serve as jurors.

**VENUE OF ACTIONS.** The venue is the county from which the jury are to come who are to try the issue. *Bowyer.*

As used in the statutes, it means the county where the action is to be brought. (See pp. 620, 621.)

## W.

**WASTE.** A spoil, or destruction in houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee simple or fee tail. *Blackstone.*

**WITHERNAM.** The name of a writ used in connection with the action of replevin.

In this state, when, in an action of replevin to determine the legality of the distraint or impounding of cattle, the defendant has judgment that the cattle be returned and restored, a writ of *return* may issue to carry a judgment of that kind, when rendered before a justice of the peace, into execution, by which writ the officer is directed to restore to the defendant the same beasts that the plaintiff had replevied from him. If the officer upon this writ makes return that the property is withheld so that he cannot get it, a writ of *withernam* may issue, by which the officer is directed to take other goods of the plaintiff in withernam, (*by way of reprisal*), and hold them until the plaintiff restores to the defendant the beasts he took from him by the writ of replevin. In this state, the writ of withernam is called a writ of reprisal. (See pp. 732, 733.)





# I N D E X .

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## A.

### ABATEMENT.

of actions brought in wrong county, . . . . 620, 661  
**non-tenure**, disclaimer, several tenancy, and joint  
tenancy may be pleaded in, or in bar  
in writs of entry . . . . . 603  
upon plea of, judgment of single judge to be  
final, . . . . . 566  
pleaded for non-joinder of other defendants,  
plaintiff may have leave to amend,  
508, 657, 658, 759  
provisions respecting pleas in, to apply to com-  
plaints under laws relating to mills, . 759  
of complaints for flowing land, on account of  
defects of form, &c., new may be  
brought within one year, . . . . . 759  
of proceedings for assessments of damages for  
land taken by railroads, new may be  
brought within one year, . . . . . 353  
of real or personal action in certain cases, new  
may be brought within one year, al-  
though otherwise barred by statutes  
of limitation, . . . . . 777, 778  
**Answer in**, may be made of any defence which  
might have been made by plea in abate-  
ment, . . . . . 655  
when overruled or amendment made by  
plaintiff on account thereof, defendant  
to answer or plead to merits, . . . 655, 656  
may be amended by defendant, or he may on  
leave answer over, . . . . . 658  
when issue of fact is joined on, how final  
judgment to be entered, . . . . . 658  
forms of, . . . . . 667, 668  
**Not to be had**, in writs, processes, &c., for  
circumstantial errors, nor defects of  
form, . . . . . 657, 836  
for defects which can be, and are on leave  
amended, . . . . . 658  
by non-joinder of other defendants, against  
whom action of contract is barred by  
limitation, . . . . . 779  
by reason of use of fictitious name for an  
unknown defendant, . . . . . 622  
by parties becoming insane, . . . . . 650  
by marriage of female plaintiff or defendant, 650  
by return or release of husband after action  
brought by wife in her own name by  
reason of his abandoning her, or of his  
imprisonment, . . . . . 542

### ABATEMENT—continued.

*by resignation, removal, or death of public  
officers or statute trustees, . . . . . 650*  
of superintendents of industrial and state  
reform schools, . . . . . 417, 420  
of assignees of insolvent debtors, . . . . 589  
of executors and administrators, . . . 650-652  
of public officers, in case of process of man-  
damus, . . . . . 744  
*by death of parties in complaints for flow-  
ing land, . . . . . 750*  
in action for waste, . . . . . 709  
in petitions for jury in highway cases, . . 235  
in petitions for partition, . . . . . 640  
of trustee, in trustee process, . . . . 725, 726  
of parties in real and personal actions and  
proceedings, general provisions, 648, 649, 650  
in insolvency proceedings, . . . . . 583  
**In criminal cases**, pleas of, to an indictment,  
may be refused to be received by court  
until proved, . . . . . 840  
of indictments and complaints not to take  
place for certain defects of form, . . . 842  
**Of nuisances**, . . . . . 453, 710  
**Of taxes**, . . . . . 79, 80, 81  
**ABDUCTION.**  
of unmarried female, under sixteen years, for a  
clandestine marriage, how punished, 817  
of unmarried woman for prostitution, . . . . 817  
prosecution therefor limited to two years, . 817  
**ABORTION.**  
punishment for unlawfully procuring or at-  
tempting to procure, . . . . . 818  
for aiding and assisting, . . . . . 818  
for advertising means for procuring, . . . . 818  
**ABSENT DEFENDANT.**  
when and how liable to actions . . . . . 645, 646  
personal actions against, when may be main-  
tained, . . . . . 645  
actions of tort against several, to be conducted  
against any one absent as if he were  
sole defendant, . . . . . 646  
so in real and mixed actions, . . . . . 647  
of contract may proceed against those who  
are served with process, although  
some defendant is absent, . . . . . 647  
and against him who is absent only in the  
same manner as if he were the only  
defendant, . . . . . 647

**ABSENT DEFENDANT—continued.**  
**Cross actions** against, . . . . . 645  
 if plaintiff is out of state, defendant may bring cross action, . . . . . 645  
 if there are several defendants, each may bring such action, and set off judgments, . . . . . 645  
 writ in such cases, how served, . . . . 645, 646  
 actions may be continued to enable absent parties to attend, or execution to be set off, . . . . . 646  
 not subject to other provisions respecting absent defendants, . . . . . 646  
**Service of writs** against, how made in different cases, . . . . . 623, 646, 647  
 summons or copy to be left at last and usual place of abode, or with tenant, agent, or attorney, . . . . . 623  
 if he has no such abode in the state, tenant, agent, or attorney, officer need make no further service, except, &c., . . . . . 623  
 if there is a co-defendant, summons or copy for absent defendant to be left with him, . . . . . 623  
 in real actions, summons or copy to be left with tenant or occupant of, or on conspicuous place on premises, . . . . . 623  
**Further notice** to be given where service is defective, or defendant is out of state, or his residence unknown, . . . . 623, 646  
 may be ordered on suggestion of plaintiff, . . 646  
 may in any case, when defendant does not appear, be ordered by court, . . . . . 646  
 cases to be continued until such notices have been given, . . . . . 646  
 how given in cases before justice of the peace, 605  
**Judgment and execution** against, . . . 646, 647  
 not appearing and answering after notice given as ordered by court, to be defaulted, and judgment to be entered against, . . . . . 605, 646  
 execution on such judgment in personal action not to be taken out within one year, unless plaintiff gives bond, 605, 646  
 bond to be deposited with clerk, . . . . . 646  
 if execution so issued is levied on real estate, absent defendant may retake same on review in certain cases, . . . . . 646  
 if judgment is for seisin in a real action, bond need not be given, . . . . . 646  
 writ of seisin in such case may issue and be levied, . . . . . 646  
 if judgment is reversed on review, defendant may have restitution of his land, . . . 646  
 when part only of defendants in actions of contract are absent, how judgment rendered, . . . . . 646  
 effect of such judgment on liability of other parties, . . . . . 647  
 action on judgment obtained by default in certain cases subject to same defence as upon review, . . . . . 662  
**May have review** as of right, within one year after judgment by default, . . . 747  
 and on petition and leave of court, within one year after notice of judgment, . . . 747  
**On petitions for partition**, . . . . 649, 701-703  
 how notified when proceedings are pending in supreme or superior court, . . . . 699  
 in probate court, . . . . . 703  
 agent for, to be appointed when petition is pending in probate court, . . . . . 703

**ABSENT DEFENDANT—continued.**  
 may have new partition within three years after judgment, . . . . . 701, 702  
 in proceedings for the enforcement of liens, . . . . . 763  
**ABUSE.**  
 of female child under ten years of age, . . . 793  
**ABUSES.**  
 and errors in inferior courts, how corrected by supreme court, . . . . . 553  
**ACADEMIES.**  
 preceptors and teachers of, incorporated, exempt from serving as jurors, . . . . . 680  
 to impress principles of piety, temperance, &c., . . . . . 216  
**ACCESSORY.**  
**BEFORE THE FACT.**  
 to burning, by wilfully, &c., cutting, &c., bell rope, injuring fire engine, &c., within twenty-four hours of fire, . . . . . 796  
 convicted of three distinct larcenies at same term, how punished, . . . . . 798  
 to larceny of real estate, . . . . . 798  
 jurisdiction in such cases, . . . . . 799  
 to a felony, how to be punished, . . . . . 825, 826  
 how, when, and where to be tried, . . . . 826  
**AFTER THE FACT.**  
 to burning, by wilfully, &c., cutting, &c., bell rope, injuring fire apparatus, &c., preventing the giving of an alarm, or obstructing the extinguishing of fires, . . . . . 796, 797  
 to larceny of real estate, . . . . . 798  
 jurisdiction in such cases, . . . . . 799  
 to a felony, who to be deemed, and how punished, . . . . . 826  
 how, when, and where to be tried, . . . . 826  
**ACCIDENT AND MISTAKE.**  
 suits in cases of, may be brought in supreme judicial court in equity, . . . . . 559  
**ACCOUNT.**  
 money of, to be dollar, cent, and mill, . . . . 292  
 otherwise made, not vitiated, but to be reduced to dollars, &c., . . . . . 292  
**ACCOUNT CURRENT.**  
 in actions to recover balance due on, limitation to run from last item proved, . . . 777, 778  
**ACCOUNTS.**  
 suits in equity upon such as cannot properly be adjusted at law, . . . . . 559  
 annexed, in action of contract, when and how allowed, . . . . . 654, 664  
 when may be stated by auditors in actions of contract, tort, and replevin, . . . . . 616  
 allowed in set-off, . . . . . 669-671  
 of executors, administrators, and guardians, 494, 495, 504, 545  
 of assignees of insolvent estates, . . . . 588, 594, 595  
**ACCUSED.**  
 right of persons, at trial, to defend themselves, have counsel, produce and meet witnesses, . . . . . 9, 15, 790  
**ACKNOWLEDGMENT.**  
 or new promise, in actions of contract, . . 778, 779  
 must be in writing, and signed by the party chargeable, . . . . . 778  
 by one of several joint debtors, not to affect the others, . . . . . 779  
 and proof of deeds, . . . . . 467  
 of the discharge of mortgages, . . . . . 469  
 after execution for possession is levied, . . 715



**ACQUITTAL.**

- when by reason of prisoner's insanity, to be so stated by jury, . . . . . 842
- Former**, when a bar to proceedings against duellists, &c., . . . . . 792
- on the merits, a bar to subsequent prosecution for same offence, . . . . . 790
- on the ground of variance, or on exception to form, &c., of indictment, not a bar, 790

**ACTIONS.**

- Divisions of personal**, only three, contract, tort, and replevin, . . . . . 653
- of contract*, to include assumpsit, covenant, and debt, except for penalties, . . . . 653
- of tort*, to include trespass, trespass on the case, trover, and all actions for penalties, . 653
- writ in, need not contain declaration unless an arrest is made, . . . . . 655
- of replevin*, . . . . . 730-733
- Civil**, to be commenced by original writ, . . 621
- not barred by criminal proceedings for same offence, . . . . . 840
- unless such proceedings are stayed upon representation to party injured, &c., payment of costs, . . . . . 839, 840
- forms of, may be amended before final judgment, . . . . . 658
- may be commenced against unknown defendant by fictitious name, . . . . . 622
- against corporations and persons not liable to arrest, commenced by writ of attachment and summons, . . . . 621, 622
- by and against married women, in what cases may be brought, . . . . 538, 541, 650
- in what cases not to be brought against husband for wife's debts, . . . . . 538
- parties to, may manage their own in court, or specially authorize any person to act, 615
- not to be brought against parties out of state, unless they have lived in state, or an attachment is made, . . . . . 645
- cross-actions against such parties may be brought for purposes of set-off, . . . 645

(See *Absent Defendants*.)

- Where and how to be brought**, in different cases, . . . . . 620, 621
  - transitory, to be brought where one of the parties lives or has his usual place of business, if either lives in this state, . 620
  - if neither lives in the state, may be brought in any county, . . . . . 620
  - trustee process, in county where one of trustees dwells, or has his usual place of business, . . . . . 721
  - whether local or transitory, by or against trustees, where to be brought, . . . . 621
  - where, by or against corporations other than the city of Boston, or any county, . . 621
  - where, by or against towns, cities, parishes, religious societies, and school districts, 621
  - by or against Boston, may be brought in Suffolk, Essex, Middlesex, or Norfolk, or where plaintiff lives, . . . . . 621
  - if brought in Suffolk, by Boston, may be removed by defendant to another county, 621
  - concerning land in different counties, may be brought in either county in certain cases, . . . . . 620, 621
  - for forfeitures, to be brought in county where offence was committed, . . . . . 621
  - on recognizances, . . . . . 564, 611, 835, 836
- (See *Recognizances*.)

**ACTIONS—continued.**

- how brought, and judgment, &c., entered on bonds, &c., with penalties, . . 685, 686
  - (See *Bonds*.)
  - upon judgments obtained upon default, subject in certain cases to same defence as upon review, . . . . . 602
  - one action may be brought against persons severally liable on same contract, . . 654
  - declaration in such case, . . . . . 654
  - trial may be had on different issues, according to order of court, . . . . . 654
  - one or more executions may issue therein, 654
  - may, before final judgment, be amended so as to enable parties to maintain their case for causes intended, . . . . . 658
  - cause of, to be deemed same for which action was brought, when, &c., . . . . . 662
  - when so adjudged, conclusive of the facts against parties to the record, . . . . 662
  - other parties, not notified, not bound by such adjudication, . . . . . 662, 663
  - may be brought in their own names by the purchasers of claims sold by assignees of insolvent estates, . . . . . 595
  - what may be brought for money advanced for repairs of mills in different cases, 761
- (See *Mills*.)

- By and against executors, &c.**, all actions which survive may be commenced and prosecuted by and against executors and administrators, . . . . . 651
  - they may voluntarily take upon themselves the prosecution or defence of actions commenced by their deceased, . . . . . 648, 649, 651, 652
  - or may be cited in, . . . . . 648, 652
  - judgment, how entered when they do not appear, . . . . . 648
  - they may apply to county commissioners in cases where deceased had a right of application, but did not apply before his decease, . . . . . 650
  - actual damages only to be recovered against executors and administrators for torts committed by deceased, . . . . . 651
  - proceedings in actions by and against executors and administrators, . . . . . 491, 494, 648, 649, 651, 652
  - special administrator may maintain, but not liable to, by creditor, . . . . . 484
  - not to be brought against executors, &c., after estate is represented insolvent, except for preferred debts, &c., . . . . 498
  - on bonds given by, how brought, &c., . . 505
- (See *Executors, Administrators, Limitations, Surviving of Actions*.)

- Against officers and stockholders**, liable for debts of corporations, . . 309, 340, 386
  - For damages for land taken for railroads**, may be had anew in certain cases, . 353, 354
  - Limitation of.** (See *Limitation*.) . . . . 777-779
  - Not abated**, by circumstantial errors and defects of form, . . . . . 657, 836
  - by plea or answer in abatement, if defect is amended, . . . . . 658
  - by death, removal, resignation of public officers, assignees, and others, . . . . .
- (See *Abatement*.)
- Continued, nisi**, in supreme court, how judgment to be entered, . . . . . 557
- (See *Continuance*.)

**ACTIONS — continued.**

- Deemed at issue, when allegations are closed, or plea in real action is filed, . . . . . 657
- Trial, by jury in, may be waived, . . . . . 661
- Changes, in matters in, may be suggested on record, . . . . . 662
- Costs, in, at law, . . . . . 780, 781
  - those that might have been joined, . . . . . 781
  - where there are several counts, and some are found for plaintiff and some for defendant, . . . . . 781
- Real and respecting real estate.
  - of dower, . . . . . 697
  - of entry, . . . . . 692-696
  - for foreclosure and redemption of mortgages, . . . . . 712 717
  - of forcible entry and detainer, . . . . . 707, 708
  - for partition of lands, . . . . . 698-706
  - of petitions for settlement of titles, . . . . . 696
  - for private nuisances, . . . . . 710, 711
  - of information for intrusion, &c., . . . . . 717-719
  - of waste and trespass on real estate, . . . . . 708-710

**ACTS AND RESOLVES. (See Laws.)**

- to be bound in separate volumes, . . . . . 49
- acts of incorporation to be deemed public acts, . . . . . 50
- list of repealed acts, . . . . . 906, 907

**ADJOURNMENT.**

- Of senate and house of representatives, respectively, . . . . . 20, 21
- Of general court, . . . . . 23
- Of congress, or either house thereof, . . . . . 3
- Of courts, in case of war, pestilence, or other calamity, . . . . . 617
- Of supreme and superior courts, by any officer upon order of court, . . . . . 618
  - when judge is absent, how adjourned, and notice given by sheriff, . . . . . 568
  - from one shire town to another, . . . . . 568
- Of probate courts, by the judge, as occasion requires, . . . . . 577
  - by register when judge is absent or office is vacant, . . . . . 577
- Of courts of insolvency, judge may adjourn court or meeting of creditors, . . . . . 581
  - register may, when judge is absent or office is vacant, . . . . . 582
  - of meeting, business done at to have same effect as if done at original meeting, . . . . . 581
- Of police courts, from time to time, to same or different places in district, . . . . . 571
  - to a future day, parties and witnesses in criminal cases not required to attend from day to day, . . . . . 571
- Of cases before justices of the peace, to other times and places, as occasions require, . . . . . 610
  - not exceeding ten days in certain cases, . . . . . 832
  - when a justice fails to attend at time and place to which a civil process is returnable or continued, any other justice may adjourn case, . . . . . 605
- Of sale of personal property taken on execution, . . . . . 688
  - not to exceed seven days at one time, . . . . . 688
  - notice of, how given, . . . . . 688

**ADJUTANT-GENERAL. (See Militia.)** . 95, 101

**ADMINISTRATION.**

- to whom granted, and in what order, . . . . . 483
- not to be granted after twenty years, . . . . . 483
  - except when property accrues or first becomes known after that time, . . . . . 483
  - or when necessary to distribute the divi-

**ADMINISTRATION — continued.**

- dends of insolvent estate of deceased person, . . . . . 499, 500
  - to be revoked on proof of will, . . . . . 483
  - jurisdiction of probate court in granting, . . . . . 574
  - court first taking cognizance of, in any case to retain jurisdiction throughout, . . . . . 574
  - first granted to extend to all estate of deceased in this state, . . . . . 574
  - when to be granted to public administrator, . . . . . 483
  - De bonis non, how and when granted, &c., 492, 503
  - With will annexed, when to be granted, . . . . . 482
    - bond in such cases, . . . . . 482
    - during executor's minority, . . . . . 482
  - Special, when may be granted, . . . . . 484
  - Ancillary, . . . . . 508
- ADMINISTRATORS.**
- who entitled to be, and in what order, . . . . . 483
  - of married woman, husband to be, unless, &c., . . . . . 483
  - bond to be given with condition, &c., . . . . . 483
  - to be approved by judge of probate court, . . . . . 505
    - when exempted from giving, for proceeds of sale of real estate, . . . . . 505
    - when new, may be required, . . . . . 505
    - provisions concerning surety, &c., on, . . . . . 505-507
  - to give notice of appointment, . . . . . 491
  - to make affidavit of notice, . . . . . 491
  - to return inventory within three months, . . . . . 488
  - may foreclose mortgage, . . . . . 489, 490
  - to hold premises in trust until redeemed, . . . . . 490
  - may sell real estate held in mortgage, or after foreclosure by obtaining license, . . . . . 490
  - limitation of actions against, by creditors, . . . . . 491
    - when assets are received after two years, . . . . . 491
    - when action fails from defect in form, insufficient service, &c., new action may be commenced, . . . . . 491
    - proceedings when right of action accrues after two years, . . . . . 491, 492
    - provisions not to affect rights of action against heirs, . . . . . 492
    - not liable to actions within a year, except, &c., . . . . . 492
    - when not liable for deficiency of assets, . . . . . 492
  - when may be discharged on payment of whole estate, before notice of other demands, 492
  - if he pays away part, and remainder of estate is insufficient to pay subsequent demands, when to be liable only for part that remains, . . . . . 492, 493
  - if there are two or more such demands, he may represent estate insolvent, . . . . . 493
  - not liable to creditors, when estate is exhausted by paying preferred debts, . . . . . 493
  - when may demand security of legatee, &c., to refund, . . . . . 493
  - liability of, for unnecessary delay in collecting debts, . . . . . 493, 494
  - claims of, &c., may be submitted to arbitration, 494
  - or same decided by court or jury, on appeal, 494
  - to account for personal estate at appraisal, . . . . . 494
  - to be charged with increase, and allowed for decrease, of appraisal, . . . . . 494
  - upon petition of, court may order sale of personal property and outstanding claims, . . . . . 494, 495
  - may transfer mortgages, . . . . . 495
  - not chargeable with bad debts, . . . . . 495
  - chargeable with certain effects not in inventory, with income of real estate, if received, . . . . . 495
  - to render account within one year, and further accounts when required by the court, 495
  - how liable for not rendering accounts, . . . . . 495

**ADMINISTRATORS — continued.**

allowances to, for services, . . . . . 495

costs against, how paid and allowed, . . . . 496, 651

duties and liabilities of, when estate is insolvent, . . . . . 496, 499

may be sued after eighteen months, if question of insolvency of estate is not settled at that time, . . . . . 499

penalty on, for neglect to settle accounts within six months of commissioner's return, . . . . 499

of trustee not required to accept trust, . . . . 501

powers and duties of, as to redeeming lands of intestate, &c., taken, &c., on execution, . . 523

register of probate and insolvency not to be in his county, . . . . . 602

suits between co-administrators and their representatives, may be brought in equity in supreme court, . . . . . 559

to pay in full judgment recovered for goods attached against the deceased as an officer, . . . . . 648

may voluntarily take upon themselves the prosecution or defence of actions commenced by or against deceased, 648, 649, 651, 652

or may be cited in, . . . . . 648, 652

if they do not appear in such cases, judgment, how entered, . . . . . 648

may apply to county commissioners in cases where the deceased had a right of application, . . . . . 650

in actions against, for tort committed by deceased, actual damages only to be recovered, . . . . . 651

of a trustee, carrier, or depository, who recovers judgment for goods, or the value of goods belonging to others, not to take the same as assets of the estate, but to deliver them to the owner, . . 651

not to account for goods returned upon a judgment of return in replevin, . . . . . 651

writ and execution against, on account of debts due by the deceased, not to issue against their bodies nor estate, . . . 651

personally liable for costs in actions commenced or prosecuted by themselves, execution in such case to be awarded against their bodies and estate personally, . . . . . 651

when judgment is for debt and costs, two executions to issue, one for costs against administrator personally, and the other for debt against estate of deceased, . . . . . 651

costs paid by, may be allowed in their accounts, . . . . . 651

seire facias may be sued out against, on suggestion of waste, when execution recovered against, for debt of deceased, has been returned unsatisfied, . . . . 651

may in such case be issued by justices of the peace, . . . . . 605

by or against, on judgments recovered for penalty of bond, covenant, or agreement, against deceased, when there are subsequent breaches, . . . . . 656

liable in such action for whole debt, . . . . 651

death of, not to abate suit commenced, but same may be prosecuted by administrator de bonis non, . . . . . 648, 652

dying after judgment by or against him, seire facias may be sued out by or against

**ADMINISTRATORS — continued.**

administrator de bonis non, and a new execution issued, . . . . . 652

execution in such case, how to issue, . . . . 652

writ of error may be brought by administrator de bonis non on such judgments, . . . . . 652

in actions by and against administrator, how demands by and against the deceased may be set off, . . . . . 670

may be prosecuted in actions for waste committed by deceased, whether actions are commenced before or after death of testator or intestate, . . . . . 709

may tender sums due on mortgages, of which deceased owned right of redemption, and bring or prosecute suits for redemption, . . . . . 715

shall acknowledge satisfaction, or give release, when an execution for possession on a mortgage has been levied, and subsequently paid, . . . . . 715

liable to be summoned as trustees on account of debts, legacies, and effects, in their hands, . . . . . 723

how in cases where deceased was summoned as trustee while living, . . . 725, 726

to seire facias on judgment in trustee process, in certain cases, . . . . . 726

(See *Trustee Process*.)

**With will annexed**, when to be appointed, . . . . . 482, 483

bond in such cases, . . . . . 482

**De bonis non**, liable to actions for two years, 492

to give notice of appointment, . . . . . 492

if he fails to give notice, not to have benefit of limitations, . . . . . 492

to be further liable, if new assets are received, 492

**Special**, when may be appointed, . . . . . 484

to act, though decree of appointment is appealed from, . . . . . 484

to give bond, and condition thereof, . . . . 484

powers and duties of, . . . . . 484

compensation of, . . . . . 484

allowance to widow, &c., from funds in hands of, . . . . . 484

appeal not to prevent payment of such allowance, . . . . . 484

may pay funeral expenses, &c., by leave of court, . . . . . 484

to cease to act, &c., on appointment of executor, &c., . . . . . 484

not liable to creditors, &c., . . . . . 484

**Death, removal, &c., of**, . . . . . 503

upon death of, administration de bonis non to be granted, . . . . . 503

may be removed by probate court for cause, and if sole, new one appointed, . . . 503, 504

acts of, before removal, to be valid, . . . . 504

marriage of administratrix extinguishes her authority to act, . . . . . 504

and, if there is no other administrator, &c., court to appoint, . . . . . 504

may resign by leave of court, . . . . . 504

**Accounts, discharges, compromises, and releases**, . . . . . 504

accounts of two or more joint, may be allowed upon oath of one of them, . . 504

final discharge of, and evidence thereof, how perpetuated, &c., . . . . . 504

to deposit money due, if not claimed for six months after decree, . . . . . 504



**ADMINISTRATORS**—*continued.*  
 such money to be paid over afterwards, when court orders, . . . . . 504  
 may compromise claims, by leave of court, . . . . . 504  
 may execute certain releases of real and personal estate, by leave of court, . . . . . 504, 505

**ADOPTION.**  
 of children, . . . . . 547, 548

**ADULTERATION.**  
 fraudulent, for purposes of sale, of bread, or any substance intended for food, . . . . . 822, 823  
 of any liquor used or intended for drink, 822, 823  
 knowingly selling such adulterated liquor, . . . . . 823  
 of drugs and medicines, . . . . . 823  
 knowingly selling such drugs, . . . . . 823  
 adulterated articles to be forfeited, . . . . . 822, 823

**ADULTERY.**  
 cause for divorce, . . . . . 532  
 how punished, . . . . . 817  
 when between married woman and unmarried man, the man deemed guilty of, . . . . . 817

**ADVANCEMENTS.**  
 to heirs, &c., to be taken, in division, &c., of estates, as part of share, . . . . . 474, 475  
 not to be refunded, though it exceed share, . . . . . 475  
 how to be considered, in division of estate, . . . . . 475  
 how to be proved, . . . . . 475  
 to issue not to be computed, in distribution to widow, . . . . . 485  
 value of, how ascertained, . . . . . 475  
 if descendant dies before intestate, leaving issue, to be considered in division, . . . . . 475  
 not to affect title of tenants in dower or by the curtesy, . . . . . 475  
 questions arising on proceedings for partition of real estate may be determined by court in which case is pending, . . . . . 705  
 or case may be continued until the questions are determined by probate court, . . . . . 705

**ADVERTISEMENTS.**  
 party may select paper for certain, . . . . . 577, 582

**AFFIDAVIT.**  
 making a denial concerning a time, sum, quantity, or place alleged, to state what time, sum, quantity, or place is admitted or denied, . . . . . 656  
 of merits to be made by defendants, in civil actions, within ten days of return of writ, or before end of return term, . . . . . 659  
 time may be extended by order of court, . . . . . 659  
 when to be made by absent defendants who come in on notice, . . . . . 646  
 of interrogating party, or his attorney, to be annexed to interrogatories filed in civil actions, . . . . . 659  
 required of corporations in suits, may be made by some officer thereof, . . . . . 663  
 to truth of facts to be made by petitioner for leave to appear and dispute validity of prior attachments, . . . . . 631  
 of witnesses out of state, when not taken according to the statute, may be admitted, or rejected at discretion of court, . . . . . 675  
 not to be admitted in such case, unless adverse party had notice, if possible to be given, . . . . . 675  
 when not to be received on trials under acts respecting fugitives from service, . . . . . 736, 737  
 of entry for breach of condition of mortgage, and to foreclose same, . . . . . 712  
 of intention to foreclose mortgages of personal property, . . . . . 767

**AFFIDAVIT**—*continued.*  
 of sales under mortgages, with powers of sale, 716  
 of notice of appointment to be made by executors and administrators, . . . . . 491  
 of notice of sales of real estate by executors, administrators, and guardians, . . . . . 511  
 of notice of sale of real estate for taxes by collector, . . . . . 84

**AFFIRMATION.**  
 may be made, instead of taking oath, by Quakers and others having conscientious scruples, . . . . . 30, 673  
 included in "oath" where by law it may be substituted therefor, . . . . . 51  
 may be made by jurors, . . . . . 841

**AFFRAYERS.**  
 before a court may be ordered without process to recognize to keep the peace, . . . . . 828, 829  
 may be committed if they fail to recognize, . . . . . 828, 829  
 arrested without warrant by order of justice of the peace, . . . . . 608

**AFRICAN METHODIST EPISCOPAL CHURCH.**  
 trustees of society of, may organize and become corporation, . . . . . 204, 205  
 powers of, . . . . . 205  
 limitation of annual income of such corporation, 205  
 organization of corporation, . . . . . 205  
 copy of record of, to be left with town clerk, 205

**AGED, infirm, &c., persons, exempted from taxation, . . . . . 75**

**AGENTS.**  
 of foreign insurance companies, to give bond, &c., . . . . . 331  
 for sale of spirituous and intoxicating liquors, 440, 441  
 of absent defendants, when writs may be served on, . . . . . 623  
 to be appointed for absent heirs or devisees, in proceedings for partition of real estate by probate courts, . . . . . 703  
 embezzlement by, how punished, . . . . . 800

**AGENTS AND FACTORS.** (*See Factors.*) . . . . . 294

**AGREEMENT.**  
 by parties, or their attorneys, in civil actions, may be made respecting amendments, enlarging time, filing papers, &c., . . . . . 660  
 by attorneys concerning suits and proceedings not valid, unless in writing, . . . . . 660  
 for continuing a case, may be made by parties, but its place on docket may be regulated by general or special order of court, . . . . . 660  
 of parties respecting amendments and filing papers equivalent to order of court, . . . . . 660  
 such agreements not to postpone trial, . . . . . 661  
 certain, not valid, unless in writing, . . . . . 527

**AGRICULTURAL AND HORTICULTURAL SOCIETIES.**  
**AGRICULTURAL SOCIETIES.**  
 property of, exempted from taxation, . . . . . 74  
 when entitled to receive money from state treasury, . . . . . 376  
 claiming bounty to file certificate with secretary of board of agriculture, . . . . . 376  
 amount of bounty to be paid, to be ascertained by certificate last filed, . . . . . 376  
 terms on which they are to receive money, . . . . . 376, 377  
 returns by, to secretary of board of agriculture, how and when to be made to entitle to state bounty, . . . . . 377  
 contents of such returns, . . . . . 377  
 passages in returns, worthy of public notice, to be marked, . . . . . 377

**AGRICULTURAL, &c., SOCIETIES—continued.**

bounty forfeited by neglect to comply with provisions of law, . . . . . 377

receiving bounty to offer premiums for agricultural experiments, . . . . . 377

to offer encouragement, &c., for raising trees for ship timber, . . . . . 377

surplus money of, to be put at interest, . . . . . 377

foregoing provisions not to apply to societies incorporated for territory less than a county, except by special enactment, . . . . . 377

may fix bounds for pens, yards, &c., within which spectators, &c., shall not enter under a penalty, . . . . . 377

such bounds not to include, highways, &c., nor private estates without the owner's consent, . . . . . 377, 398

may appoint marshals, with power of constables, . . . . . 378

term of marshals' office, . . . . . 378

premium for field crop not to be awarded without sworn evidence of weight, . . . . . 378

**Annual exhibitions, times of holding, . . . . . 378**

**AGRICULTURAL, HORTICULTURAL, AND ORNAMENTAL TREE ASSOCIATIONS.**

ten or more persons may become a corporation for the purpose of encouraging agriculture, horticulture, &c., . . . . . 378

may hold real and personal estate, to a limited amount, . . . . . 378

how organized, and powers and privileges of, . . . . . 378

**FARMERS' CLUBS.**

properly organized and holding regular meetings, upon application to secretary of state board of agriculture, to receive copies of report of board, &c., . . . . . 378, 379

receiving such benefits, to make returns annually in October to said secretary, . . . . . 379

**AGRICULTURE, BOARD OF.**

how constituted, . . . . . 141

tenure of office of members, . . . . . 141, 142

vacancies, how filled, . . . . . 141, 142

to meet at state house at least once each year, . . . . . 142

to investigate subjects relating to agriculture, . . . . . 142

to take donations, &c., for promoting interests of husbandry, &c., . . . . . 142

may prescribe forms for and regulate returns by agricultural societies, . . . . . 142

compensation allowed only for expenses, . . . . . 142

**Secretary of, how appointed, . . . . . 142**

salary of, . . . . . 142

clerk of, and salary, . . . . . 142

to publish annual abstracts of returns of agricultural societies, . . . . . 142

may appoint agents to visit towns, &c., . . . . . 142

such agents to report to secretary, . . . . . 142

**Annual report of, . . . . . 142**

when to be laid before legislature, . . . . . 52, 142

when may be put in type, . . . . . 53

number to be printed, and distribution of, . . . . . 53

**AIR.**

easement of, not to be acquired by use, . . . . . 472

**ALARMS OF FIRE.**

penalty for giving falsely, . . . . . 816

for stealing property removed because of, . . . . . 797

**ALDERMEN.**

general provisions respecting, . . . . . 166, 167

duty of in suppressing riots . . . . . 815

exempt from liability to watch, &c., . . . . . 174

(See *Mayor and Aldermen.*)

**ALE.**

to be considered intoxicating liquor, . . . . . 442

**ALEWIVES.**

regulations respecting, . . . . . 263, 264

**ALIEN PASSENGERS.**

board of commissioners of, and of state paupers, how constituted, . . . . . 396

commissioner appointed by governor, to hold office for three years, . . . . . 396

**Commissioners** may appoint person to visit state almshouses and report, . . . . . 396

to appoint agents to procure information respecting, arriving in this state, . . . . . 397

officers of railroads, &c., to furnish agents certain information concerning, under penalty, . . . . . 397

to give direction concerning pauper returns, . . . . . 397

to prescribe forms of returns for superintendents of state almshouses, . . . . . 397

to prescribe and furnish forms of certificates to towns, for sending paupers to state almshouses, . . . . . 397

to have powers of overseers of poor in relation to state paupers in hospitals, . . . . . 397

may transfer inmates of state almshouses, &c., . . . . . 397

may commute bonds taken by superintendents of alien passengers, . . . . . 397

may require pauper accounts to be substantiated by affidavits, &c., . . . . . 403

to make annual report to governor and council, . . . . . 397

may allow towns to send sick paupers to hospital at Rainsford Island, . . . . . 400

may complain in bastardy cases, when woman refuses, &c., . . . . . 404

compensation of, and of their agents, . . . . . 397

**Superintendents of, how appointed, qualified, and paid, . . . . . 398**

duties of, . . . . . 398

when to be performed by overseers of poor, . . . . . 400

to account quarterly with state treasurer, 399, 400

certain passengers not to be landed until bond is given to, . . . . . 398

may permit sick, &c., passengers to land without bond, . . . . . 399

may receive head money in lieu of bond, . . . . . 398

such money to be refunded in certain cases, 399

may take bond for payment of such money, 399

such bond, how cancelled, . . . . . 399

penalty on master, &c., for refusing to give bond, when landing sick passenger, if passenger becomes a charge upon town, &c., . . . . . 399

party to whom head money is repaid, &c., liable if passenger returns, . . . . . 399

provisions not to apply to seamen sent from foreign places by U. S. consuls, . . . . . 399

nor to foreign consuls, &c., nor persons from wrecked vessels, . . . . . 399

penalty on master, &c., of vessel for landing, except at port of destination, with intent to avoid these provisions, . . . . . 399

for landing, contrary to these provisions, . . . . . 399

for landing convicts from other states, . . . . . 399

persons bringing foreigners into the state, liable for their support, in certain cases, . . . . . 400

arriving sick, to remain at Rainsford Island Hospital, . . . . . 400

**ALIENATION** of real estate. (See *Deed.*)

**ALLEGATIONS.** (*See Pleadings.*)**ALIENS.**

- may take, hold, transmit, &c., real estate, . . . 473
- titles to real estate derived from, confirmed, . . . 473
- when may be admitted as attorneys at law, . . . 615
- how naturalized by supreme and superior courts, 618
- not to be naturalized by other courts, . . . . 618
- actions by, within what time may be brought in certain cases, . . . . . 778

**ALIMONY.**

- may be decreed to wife, in certain cases, . . . 535, 536
- during pendency of libel for divorce, . . . 533
- decrees concerning, may be enforced, revised, and altered by the court, . . . . . 536
- or share of estate in the nature of, to husband in certain cases, . . . . . 536

**ALLEGIANCE.**

- oath of, . . . . . 29, 33

**ALLOWANCE.**

- to widow and children of deceased persons, 484, 489
- when to be paid, notwithstanding appeal, on giving bond, . . . . . 484
- to wife during pendency of libel for divorce, . . . 533
- to insolvent debtors out of their estate, . . . 594, 597
- to prosecutors after conviction of burglary, larceny, &c., . . . . . 799
- when offender has forfeited his recognizance, . . 799

**ALMSHOUSES AND WORKHOUSES.**

- may be provided by cities and towns, . . . 170, 171
- persons who may be maintained there, . . . 170, 171
- not to be erected by towns in other places without consent of such places, . . . . . 171

**Directors of,** may be chosen, . . . . . 171

- when not chosen, overseers of poor to act, . . 171

may appoint masters and assistants to superintendent, . . . . . 171

meetings of, to be held monthly, . . . . . 171

may make rules for government, subject to approval of town, &c., . . . . . 171

register of inmates, &c., to be kept by master, to be submitted to overseers of poor upon their request, . . . . . 172

controversies between masters and overseers of poor to be determined by directors, . . . . . 172

profits and earnings, how to be disposed of, 172

**Persons committed to,** how may be discharged, . . . . . 172

to be kept employed, . . . . . 172

if idle, stubborn, &c., may be punished, . . 172

persons not having settlement in state may be committed to, &c., . . . . . 172

inmates with infectious diseases may be removed to hospitals, &c., by board of health, . . . . . 191

masters, &c., to give notice to overseers of poor of death of inmates, . . . . . 195

**May be discontinued,** . . . . . 173**Powers, &c., granted to places by special acts,** not affected, . . . . . 173

JOINT BY SEVERAL TOWNS.

how may be provided, . . . . . 171

**Directors of,** to be joint board, chosen by the several places, . . . . . 171

each place to choose three, unless, &c., . . . 171

vacancies, how filled, . . . . . 171

if place neglects to choose, those of other places to have charge, . . . . . 171

meetings of, to be held quarterly, . . . . . 171

may be called at other times by directors of either place interested, . . . . . 171

**ALMSHOUSES, &c. — continued.**

may choose moderator and clerk, . . . . . 171

clerk of, to be sworn, and record votes, &c., 171

may make by-laws, &c., if one half are present, 171

may appoint master, &c., and fix compensation, . . . . . 171

may act on other matters if one third are present, subject, &c., . . . . . 171

expenses, compensation, and repairs, how to be paid, by places interested, . . . . . 172

remedy against places neglecting to pay proportion, . . . . . 172

places not to send more than their proportion of persons, . . . . . 172

places refusing to pay proportion of expenses, deprived of right to send, . . . . . 172

each place may furnish means of work, for committee, by its authority, . . . . . 172

duties of master, when materials thus furnished, 172

**ALMSHOUSES, STATE.****Inspectors of,** appointment, duty, and salary of, . . . . . 400, 401

to audit superintendents' accounts, and make reports, . . . . . 403

to have powers of overseers of poor, &c., 401, 402

may send inmates becoming insane to state lunatic hospitals, . . . . . 401

to make certain inventories annually, . . . . 55

**Superintendents of,** appointment, salary and bond of, . . . . . 401

to make returns, &c., concerning births, &c., . . . . . 169, 170

to receive paupers sent to them with proper certificate, &c., . . . . . 401

may contract for employment of inmates of, 402

accounts of, to be audited by inspectors, . . 403

to notify towns when paupers can be received, . . . . . 402

may complain in bastardy case when woman refuses to make complaint, . . . . . 404

towns, &c., may send state paupers to, . . . . 401

not to send lunatics to, who are dangerously mad, . . . . . 401

idiots, having no known settlement, may be sent to, . . . . . 401

fees of officers, &c., in such cases, . . . . . 401

discharged convicts to be removed to in certain cases, . . . . . 401, 402

when settlement of such pauper is discovered, inspectors may remove him thereto, . . 402

inmates of, may be transferred by alien commissioners, . . . . . 397

to be distributed in case either is full, . . . 402

penalty on, for leaving without consent, and found begging, . . . . . 403

if all are full, towns to take charge of paupers at expense of state, . . . . . 402

to be visited by persons appointed by alien commissioners, &c., . . . . . 396

inmates of, having a settlement, to be supported at expense of place liable, . . . . . 402, 403

accounts for maintenance of, and support of inmates, how paid, &c., . . . . . 403

female inmates of, pregnant with bastard child, complaint where made, . . . . . 404

**AMENDMENT.**

**In civil suits,** may be made at any time before final judgment, . . . . . 658

of answers and pleas in abatement, . . . . 658

introducing new parties, discontinuing as to parties, changing form of action, &c., . . 658

in any matter of form or substance to enable



**AMENDMENT—continued.**

parties to sustain their case for cause intended . . . . . 658

when deemed for same cause of action and effect of adjudication thereof, . . . . . 662

of writs sued out against defendant by fictitious name, . . . . . 622

introducing new defendant when answer in abatement is filed, may be made before issue joined, . . . . . 657, 658

when made in consequence of plea in abatement defendant to answer or plead to merits, 655

after demurrer filed, . . . . . 656

in actions concerning lands in different counties, so as to include whole tract in one action, . . . . . 620, 621

after judgment, to correct defects and imperfections of form in record, how made, orders allowing, may before trial be made by court, or justice in term time or vacation in any county, . . . . . 660

may be made by consent of parties, or by their attorneys in writing, . . . . . 600

rules prescribing terms on which they may be allowed, to be made by courts, . . . . . 600

court may impose costs as condition of, . . . . . 782

of pleadings in petitions to enforce liens, . . . . . 763, 769

Of constitution, how made, . . . . . 8, 33

**ANATOMICAL SCIENCE.**

provisions for advancement of, . . . . . 195

**ANATOMY.**

when professors of to have body of person executed for dissection, . . . . . 791

**ANCIENT AND HONORABLE ARTILLERY COMPANY.**

members of exempt from serving as jurors, . . . . . 680

**ANIMALS. (See Beasts.)**

cruelly beating and torturing, how punished, . . . . . 822

live, if attached, how may be disposed of, . . . . . 628, 629

noxious, towns may raise money for destruction of, . . . . . 158

unlawfully taking and driving, &c., . . . . . 801

**ANNUAL MEETING.**

when to be held for town business, . . . . . 159

for state elections, . . . . . 36

when applied to towns, how construed, . . . . . 51

**ANNUITY.**

given by will, when payable, . . . . . 493

from what time to commence, &c., . . . . . 493

apportionment of, in certain cases, . . . . . 493

suits for, not to be brought against executor within one year after giving bond, . . . . . 493

action for, against executors, &c., not limited, . . . . . 493

**ANSWER.**

In equity cases, defence may be made by, . . . . . 559

to be supported by oath unless waived, . . . . . 559

In abatement, may be made in real, personal, or mixed actions, . . . . . 655

not to defeat action if defect can be, and is, amended on leave, . . . . . 658

that others should be joined as defendants, plaintiff may amend by joining other defendants, . . . . . 657

when overruled on demurrer, or an amendment is made in consequence, defendant to plead or answer to merits, 655, 656

may be amended, or defendant allowed to answer over, for good cause shown, and not otherwise, . . . . . 658

To merits of action, by defendant, may contain demurrer to raise issue in law in certain cases, . . . . . 655

**ANSWER—continued.**

attorney to certify probable grounds, &c., in such case, . . . . . 657

substituted in all but real and mixed actions, for special pleas in bar and general issues, which are abolished, . . . . . 656

may be made jointly by two or more defendants making same defence, . . . . . 656

may contain different consistent defences, separately stated, . . . . . 655

to deny clearly, &c., or declare defendant's ignorance of every substantive fact, . . . . . 656

to the common counts, and count annexed, every item to be answered specifically, 656

to state grounds of denial, and specify whether all or part, and what part of any sum, &c., in certain cases, is denied, . . . . . 656

making denial concerning time, sum, quantity, or place, to state what time, sum, &c., is denied and what admitted, . . . . . 657

may allege facts or title alternately, &c., . . . . . 657

to set out clearly each substantive fact intended to be relied on in avoidance of plaintiff's action, . . . . . 655

setting up statute of limitation or of frauds, or other legal bar, need not deny facts set out in plaintiff's declaration, . . . . . 655

to set out copies, or effect, of written instruments relied on, . . . . . 656

need not state evidence, or disclose means of proof, . . . . . 657

to set forth breaches of bonds and conditional obligations, and aver performance of conditions precedent, . . . . . 656

may allege facts occurring after commencement of suit, . . . . . 657

justifying in action for slander and libel, not proof of malice, . . . . . 602

to one matter, not evidence in another in same answer, . . . . . 602

required of corporations, by whom to be made, . . . . . 663

when made to merits, defects in writ or process not to affect jurisdiction of court, when required to be made by absent defendants, . . . . . 646

may be amended, . . . . . 658

when to be made by absent defendants who come in under notice, . . . . . 646

how made by respondent in complaints for flowing land, . . . . . 755

supplemental may be allowed by court, . . . . . 657

order allowing may be made by judge, in or out of court, in any county, . . . . . 660

in set-off, when and how may be made, . . . . . 670, 671

in case of tender, how made, . . . . . 671

forms of, . . . . . 667-669

**After answer, no further pleadings required, except by order of court, . . . . . 656**

but plaintiff may demur to answer or reply if he pleases, . . . . . 656

new matter introduced by answer, deemed denied by plaintiff, or court may require him to reply, . . . . . 656

trial not to be delayed for want of reply, except by order of court, . . . . . 661

(See Pleading.)

**To interrogatories, filed by parties in civil suits, . . . . . 650**

(See Interrogatories.)

**By trustee, in trustee process, . . . . . 722, 729**

(See Trustee Process.)

**APOTHECARY.**

- penalty for selling deadly poisons and not making record of sale, unless by physician's prescription, . . . . . 823
- when may sell intoxicating liquors, . . . . . 442

**APPEAL.**

- In equity cases in supreme court, from single judge to full court, . . . . . 500**
- may be had from any final decree of single judge if claimed within thirty days, . . 560
- how claimed, entered, heard, and determined, . . . . . 560, 561
- omitted, by accident, &c., to be claimed in time, may, on petition to court within a year, be allowed on terms, . . . . . 560
- after an appeal is taken, single judge may make certain orders for appointment of receivers, &c., . . . . . 560
- from interlocutory decree of a single judge, may be had to full court, . . . . . 560
- such appeal not to transfer the case but only the question, nor suspend execution of decree, . . . . . 650
- from final decree, court may revise interlocutory decrees not appealed from, . . . 650
- to be heard on the evidence taken before single judge, and provisions for taking such evidence, . . . . . 561
- but court may in certain cases allow further evidence to be taken, . . . . . 561
- From superior court to supreme court, . . 563**
- may be had in all cases, civil or criminal, upon judgment founded upon law apparent on record, except upon answers and pleas in abatement, and certain motions to dismiss, . . . . . 563
- on decisions upon demurrer in certain cases, 661
- by third parties in certain cases, on adjudication that an amendment is for same cause of action, . . . . . 662, 663
- question only to be entered in supreme court, 567
- execution not to issue on judgment appealed from except in certain cases, . . . . 563
- to be heard by full court, . . . . . 553
- issue of law joined before, not to be waived after entry in supreme court, &c., . . 563
- but pleadings may be withdrawn or amended on leave and case remanded, 563
- security, &c., not discharged when appeal is entered in supreme court until after final judgment, . . . . . 563
- copies of papers in, how prepared, transmitted, and paid for, . . . . . 563, 567
- such copies to be transmitted within twenty days after adjournment of court for the term, and entered on law docket of supreme court, . . . . . 567
- to be entered at next term of supreme court, in counties where law terms are established, . . . . . 554
- or by consent of parties in court for commonwealth, . . . . . 567
- in other counties, to be entered in court for commonwealth, . . . . . 557
- in criminal cases, to be entered on separate docket, . . . . . 557
- if not entered by appellant, adverse party may on complaint have judgment, &c., affirmed, . . . . . 554, 555
- if by mistake, &c., appeal or complaint is not duly entered, how may, on leave, be entered afterwards, . . . . . 555

**APPEAL—continued.**

- such entry on leave not to revive any security discharged, . . . . . 555
- court may affirm former judgment with additional damages, reverse the same, or make other order, &c., . . . . . 554
- in proceedings for partition of real estate, upon matters of law, &c., . . . . . 701
- in complaints for flowage, as in other cases, 755
- in proceedings to enforce liens, . . . . 763
- in libels for forfeited goods, . . . . . 773
- in cases of audita querela, . . . . . 742
- From probate courts to supreme court, 415, 422, 548, 575, 576**
- may be taken by any person aggrieved by decree, &c., of probate court, . . . . 575
- to be claimed and notice given at probate office within thirty days, . . . . . 575
- to be entered at rule day of supreme court next after fifty days, . . . . . 575
- appellant to file in probate office reasons for appeal, and serve copy on adverse party within fourteen days before time of entry, . . . . . 575
- omitted, how may be entered on petition and leave granted, . . . . . 575
- petition for entry in such case must be filed within one year, and adverse party notified, . . . . . 575
- unless petitioner was out of the country, in which case he may file his petition within three years after his return, . . 575
- to be entered on docket with cases in equity, as also petitions for appeal, . . . 560, 575
- after being taken, proceedings upon decree, &c., to cease until determination or waiver thereof, . . . . . 575
- except in case of certain allowances to widow and children, when bond is given, . . . . . 484
- may be waived before entry, . . . . . 575
- may be affirmed or reversed in whole or in part, or other order made and case remitted, . . . . . 575, 576
- if not entered, may be affirmed upon complaint of person interested, . . . . . 576
- questions of fact on, may be tried by jury, . 576
- From courts of insolvency, to superior court, . . . . . 585, 592**
- may be taken by assignee from allowance, and by creditor from disallowance of claim, . . . . . 585
- to be claimed, and notice given to register and to creditor or assignee within ten days, . . . . . 585
- to be entered in next term of superior court after fourteen days from time of claiming same, . . . . . 585
- proceedings, judgment and costs on such appeal, . . . . . 585
- from question of granting discharge, may be taken by assignee or debtor, . . . . 592
- notice of to be given to register within ten days, . . . . . 592
- how entered in superior court, heard and determined, . . . . . 592
- may be waived in writing before entry, in either case, and proceedings to be same as if no appeal had been taken, . . 575, 592
- From police courts and justices of the peace, to superior court, 447, 502, 572, 607, 609, 610, 828, 843**

**APPEAL — continued.**

jurisdiction of, by superior court, . . . . . 562  
 from police courts to be same as from justices of the peace, . . . . . 572  
*In civil cases,* . . . . . 607  
 may be had to next term of superior court, by any party aggrieved by judgment of justice, except upon verdict of jury, . . . . . 607  
 by third parties in certain cases upon adjudication that an amendment is for same cause of action, . . . . . 662, 663  
 to be claimed within twenty-four hours, . . 607  
 when taken, no execution to be issued by justice, but case to be determined in court appealed to, as if it had been commenced there, . . . . . 607  
 appellant to recognize to prosecute his appeal, &c., . . . . . 607  
 if defendant in process of forcible entry and detainer appeals, he must recognize to pay rent, &c., . . . . . 708  
 appellant to produce to court appealed to copy of record, papers, &c., . . . . . 607  
 to be tried in superior court, on issue joined before justice, unless court orders defendant to plead, . . . . . 607  
 if not entered, or copies, &c., are not produced, former judgment may, on complaint of adverse party, be affirmed, &c., . . . . . 607  
 when appeal, or complaint for not entering an appeal, is by mistake, &c., not duly entered, how may be entered afterwards on leave, . . . . . 563  
 such entry on leave not to revive security discharged, . . . . . 563  
 to be tried at civil terms in counties where there are separate terms of superior court for civil and criminal business, . . 564  
 costs to be only quarter sum of debt if plaintiff appeals and does not recover more than twenty dollars, . . . . . 781  
 in proceedings to enforce liens, . . . 763, 770  
*In criminal cases,* . . . . . 572, 609, 610, 828, 843  
 from magistrates, requiring sureties of the peace, . . . . . 828, 829  
 from conviction before justices of the peace or police courts, . . . . . 843  
 appellant to be committed until he recognizes, . . . . . 843  
 condition of recognizance, . . . . . 843  
 witnesses to be recognized, . . . . . 843  
 duty of justice, &c., as to the papers in the case, . . . . . 843  
 to make and transmit copies, and the recognizance, . . . . . 843  
 fees therefor to be paid from county treasury, . . . . . 843  
 appellant not to advance fees on claiming or prosecuting his appeal, . . . . . 843  
 on sentence may be made to pay all or part, if appellant fails to enter and prosecute appeal, he may be defaulted on his recognizance, . . . . . 843  
 sentence may be awarded, as on conviction, may be brought in by process, to receive sentence, . . . . . 843  
 in suits on forfeited recognizances, if penalty is forfeited, or paid without a suit, forfeiture may be paid to proper person by order of court, . . . . . 843

**APPEAL — continued.**

**From commissioners on insolvent estates of deceased persons,** 497, 498, 562  
 may be had to supreme or superior court according to amount in controversy, 497, 498  
 how claimed, entered, and proceeded with, 497, 498  
 may be waived before entry, and claim submitted to arbitration, . . . . . 498  
**From magistrates rendering judgment on charges of fraud alleged against poor debtors,** . . . . . 638, 639  
 may be had to superior court by debtor or creditor, in like manner as from a justice in civil cases, . . . . . 638, 639  
 appellant to recognize, . . . . . 639  
 trial to be had by jury, unless the court determines it by consent of parties without jury, . . . . . 639  
**Miscellaneous.**  
 from order of board of health to supreme court relative to offensive trades, . . . 194  
 closing tombs, &c., . . . . . 196  
 from commissioners of wrecks, to superior court, concerning compensation, &c., . . 428  
 from judges and commissioners, on order to commit to reform and industrial schools, . . . . . 415, 422  
 from taxation of costs, how to be heard and determined, . . . . . 782  
 when appellee may have costs before appeal is settled, . . . . . 782  
 costs of appeal from taxation of costs, 782, 783  
 in cases of seizing, &c., forfeited goods, 773, 774  
 in proceedings for improvement of low lands, &c., . . . . . 752, 753  
**APPEARANCE.**  
 of defendant, in civil actions, to make affidavit, . . . . . 658, 659  
 of absent defendant, when required after notice, . . . . . 646  
 of trustees in trustee process, when and how to be made, . . . . . 722, 729  
**APPLICATIONS TO LEGISLATURE.**  
 notice of, when to be given, &c., . . . . . 47, 48  
**APPORTIONMENT OF SENATORS AND REPRESENTATIVES.** . . . . 62-64  
**APPRAISERS.**  
 not disqualified on account of being inhabitant of town, &c., interested, . . . . . 618  
 of goods seized, and libelled, or forfeited, . . . 774  
 of damages in case of cattle impounded, . . . 186  
 of stray beasts, and lost goods, how appointed and sworn, . . . . . 425  
 of estates of persons deceased, appointment and duty of, . . . . . 488, 489  
 to be sworn, . . . . . 489  
 form of justice's order to, . . . . . 489  
 of trust property, . . . . . 501  
 of estates of wards, . . . . . 545  
 when officer sells perishable property, &c., attached, . . . . . 629  
 when property is attached on suit against part owner, . . . . . 630  
 of estate of homestead, to be set off to insolvent debtor, or in case of levy of execution, . . . . . 526  
 of estates taken on execution, . . . . . 517  
 fees of, . . . . . 786, 787  
**APPRENTICES.**  
 settlement of, how acquired, . . . . . 391  
 to be bound by indentures of two parts, &c., . . . . . 549, 559



**APPRENTICES — continued.**

binding of, by whom, and for what time, . . . . 549  
cannot be bound by mother or her husband upon  
subsequent marriage, . . . . . 549  
not bound, after master's death, . . . . . 551  
consent of, to be expressed in indentures, if  
above the age of fourteen years when  
bound by parent or guardian, . . . . 549  
may be bound to mistresses as well as mas-  
ters, . . . . . 551  
indentures to be kept for use of, . . . . . 550  
minor children of poor parents, how bound  
by overseers of the poor, . . . . . 549  
how to be taught, &c., . . . . . 549  
to have what is paid, &c., for their services, &c.,  
by master, . . . . . 550  
to have what is recovered of master, for breach  
of indenture, . . . . . 550  
treatment of, to be inquired into by parents,  
&c., . . . . . 550  
to be defended, and protected from cruelty, neg-  
lect, &c., . . . . . 550  
complaint for misconduct, &c., of master or ser-  
vant may be filed in superior court, . . 550  
notice of, to be given to adverse party, &c., 550  
may be discharged from apprenticeship, . . 550, 551  
when discharged may be bound out anew, . 550, 551  
costs in such case, how awarded and recov-  
ered, . . . . . 550  
master of, liable for breach of indenture, . . . 550  
actions against, by whom to be brought, . . 550  
proceedings in, . . . . . 550  
limitation of, . . . . . 551  
may be apprehended, &c., if they abscond from  
master, . . . . . 551  
and returned to master, or committed to jail,  
&c., . . . . . 551  
costs, how paid in such cases, . . . . . 551  
how bound by alien commissioners, . . . . . 397  
by inspectors of state almshouses, . . . . . 401  
inmates of industrial school, how bound, . . . 415  
of reform school, how bound, . . . . . 419  
certain inmates of jails, houses of correction,  
and workhouses, how bound, . . . . . 859

**APPROPRIATIONS. (See Finance.) . . 139, 141**

**AQUEDUCTS.**

penalty for injuring or corrupting water in, 375, 823  
water from, may be used for extinguishing  
fires, . . . . . 375, 376  
**Proprietors of, how to become a body corpo-  
rate, . . . . . 374**  
may determine their corporate name, . . . . 374  
organized under chapter forty of Revised  
Statutes, subject to provisions of chap-  
ter sixty-five, . . . . . 374  
may agree how to call future meetings, &c., 375  
may choose a clerk, who shall be sworn, di-  
rectors and other officers, . . . . . 375  
president of, to be one of the directors, . . 375  
clerk of, to record by-laws, votes, &c., . . 375  
to record their names, and the shares of  
each, . . . . . 375  
the transfer of shares, . . . . . 375  
shares of to be personal property, and how  
transferable, . . . . . 375  
may be assessed, and sold to pay assess-  
ments, . . . . . 375  
sale of, how advertised, &c., in such case, 375  
surplus money arising from sale to be  
paid to owner, &c., . . . . . 375  
may hold real estate to a limited amount, . 375  
may dig up streets, and with consent of may-

**AQUEDUCTS — continued.**

or and aldermen or selectmen, to  
place or repair pipes, &c., . . . . . 375  
upon dissolution of company, corporators to  
be tenants in common of real estate, 375  
contracts of, to remain in force, . . . . . 375  
last shareholders, to be liable, &c., six years  
in corporate capacity for performance  
of contracts, . . . . . 375  
how far personally liable, . . . . . 375  
applications for damages sustained by op-  
erations of, to be made within three  
years, &c., . . . . . 376  
damages recovered against, may be collected  
by warrant of distress, &c., . . . . . 376

**ARBITRATION AND AWARD.**

**Arbitration, by agreement, before a justice of  
the peace, . . . . . 749**  
fees of justice for making out the agreement, 750  
subjects of a personal action at law, or of a  
suit in equity, may be submitted, . . 749  
parties to, shall sign and acknowledge agree-  
ment of, . . . . . 749  
form of such agreement, and of justice's cer-  
tificate, . . . . . 749  
the demand submitted, if specific, and to ex-  
clusion of others, shall be stated and  
annexed to agreement, . . . . . 749  
submission of all demands, what to include, 749  
not to be revoked, unless by agreement, . . 749  
when arbitrators may determine ex parte, . 749  
all the arbitrators shall meet; a majority  
may decide, unless restrained by the  
submission, . . . . . 749  
arbitrators may make award concerning  
costs, &c., . . . . . 750, 782  
compensation of, subject to reduction by  
court, . . . . . 750  
time of making, &c., award may be agreed  
upon by parties, . . . . . 749  
parties to attend courts without notice, as if  
action were pending, . . . . . 750  
of claims allowed or disallowed by commis-  
sioners of insolvency on estates of de-  
ceased persons after an appeal claimed,  
how had, . . . . . 498  
of claims, by and against estates of insolvent  
debtors, may be had by assignee, un-  
der direction of the judge, . . . . . 588  
**Award to be made and reported within time  
agreed on by parties, . . . . . 749**  
after such time, inoperative, unless recom-  
mitted by court, . . . . . 749  
to be delivered to court, or sent to clerk, un-  
der seal, . . . . . 749, 750  
may be returned at any term, &c., of court  
within the time limited in submission, 750  
subject to same disposition by court, as if  
made by referees under rule, &c., . . . 750  
judgment and execution on, as on award of  
referees under rule, &c., . . . . . 750  
notice of, may be given by court, before act-  
ing thereon, . . . . . 750  
may be accepted, recommitted, or rejected  
by court, . . . . . 750  
fees in court the same as on awards made  
under rule, &c., . . . . . 750  
no appeal from judgment, &c., on award, but  
writ of error may be brought, . . . . 750  
of claims on appeal from decision of commis-  
sioners of insolvency on estates of de-  
ceased persons, . . . . . 498

**ARBITRATION, &c. — continued.**  
of claims of executors, &c., against estate of the deceased, . . . . . 494  
of commissioners of wrecks, &c., for compensation, . . . . . 428, 429  
of controversies respecting contracts made by warden of state prison, . . . . 873, 874

**ARBITRATORS.**  
witnesses in cases pending before, how summoned, . . . . . 672  
may administer oaths to persons offered as witnesses before them, . . . . . 673  
penalties for bribing, &c., and for acceptance of bribe by, . . . . . 813  
fees of, . . . . . 759

**ARMORIES.**  
provisions concerning, . . . . . 104

**ARMS.**  
right of the people to keep and bear, for the common defence, . . . . . 9, 16  
exempt from distress for taxes, . . . . . 82  
attachment and levy for debt, . . . . 102, 688  
**Firearms, how to be proved, . . . . . 260**  
how to be stamped, . . . . . 260, 261  
provers of, how appointed, . . . . . 260  
to be sworn, and duties of, . . . . . 260  
fees for proving, . . . . . 261  
penalty for buying or selling not proved, . . 261  
not to extend to arms manufactured by United States, &c., . . . . . 261  
for forging or altering stamps, . . . . . 261

**ARRAIGNMENT.**  
if prisoner refuses to plead or answer, or does not confess, court to order plea of not guilty to be entered, . . . . . 840  
prisoner need not be asked how he will be tried, 840  
**In capital cases, may be by single judge of supreme court, . . . . . 553**  
if prisoner pleads guilty, single judge may award sentence, . . . . . 553  
if he does not plead guilty, single judge to assign counsel, and take measures for trial before full court, . . . . . 553, 554

**ARREST.**  
members of congress privileged from, . . . . 3  
representatives, how far privileged from, . . . 22  
in prosecutions before courts martial, . . . . 117  
**In civil cases, original writ for arrest of body, how framed, . . . . . 621**  
to be served by officer, as directed by plaintiff, . . . . . 632  
officer not liable for not arresting defendant, unless specially directed, . . . . . 634  
on mesne process and execution, when and how may be made, . . . . . 633, 634  
of attorneys at law, in actions for money collected, how made, . . . . . 633, 634  
not to be made of person performing military duty, . . . . . 99  
not to be made of defendant in actions for slander or libel, . . . . . 634  
not to be made after sunset, unless specially authorized by magistrate, . . . . . 635  
women not to be arrested, except for tort, . . 634  
upon executions issued for costs only, may be made without affidavit, and proceedings thereon, . . . . . 634  
may be made, as in other cases, on writs, to bring in new defendants, . . . . . 658  
on writ taken out by sureties on administration bond against principal, . . . . 505  
sheriff, exempt from, . . . . . 151

**ARREST — continued.**  
insolvent debtors discharged, how exempt, and discharged from, . . . . . 591  
punishment for arresting a dead body, . . . 821  
defendant when arrested, may give bail, 635, 642  
persons arrested, when to be carried before magistrate, duty of officer, and proceedings thereon, . . . . . 635  
(See *Poor Debtors.*)  
*Of judgment, not to be made for any cause existing before verdict, . . . . . 662*  
**In criminal cases, officer arresting to state reason to person arrested, . . . . . 789**  
to exhibit precept, on request, . . . . . 789  
penalty for false answers, or refusal to show precept, . . . . . 789  
for arrest on pretended process, . . . . . 790  
on warrant, not allowed, unless person specially designated, &c., . . . . . 15  
of persons indicted capitally, to be ordered forthwith by the court, . . . . . 839  
against whom a warrant has issued, and who have left the county, how may be made, . . . . . 831  
if charge is for capital or state prison offences, officer to carry person to county whence warrant issued, . . . . 832  
may be made without warrant in certain cases, . . . . 608, 814, 815, 816, 821, 828, 829  
process for, by whom may be issued, . . . 831  
punishment of officers for wilfully refusing to arrest on lawful process, . . . 813, 815  
person arrested, to be carried before magistrate, . . . . . 831, 832  
proceedings in such cases, . . . . . 832, 833  
proceedings where person under indictment is arrested after adjournment of court, 834

**ARSENIC.**  
persons selling without written prescription of a physician, to keep record of sale, . . 823  
penalty for neglect, . . . . . 823  
penalty on purchasers giving false names, . . 823

**ARSON.**  
not a bailable offence, . . . . . 836  
how punishable. (See *Burning.*) . . . . . 796

**ARTICLES OF WAR. . . . . 121-126**

**ARTILLERY.**  
provisions concerning, . . . . . 94  
(See *Militia.*)

**ASHES.**  
provisions respecting pot and pearl, . . . . 276, 277

**ASSAULT.**  
on a representative for official act, how punishable, . . . . . 92  
on a witness summoned before the legislature, . 22  
punishment of, with intent to murder, . . . 793  
with intent to maim, &c., . . . . . 793, 794  
with intent to rob, &c., . . . . . 793, 794  
with intent to ravish, . . . . . 793, 794  
with dangerous weapon, and intent to rob or murder, . . . . . 793, 794  
with intent to commit burglary, . . . . . 794  
jurisdiction of police courts and justices of peace in cases of, . . . . . 570, 609

**ASSAULT AND BATTERY.**  
actions for damages for, to be brought in two years, . . . . . 777  
jurisdiction of police courts and justices of peace in cases of, . . . . . 570, 609  
prosecution for, may be stayed on reparation of injury and payment of costs, . . . 834, 839

**ASSAULT, &c. — continued.**  
 except assault is riotous, or on officer, or with intent to commit a felony, . . . 834, 839  
 civil actions for, barred by such reparation, 839, 840

**ASSAYERS.**  
 of metals and ores, may be appointed by governor, . . . . . 274

**ASSES.**  
 to be impounded, if found going at large, contrary to law, &c., . . . . . 185  
 penalty for unlawful driving, . . . . . 801

**ASSEMBLY.**  
 unlawful, riotous, and tumultuous, how suppressed, . . . . . 815  
 refusing aid to suppress, . . . . . 815  
 officers neglecting to suppress, how punished, . . . . . 815  
 may be dispersed by force, . . . . . 815  
 proceedings in calling out an armed force, 815, 816  
 penalty for disturbance of any lawful, . . . . . 820

**ASSESSORS.**  
 three or more to be chosen, by ballot, by towns at annual meeting, . . . . . 160, 161  
 to be sworn, . . . . . 161  
 form of oaths, . . . . . 79, 163, 201  
 penalty on, for not taking oath of office, . . . . 163  
 if towns neglect to choose, county commissioners may appoint, . . . . . 161  
 selectmen to act as, when others not specially chosen, . . . . . 162  
 to give notice to inhabitants to bring in lists of polls and property, . . . . . 77  
 such list to be under oath, and be received as true unless, &c., . . . . . 77  
 to make fair cash valuation of all taxable property, . . . . . 77  
 to make estimate of value of property when list is not brought in, . . . . . 78  
 estimate to be conclusive, and entered in valuation, unless, &c., . . . . . 78  
 to add to tax of parents, &c., price of books furnished by school committee to children, . . . . . 219  
 duty of, when taxable person designates another place as his residence, . . . . . 75  
 in assessment of all taxes, . . . . . 77  
 penalty on, for neglect, . . . . . 77  
 neglecting to assess taxes, county commissioners to appoint persons to perform duty, . . . . 77  
 masters of dwelling houses, &c., to give names of taxable persons to, under penalty, . . . . 77  
 penalty on, for agreeing with parties to an assessment for limited amount, with view to a residence for taxation, . . . . . 77, 78  
 may include state, county, and town taxes, or any two of them, in one assessment, . . . . 78  
 to assess upon polls one sixth part of sum to be raised, provided, &c., . . . . . 78  
 may add five per cent. to tax for convenience of apportionment, . . . . . 78  
 to make list of valuation and assessment thereon, and deposit in office for public inspection, . . . . . 78  
 contents of such list, . . . . . 78  
 to swear to such list, under penalty, . . . . . 79  
 form of tax list for collectors, . . . . . 79  
 to commit list and warrant to collector, if no collector, to constable or sheriff, . . . . . 79  
 contents and form of warrant, . . . . . 79  
 to issue new warrant, if original is lost, . . . . 79  
 may order taxes to be collected forthwith if credit is doubtful, . . . . . 81

**ASSESSORS — continued.**  
 to post up rates of discount allowed, . . . . . 79  
 may make abatement to party overtaxed, upon application, . . . . . 79, 224  
 if application is refused, party may complain to county commissioners, . . . . . 79  
 to furnish certificate of abatements made by them, . . . . . 80  
 to assess persons applying seven days before an election, . . . . . 80  
 to be responsible only for want of integrity in assessing town, parish, &c., taxes, . . . . . 80  
 may reassess all taxes except poll taxes, invalid by error, &c., . . . . . 80  
 may order collection of taxes, although error in name of person taxed, . . . . . 82  
 to make list of persons liable to enrollment in militia, annually, in May or June, and deliver copy to town clerks, . . . . . 91  
 to take census in towns, . . . . . 168  
 to be sworn, and make return under oath, . . . 168  
 to deliver return to sheriff or transmit to secretary, . . . . . 168  
 penalties on, for neglect, &c., . . . . . 168  
 duties of, in assessing taxes in watch districts, . 175  
 in fire districts, . . . . . 181  
 in school districts, . . . . . 223, 224  
 to ascertain, annually, number of children between five and fifteen years, and report to school committee, . . . . . 226  
 to assess highway taxes upon order of town, and deliver lists to surveyors, . . . . . 245  
 compensation of, . . . . . 80, 224

**Assistant,** may be chosen if towns deem expedient, . . . . . 160  
 to be sworn, . . . . . 161, 163  
 duties of, . . . . . 163

**Of parishes,** to be chosen at annual meeting, and sworn, . . . . . 201  
 form of oaths, . . . . . 79, 163, 201  
 to manage prudential affairs, and have power of selectmen to call meetings, &c., . . . . 201  
 what to insert in warrant for meeting, . . . . 201

**ASSETS.**  
**Of estates of deceased persons,** do not include goods ordered by judgment in replevin, to be returned by executor, &c., . . . . . 651  
 nor goods and damages recovered by executor, &c., as a mere testator, . . . . . 651  
 may be ordered to be retained to pay debts not become due, . . . . . 491  
 received by executor, &c., after two years from administration taken, render him again liable to suits by creditors, . . . . . 491, 492  
 may be marshalled by courts, conformably to will of deceased, so far as consistent with rights of creditors, . . . . . 479  
 how distributed in case of intestates, . . . . 485  
 when an estate is insolvent, . . . . . 496-500

**Of insolvent debtors,** how distributed, . . . . . 504, 505, 507

**ASSIGNEES.**  
 of insolvent debtors, . . . . . 585, 597  
 (See *Insolvency*.)

**ASSIGNMENT.**  
 of the estate of insolvent debtors, and corporations, . . . . . 586, 587, 598  
 (See *Insolvency*.)

**ASSISTANT CLERK.**  
 of the supreme judicial court for the commonwealth, . . . . . 612, 614



**ASSISTANT CLERK — continued.**

of the courts in the counties of Middlesex and Worcester, . . . . . 612  
of supreme and superior court in Suffolk county, 612  
of police courts, . . . . . 569, 573  
(See *Clerks of the Courts, Police Courts.*)

**ASSUMPSIT.**

action of contract substituted for, . . . . . 653

**ASSISTANT WATCHMEN.**

at state prison, appointment and salary of, . 870, 871

**ATTACHMENT.**

writ of, how framed, issued, and served, . . . . 621  
to be served by attachment, if the plaintiff so directs, . . . . . 631  
may be made on original writs, . . . . . 624  
on writs issued to bring in new defendants, 638  
in suits in equity, by creditor's bill or writ of attachment, . . . . . 559  
upon bills for divorce, in certain cases, and how, . . . . . 536  
on writs of review sued out by original plaintiff, . . . . . 748  
on writ taken out by sureties on administration bond against principal, to make him co-defendant, . . . . . 506  
not to be made of real estate, on writs returnable before police courts or justices of the peace, unless damages demanded exceed twenty dollars, . . . . . 624  
when creditor not bound by adjudication that amendment in action in which prior attachment is made, . . . . . 663  
property held by, may be replevied, . . . . . 731

**WHAT PROPERTY LIABLE TO.**

all property which may be taken on execution liable to, . . . . . 624  
property replevied from officer after an attachment, . . . . . 624  
liability of plaintiff in replevin and his sureties in such case if there is judgment for return, . . . . . 624  
goods replevied in other cases, when not to be made, . . . . . 625  
proceeds in hands of officer of property attached and sold, . . . . . 624  
goods attached by a former officer who has died or been removed, . . . . . 624, 625  
owner's interest in building on which mechanic's lien is sought to be enforced, . 764, 765  
how protected, in case of sale of building, 764, 765  
money in hands of officer after sale on another attachment or levy, . . . . . 689  
franchises of turnpikes, and other corporations, authorized to take toll, . . . . . 387

**HOW MADE, DURATION AND EFFECT OF.**

several attachments may be made in any county on same writ by same or different officer, . . . . . 624  
not to be made on writ after summons is served, 624  
to continue in force, notwithstanding death of officer, . . . . . 625  
not to be held in original suit to satisfy judgment in review, . . . . . 748  
of land mortgaged, to continue although mortgage is paid before levy, . . . . . 625  
to continue in force thirty days after judgment for plaintiff, . . . . . 625  
sixty days, if judgment is recovered or the attachment is made in Nantucket, in certain cases, . . . . . 625

**ATTACHMENT — continued.**

how long when levy on is suspended by reason of a prior attachment, . . . . . 690  
when, unless dissolved, sufficient cause for instituting proceedings in insolvency against debtor, . . . . . 596  
against corporations, . . . . . 599  
if, by accident, not dissolved within time allowed, proceedings may be stayed, . . . 593  
**By trustee process, how made, . . . . . 721**  
may be made of property in hands of trustee, after service on defendant; but writ must, in such case, be again served on defendant, . . . . . 721  
on new trustees inserted in writ, or on same trustee several times, . . . . . 721  
demand to be made within thirty days after judgment, . . . . . 724  
**Exemption from, of certain homesteads, to extent of eight hundred dollars, . 524, 525**  
of certain personal property, . . . . 102, 687, 688  
property of a debtor discharged in insolvency, acquired by him after first publication of notice, . . . . . 591  
of wages of debtor and minor children in certain cases, . . . . . 724

**OF REAL AND LEASEHOLD ESTATES.**

of real estate may be made without officer entering upon or being in view of land, . . 623  
of leasehold estate, officer to state in general terms the leasehold estate, . . . . . 623  
not valid against subsequent purchaser, or attaching creditor, unless writ or copy, &c., are deposited in clerk's office, . . 626  
officer to deposit writ or copy in such case with clerk, and receive fees therefor, . . . 626  
clerk to note time of receiving same, and make a record thereof, . . . . . 626  
clerk's fee for record to be taxed by plaintiff in his bill of cost, . . . . . 626  
if writ or copy is so deposited within three days, the attachment takes effect when made, otherwise when writ or copy is deposited, . . . . . 626  
of real estate fraudulently conveyed, or paid for directly or indirectly and retained by vendor, or conveyed to a third person, clerk to enter with record of officer's return, the name also of the person in whom such record title stands, . . . . . 626, 627  
of lands mortgaged to continue, although mortgage is paid before levy, . . . . . 625  
of lands held in common, to remain on part assigned to defendant on partition, . . . 702

**OF GOODS WHICH CANNOT BE REMOVED.**

of personal estate, which by reason of bulk cannot be immediately removed, copy of writ to be deposited in the office of the city or town clerk, . . . . . 627  
clerk to receive and file copies, and make record thereof, and receive fee therefor, . . . . . 627  
officer making a subsequent attachment of same property to give notice to the officer who makes sale under first attachment, . . . . . 689

**OF SHARES IN CORPORATIONS.**

may be made by leaving copy with some officer thereof, . . . . . 627

**ATTACHMENT — continued.**

- such attachment to hold shares, and all subsequent dividends, . . . . . 627
- officer having writ against a stockholder may have a certificate from recording officer of corporation of number of shares held by such stockholder, . . . . . 627
- officer making a subsequent attachment of same property to give notice to the officer who makes sale under first attachment, . . . . . 689

**OF PERSONAL PROPERTY MORTGAGED OR PLEDGED.**

- of property mortgaged, pledged, or subject to any lien, how made, . . . . . 627
- attaching creditor in such case to pay mortgage, or other claim, within ten days after same is demanded, . . . . . 627
- claimant of property in making demand shall state in writing exact amount due, and if it is not paid in ten days, attachment to be dissolved, . . . . . 627
  - if he demands and receives more than is due, creditor may recover excess with twelve per cent. interest, . . . . . 628
- when such property so attached is redeemed by creditor, and sold on mesne process or execution, proceeds to be first applied to pay amount paid by creditor on mortgage or other claim, . . . . . 628
- plaintiff, after having so redeemed property, if he does not recover judgment, may still hold the property until debtor repays him, . . . . . 628
- property subject to mortgage, and in possession of mortgagor, may be attached, and mortgagee summoned as trustee to answer interrogatories, . . . . . 628
- if mortgage is proved to be bona fide, court may order attaching creditor to pay amount due to the mortgagee, . . . . . 628
- if attaching creditor denies validity of mortgage, an issue may be framed and tried by jury, . . . . . 628
- when creditor has paid amount as ordered by court, he may retain amount thereof out of proceeds of property sold, . . . 628
- if in such case plaintiff does not recover judgment, he may hold the property until debtor has repaid sum so paid by him, 628

**SALE OF PERSONAL PROPERTY ATTACHED.**

- by consent of debtor and all attaching creditors, personal property attached may be sold by officer, . . . . . 628
- sale to be conducted in like manner as sales on execution, . . . . . 624, 688, 689
- proceeds in such case to be held by officer, and liable to further attachment, . . . . . 624
  - balance of, above attachments, to be paid to defendant, . . . . . 624
- live animals and perishable property attached may be sold by request of either party, . . . . . 628, 629
- on such request officer to give notice to parties or their attorneys, and prepare schedule, 629
- notice, how given to defendant, . . . . . 629
- three appraisers to be appointed, and sworn by officer or a justice of the peace, . . . 629
- appraisers, how and by whom to be appointed, to examine the property and appraise it, if they find it cannot be kept without waste or great expense, . . . . . 629

**ATTACHMENT — continued.**

- officer thereupon to sell, and hold proceeds as if sold by consent, unless defendant deposits appraised value, . . . . . 629
- proceeds liable to further attachments, . . . . . 624
  - balance of above attachments to be paid to defendant, . . . . . 624
- defendant may take property on depositing appraised value with officer, or giving him a bond to pay the amount, or satisfy judgment within certain time, . . 629
- bond in such case to be returned with writ, and suits thereon how brought, . . . . . 629
- writ in suit on, to be indorsed by all creditors who join therein, . . . . . 629
- judgment on, how awarded, and executions, how issued, . . . . . 629
- money recovered on such bond to be appropriated to pay expenses of writ thereon, and residue to attaching creditors, . . 629
- rights of attaching creditors may be determined by court in equity, and joint or separate executions awarded, . . . . . 629, 630
- in rendering judgment or issuing execution in such case, sufficient to be reserved for prior attaching creditors, although they did not sue, . . . . . 630
- creditor not joining in suit on such bond, may, on motion, become a party to the suit, 630
- or may have scire facias to recover what may be due him, . . . . . 630
- action on such bond, and such writ of scire facias, limited to one year, . . . . . 630

**OF JOINT PERSONAL PROPERTY, ATTACHED ON WRIT AGAINST PART OWNER.**

- owner of part not attached may have property appraised, . . . . . 630
- property after appraisal to be delivered to such owner upon his giving bond to restore same, &c., . . . . . 630
- share of defendant in such property to become pledged to other owner who pays appraised value, . . . . . 630
  - may be sold by such owner if not redeemed, 630
- if attachment is dissolved, property to be restored to defendant or officer, . . . 630
- bond to be returned by officer, and how suits may be brought thereon, . . . . . 630

**HOW DISSOLVED.**

- by defendant giving bond to pay amount of judgment recovered, . . . . . 632
- bond in such case to be approved by plaintiff or a master in chancery, . . . . . 632
- proceedings in such case before master, and fees therefor, . . . . . 632
- by defendant's death, if administration is taken out within a year, . . . . . 625
- in such case officer to deliver goods attached to executor or administrator on demand, on being paid fees, . . . . . 625
- if officer has sold the goods, he is liable only for proceeds, . . . . . 625
- if officer has paid proceeds to creditor, executor or administrator may recover same of creditor, . . . . . 625, 624
- in actions by executors or administrators in either of said cases, officer or defendant not to set off claims against deceased, . . . . . 624
- by final judgment for defendant, . . . . . 625

**ATTACHMENT—continued.**

by omission to enter appeal on exceptions, not revived by subsequent entry on petition, . . . . . 555, 563

by assignment of debtor's estate by proceedings in insolvency, . . . . . 586

how attachment may be made to survive in such case for benefit of creditors, . 586, 587

not to be, by bringing in new defendant in action, . . . . . 658

not by appeal or exceptions taken until final judgment thereon, . . . . . 563

**DISPUTED BY PERSONS HAVING SUBSEQUENT LIENS.**

validity and effect of, may be disputed by persons having subsequent liens, on the ground that demand in first suit was not due or payable, . . . . . 631

petition to be filed in court by persons disputing attachment, . . . . . 631

to be made on oath of petitioner, or some person in his behalf, . . . . . 631

petitioner to give bond, or recognize to pay damages and costs, . . . . . 631

trial by jury may be had thereon, . . . . . 631

attachment may be dissolved in whole or in part, not to be dissolved by reason of certain defenses which the defendant might set up, . . . . . 631

proceedings between adverse claimants not affected by answer or other act of defendant in the suit, . . . . . 631

if, while proceedings are pending, original action is removed to higher court, the inquiry concerning the attachment shall also be removed, . . . . . 631

costs may be awarded to either party in such proceedings, . . . . . 631

damages may be, to attaching creditor if his attachment is sustained, . . . . . 631

decision on petition to bar any claim for damages to petitioner by plaintiff on account of fraud in making attachment, . 631

**EXCESSIVE, HOW REDUCED.**

defendant may apply to court to which the writ is returnable, and have attachment dissolved, or part of property restored, if attachment is excessive, 631, 632

**ATTAINDER.**

no bill of, to be passed, . . . . . 5

treason not to work corruption of blood or forfeiture, except, &c., . . . . . 7

**ATTEMPT.**

to commit murder, how punished, . . . . . 793

to extort money by threats, . . . . . 793

to commit offences, how punished, in various cases, . . . . . 826

**ATTENDANCE.**

of children in the schools, . . . . . 228

costs for, what to be allowed, before justices of the peace or police court, . . . . . 783

in actions nonsuited, defaulted, continued, &c., . . . . . 783

day when action is disposed of, further term, &c., to be entered on docket, . . 783

**ATTORNEY-GENERAL.**

not to hold certain other offices, . . . . . 30, 33

when and how elected, . . . . . 37, 62

term of office of, . . . . . 37

qualifications of, . . . . . 37

return of votes for, . . . . . 59, 60

vacancy in office of, how filled, . . . . . 37

**ATTORNEY-GENERAL—continued.**

neglecting to qualify for ten days, office to be deemed vacant, . . . . . 37

annual report of, to legislature, . . . . . 130

when may be put in type, . . . . . 53

salary of, . . . . . 129

allowance to, for clerical assistance, . . . . . 129

and for expenses in civil actions, where state is a party, and to account for same, . 130

to appear for commonwealth in capital cases, . 129

and when state is a party, or interested, or upon order of governor, &c., . . . . 129, 130

to enforce collection of money due to state, . . 127

to assist district-attorneys before grand jury, in capital cases, . . . . . 130

and advise them in matters relating to their office, . . . . . 130

when present, to have management of prosecutions, &c., . . . . . 131

to enforce application of funds for public charities, . . . . . 130

to prosecute corporations failing to make to legislature, returns required by law, . . 130

to attend sessions of legislature, and give opinions, when required, . . . . . 130

to advise secretary, treasurer, &c., on questions of law, . . . . . 130

to advise the governor respecting surrender of persons demanded as fugitives from justice, . . . . . 854

in absence of, court may appoint person to perform duties, . . . . . 130

not to receive fees from prosecutor, nor to be counsel in certain civil cases, . . . . 130

no fees for travel to be taxed for, . . . . . 782

to account with state treasurer for fees, costs, &c., . . . . . 130

to prosecute officers of banks for violation of law, . . . . . 302

to prosecute insurance companies, officers, or agents, for violation of law, . . . . . 321

may prosecute loan fund associations for violation of law, . . . . . 335

to file informations, &c., against trespassers on public property, . . . . . 130

duties of, in relation to persons unlawfully entering or intruding upon, or holding, lands of commonwealth, . . . . . 717-719

when lands, the title to which is in the state, trustees, guardians, treasurer, or agents, for use of Indians, . . . . 719

**ATTORNEY'S FEE,**

in supreme judicial court or superior court, . . 783

**ATTORNEYS AT LAW.**

any citizen, upon three years' study, and otherwise qualified, may be admitted to practice, . . . . . 615

or alien having made his primary declaration, &c., . . . . . 615

may be admitted, on examination, without three years' study, . . . . . 615

may be admitted, in either case, by supreme or superior court, . . . . . 615

from other states, how admitted, . . . . . 615

to take and subscribe the oath of office, . . . . 615

may practise in all the courts, and no distinction of counsellors and attorneys, . . . . 615

may act as counsel for persons claimed as fugitives from service, . . . . . 740

may be removed for mal-practice or gross misconduct; expenses of removal, how paid, . . . . . 615



**ATTORNEYS AT LAW—continued.**

- parties may manage their own suits, or employ such counsel as they may engage, . . . 615
- not more than two for each party to be engaged in any suit, without leave of court, . . . 615
- any persons may act as such, in managing suits, on being specially authorized, . . . 615
- to have a lien on execution obtained in suit prosecuted by them, . . . . . 615
- neglecting to pay money on demand, liable to pay five times' lawful interest, . . . 615
- not to appear in any case previously determined by them as judge or justice, . . . 615, 616
- not to act in certain other cases, when judges or registers, . . . . . 602, 610
- sheriffs, deputy sheriffs, coroners, and constables not to appear as, &c., . . . . . 616
- penalties for so acting, . . . . . 151, 153, 164, 616
- not to buy, or be interested in buying, claims for suit, nor to induce persons, by certain means, to place claims in their hands for collection, under penalty, . . 618
- exempt from serving as jurors, . . . . . 680
- may act as counsel for fugitives from service, . 740
- to certify demurrers, . . . . . 655
- agreements by, respecting writs, not valid unless in writing, . . . . . 660
- arrest of, on mesne process, in actions for money collected by them, how made, . . . . 633
- on execution in such actions, . . . . . 634

**AUCTION.**

- goods sold by, contrary to law, to be forfeited, 281
- tenants of houses, &c., liable for unauthorized sales by, in such house, &c., . . . . 281
- penalty on person selling by, without license, . 281

**AUCTIONEERS.**

- to be licensed for one year by selectmen, &c., . 280
- license of, to be recorded, . . . . . 280
- fee for license, . . . . . 280
- may be licensed by county commissioners, if selectmen refuse, . . . . . 280
- cities and towns may designate places of sale by, &c., . . . . . 281
- to give bond, . . . . . 280, 281
- to keep accounts of sales, . . . . . 281
- may sell at any place within his county, . . . 281
- may sell at any place within the state, when, &c., 281
- penalty on, for receiving goods from minors, or selling before sunrise, or after sunset, 281
- for selling in place where he is not authorized to sell, . . . . . 281
- for fraud or deceit, . . . . . 281
- on person for selling, not licensed as, . . . 281
- not to sell under hawkers' licenses, except in places where licensed as hawkers, . . 283
- provisions concerning, not to apply to sheriffs, &c., . . . . . 281

**AUDITA QUERELA.**

- form and service of writ of, . . . . . 742
- where to be sued out and returned in different cases, . . . . . 742
- to remedy wrongful issuing of execution on recognizance for debt, . . . . . 772
- writ of, to be indorsed before entry, if no one of plaintiff's resides in this state, . . . . 622
- indorser of, when may be required, or changed, after entry, . . . . . 657
- after issuing of writ, court may grant injunction, as justice and equity require, . . 743
- pleadings, trial, and judgment, . . . . . 742
- plaintiff in, entitled to recompense for what damages, . . . . . 743

**AUDITA QUERELA—continued.**

- judgment in, when a bar to other action for same damages, . . . . . 743
- appeal from superior court allowed to either party, as in other civil cases, . . . . . 742
- plaintiff, if imprisoned on process complained of, may be enlarged on giving bond, . 743
- condition of such bond, that plaintiff shall surrender himself, if, &c., . . . . . 743
- when plaintiff surrenders, according to his bond, to be in custody as if writ had not been brought, . . . . . 743

**AUDITOR OF ACCOUNTS.**

- when and how elected, . . . . . 37, 62
- return of votes for, . . . . . 59, 60
- term of office of, . . . . . 37
- vacancy in office of, how filled, . . . . . 37
- qualifications of, . . . . . 37
- neglecting to qualify for ten days, office to be deemed vacant, . . . . . 37
- to give bond, . . . . . 135
- salary of, . . . . . 135
- may employ one permanent clerk, . . . . . 135
- salary of clerk, . . . . . 135, 136
- may employ additional clerks, . . . . . 136
- salary of such clerks, . . . . . 136
- to examine accounts against state, and may deduct overcharges, . . . . . 136, 140
- to require bills exceeding fifty dollars to be sworn to, except, &c., . . . . . 140
- to make and record certificate of amount due on demands against state, . . . . . 136
- to transmit such certificate to governor, . . . . 136
- to keep distinct accounts of public receipts and expenditures, school fund, and other public property, and debts, . . . . . 136
- Annual report** to be made by, to legislature, . 136
- may be made in print, . . . . . 53
- contents of, . . . . . 136
- when to be laid before legislature, . . . . 52, 136
- of expenses of office, &c., to be made to legislature, . . . . . 141
- to examine treasurer's books annually, . . . . 136
- to comply with certain regulations, prescribed by governor and council, . . . . . 136
- books and accounts of, to be examined by committee of the council, . . . . . 136
- and by committee of accounts of legislature, . . . . . 136
- to cause bank notes to be engraved, . . . . . 314
- to countersign, number, and register such notes by himself or clerk, . . . . . 314
- to destroy bank notes returned by bank, and certificate to be entered, &c., . . . . . 314
- to give notes to bank upon receipt of public stock, . . . . . 314
- securities held by, for banks, to be stamped or braided, . . . . . 314
- such securities, when withdrawn, to be indorsed, &c., . . . . . 315
- to give notice to bank of bills protested, . . . 315
- to apply trust funds for payment of bank notes, &c., . . . . . 315
- penalty for countersigning excess of notes, . . 315
- plates, dies, &c., to remain in custody of, . . . 315
- to furnish banks with powers of attorney to receive interest on stocks pledged, . . . . 315
- may revoke such powers of attorney, . . . . . 315
- may give up securities on receiving ninety per cent. of bank notes, &c., . . . . . 315, 316
- to transfer stocks of insolvent banks to receivers, . . . . . 316

**AUDITOR OF ACCOUNTS** — *continued.*  
 duties of, as to accounts of county treasurers for fines, forfeitures, and costs, . . . 852, 853  
 to be one of board of commissioners of alien passengers and state paupers, . . . 396

**AUDITORS.**  
 may be appointed by court in actions of contract, tort, or replevin, when at issue, to hear the parties, &c., and report, . . . 616  
 to give notice to parties of time and place of meeting, and may adjourn, . . . 616  
 if more than one in a case, all to meet, but a majority may report, . . . 616  
 may be discharged by court, and case committed to same or other auditors, . . . 616

**AUDITORS** — *continued.*  
 report of, to be prima facie evidence, . . . 616  
 interest on, how computed, . . . 685  
 compensation of, and how taxed and paid, . . . 616  
 witnesses before, how may be summoned, sworn, &c., . . . 672, 673  
 punishment of, for accepting bribes, . . . 813  
 for bribing or attempting to bribe, . . . 813

**AUTHORITY.**  
 conferred on more than two, may be exercised by a majority, . . . 51

**AWARDS.** (*See Arbitration.*)  
 of county commissioners, committees, and referees, to bear interest, . . . 685  
 form of declaration in actions on, . . . 664

**B.**

**BACK BAY.**  
 limitation to suits for recovery of lands by commonwealth, not to apply to land in, . . . 776

**BAIL.**  
 excessive, not to be required, . . . 9, 16  
 when excessive is required, how party may be relieved, . . . 734, 737

**IN CIVIL CASES.**

not to be required on mesne process of representatives in the general court, . . . 22  
 may be given by any defendant arrested on mesne process, . . . 635, 637, 642  
 not to discharge defendant from imprisonment on sentence of fraud, . . . 642  
 to be taken by bond to sheriff or other officer, and with what condition, . . . 642  
 not discharged by entry of judgment, as at a former term, in actions continued nisi in supreme court, . . . 557  
 not discharged by appeal or exceptions taken, . . . 503  
 liability of, not revived by entry of appeal or exceptions on petition, . . . 555, 503  
 shall satisfy judgment against principal unless he is surrendered, or they are otherwise discharged, . . . 643  
 not concluded by adjudication that an amendment is for same cause of action, unless notified, . . . 662, 663  
 not liable, unless writ of scire facias is served on them within one year after final judgment, . . . 643  
 how long held when judgment is entered in cases continued nisi, . . . 557  
 may be exonerated by surrendering their principal before final judgment, . . . 643, 644  
 may be taken anew after surrender of principal by former bail, . . . 644  
 when taken in cases before justice of the peace and police courts, proceedings in relation to, . . . 644  
 when and how liable for support of principal after surrender, . . . 645  
 taken in actions in which new defendants are brought in, to be held liable, . . . 658  
 may be taken on writs sued out by sureties on administration bonds, to bring in principal, . . . 506

**BAIL** — *continued.*  
**Bond** given by, to run to sheriff or other officer, 642  
 to be with two sureties having sufficient in state, . . . 642  
 officer may examine sureties on oath, and liable if he takes only one, . . . 642  
 binding, although executed by one surety, . . . 642  
 may be approved by certain magistrates, . . . 642  
 to be returned and filed with writ, and time of filing noted, . . . 643  
 to be sent with other papers to court appealed to, in case of appeal, . . . 643  
 to be considered so far matter of record that scire facias may issue on, . . . 643

**Scire facias**, against, may be issued from court in which judgment was rendered, in term time or vacation, in name of creditor, . . . 643  
 may be issued by justices of the peace, . . . 605, 644  
 what shall be alleged therein, . . . 643  
 must be served within one year after final judgment, . . . 643  
 defendants in, may answer jointly or severally, . . . 643  
 costs on, to be paid by bail upon surrender of principal, . . . 643, 644

**Surrender of principal** by, . . . 643, 644  
 may be in court where scire facias is pending, upon payment of costs, . . . 643  
 in such case principal to be committed to jail, and how long held, . . . 643  
 may be to the jailer in county where principal was arrested, or in which the original writ was returnable, . . . 643  
 in case of surrender to jailer, he may require copy of bail bond, and shall be protected by such copy, . . . 643  
 bail within fourteen days to furnish jailer with copy of writ and officer's return, 643  
 and give notice to plaintiff's attorney of time and place of commitment of principal, . . . 643  
 to pay costs on writ of scire facias if sued out, may be made in court where original action is pending or to officer holding execution, 644  
 principal, when surrendered, shall be received by jailer and may be bailed anew, 644  
 before police court and justices of the peace,

BAIL—continued.

creditor to procure attendance of officer, . . . . . 644

in such case, officer to attend and take charge of principal, . . . . . 644

entry to be made of surrender, and principal to be committed, . . . . . 644

copies of papers to be delivered to officer, and by him to jailer, . . . . . 644

fees of officer, . . . . . 644

**Support of principal surrendered,** . . . . . 644, 645

if principal claims support as pauper, creditor to pay in advance or give security, 644, 645

bail liable for support of, until seven days after notice to creditor, . . . . . 645

when defendant may be discharged if support is not paid, . . . . . 645

IN CRIMINAL CASES.

arson, rape, and treason not bailable, . . . . . 836

persons constitutionally committed by governor and council, senate, and house of representatives, not bailable, . . . . . 738

to be taken by magistrates in bailable cases, when there is cause to believe prisoner guilty, . . . . . 833

to be taken by recognizance, . . . . . 832

by whom to be taken when persons are committed for bailable offences, or for not finding sureties of the peace, . 737, 738, 834

not to be taken by police court, justice of peace, or commissioner, in a less sum than was required on commitment, . . 834

in what cases may be taken by magistrate, at prisoner's request, without examination, . . . . . 831, 832

to be taken, if offered, in all cases bailable, for appearance at adjourned examination before a magistrate, . . . . . 832

by magistrate, after examination, in all cases bailable by him, . . . . . 833

on habeas corpus, in all bailable cases, . . . 737

by justice of the peace, pursuant to order of judge, &c, . . . . . 737

may be allowed by supreme court, or superior court, or any judge of said courts, in all cases whatever, (except, &c.,) on writ of habeas corpus, . . . . . 737, 738

persons held in prison on indictment, when to be bailed on their own recognizance, if brought to early trial, . . . . . 840

those committed on Lord's day, or on evening or afternoon preceding, may be bailed on Lord's day, . . . . . 834

**Surrender of principal by,** . . . . . 835, 836

may exonerate themselves by surrender of principal into court, . . . . . 835

before commencement of scire facias, . . . 835

before final judgment on scire facias, . . . 835

after final judgment on scire facias, . . . 835, 836

if scire facias is commenced, whole costs or penalty, or part thereof, the court may require to be paid, . . . . . 835

where by act of God, or of government, or by sentence of law, principal cannot be surrendered, bail may be discharged by court, with or without costs, . . . 835

principal, when once surrendered, may be bailed anew, . . . . . 835

new bail not to have benefit of surrender, &c., like former bail, . . . . . 835

BAILEES.

embezzlement by, how punished, . . . . . 800

BAKER'S ISLAND.

land for lighthouses on, ceded to United States, 44

BALANCES.

unclaimed, for two years or more, and held by corporations, to be advertised, . . . . . 386

BALLAST.

weighing of, may be regulated by ordinance in cities, &c., . . . . . 291, 292

BALLOTS. (See Elections.)

when several officers may be voted for on one ballot, . . . . . 58

penalty for giving more than one vote, . . . . . 61

BALUSTRADES, &c.

may be regulated by city councils, . . . . . 167

BANKRUPTCY.

congress may establish a system of, . . . . . 4

when discharge in is pleaded, from what time parties liable for costs, . . . . . 780

BANK BILLS. (See Banks.)

how attached and disposed of, . . . . . 624, 687

penalty for larceny of paper, &c., designed for, on printers, &c., for retaining such paper, &c., with intent, &c., . . . . . 798

on persons having custody of such paper, &c., retaining, with intent, &c., . . . 798

for passing as currency, except, &c., . . . 810

for passing any for less than five dollars, except bank notes, . . . . . 810

for passing fractional bills or notes, . . . 810

for wilfully and maliciously injuring, . . 810

for maliciously gathering up and retaining, to injure the business of bank, . . . . 810

indictment and proof, in such cases, . . . 810

for having in possession five uncurrent and worthless, with intent to circulate, to defraud, . . . . . 810

for uttering and passing such bills, with such intent, . . . . . 811

for engraving and issuing shop bills in form of, &c., . . . . . 811

counterfeit and forged, to be seized and destroyed, . . . . . 811

remuneration to prosecutors of forgers of, &c., 811

BANKS.

I. COMMISSIONERS.

three to be appointed by governor, . . . . . 300, 301

tenure of office, . . . . . 301

to be sworn, . . . . . 301

may appoint a clerk, prescribe his duties, and fix his compensation, . . . . . 301

to visit banks within one year after going into operation, &c., . . . . . 301

to visit banks, savings institutions, &c., once in two years, . . . . . 301

powers and duties at such visits, . . . . . 301

to preserve a full record of their proceedings, and condition of each bank, . . . . . 301

to visit banks whose charters have been annulled, . . . . . 301

may summon, and examine under oath, all directors, &c., . . . . . 301

penalty for refusing to testify before, &c., . . . 301

to examine any bank or savings institution, upon request of five or more officers, . . 301

to apply to supreme judicial court for injunction upon insolvent banks, . . . . . 301

to make annual report to secretary, . . . . . 302

to report violation of laws, &c., to secretary, . . 302

banks not to discount notes of, . . . . . 302

salary of, &c., . . . . . 302

to examine certificates of stocks held by the auditor, . . . . . 315



**BANKS — continued.**

**II. ORGANIZED UNDER CHARTERS.**

**1. GENERAL PROVISIONS.**

subject to what liabilities, &c., . . . . . 302  
 name of, privileges, &c., . . . . . 302  
 where to be kept, . . . . . 302  
 may receive deposits, loan money, and divide profits, . . . . . 302  
 not to go into operation until one half of capital is paid in, &c., . . . . . 302  
 capital to be examined by commissioners appointed by governor, . . . . . 302  
 duties of such commissioners, . . . . . 302  
 stock not to be sold until whole amount is paid in, . . . . . 302  
 stockholder of, not to receive loan until full amount of his shares is paid in, . . . 302  
 specie, equal to fifteen per cent. of liability, for circulation and deposit, to be kept in, what to be deemed such, . . . . . 303  
 increase of capital, how to be paid in, . . . . 303  
 when paid in, certificate to be forwarded to secretary of commonwealth, . . . . . 303  
 no person shall hold more than one half of capital stock of a bank, exclusive of stock held as collateral, . . . . . 303  
 commonwealth may take stock in, . . . . . 303  
 not to loan more than one half of capital, on pledge of their own stock, . . . . . 303  
 not to hold their own stock except as security, under penalty, . . . . . 303  
 stock held as security to be sold within six months, under penalty, . . . . . 303  
 debts, limit of, . . . . . 303  
 directors, liability of, when debts exceed amount allowed by law, . . . . . 303  
 dissenting, &c., how exonerated from such debts, . . . . . 303  
 not exempted from liability by directors becoming liable, . . . . . 303  
 not to use their money, &c., in trade, . . . . 303  
 may sell property held by them in pledge, . . 303  
 to pay over surplus of sales of pledged property, . . . . . 303, 304  
 may hold real estate not exceeding twelve per cent. of its capital, for convenient transaction of business, . . . . . 304

**2. MEETINGS, VOTES, PROXIES.**

**Meetings**, notices of, how to be given, . . . 304  
 each bank to prepare list of stockholders, &c., at least once in six months, under penalty, . . . . . 304  
**Votes**, what number, stockholders entitled to, by absent stockholder, may be by proxy, . . 304  
**Proxies**, votes of stockholders by, . . . . . 304  
 salaried officers not to vote as, . . . . . 304  
 record of, to be made, under penalty, . . . . 304  
 form and execution of, . . . . . 304  
 to be filed with cashier, &c., within ten days of execution and three days of meeting, for what time and meetings valid, . . . . . 304  
 list of, to be prepared and read at meeting, . 304  
 not to be received or asked for by salaried officers, under penalty, . . . . . 304  
 penalty on officers for violation of provisions concerning, . . . . . 305

**3. DIRECTORS.**

number of, to be determined by by-laws, . . . 305  
 to be not less than seven, nor more than twelve, to be citizens, &c., of this state, . . . . . 305  
 to be stockholders, holding unpledged stock, . 305

**BANKS — continued.**

not to be directors of two banks at same time, . 305  
 where majority of to reside, &c., . . . . . 305  
 to be chosen annually, by ballot, . . . . . 305  
 at what time to be chosen, . . . . . 305  
 may be appointed by legislature, when the state is stockholder, . . . . . 305  
 how may be removed, . . . . . 305  
 vacancies, how filled, . . . . . 305  
 majority of, to be a quorum, . . . . . 305  
 to record notes, &c., offered for discount, and proceedings at meetings of, &c., under penalty, . . . . . 305  
 to prepare lists of proxies, &c., to be read at stockholders' meetings, . . . . . 304  
 liability of, in certain cases, . . . . . 303  
 absent, &c., how exonerated, . . . . . 303  
 may call special meetings of stockholders, . . . 305  
 to choose one of their number president, and fix his compensation, . . . . . 305  
 to appoint cashier, . . . . . 305  
 may appoint clerks and other officers, . . . . 305  
 not to be liable to an amount exceeding thirty per cent. of capital stock of, unless, &c., 306  
**President**, to be chosen from and by directors, 305  
 compensation of, to be fixed by directors, . 305

**4. CASHIER AND LOANS TO OFFICERS.**

**Cashier**, to be appointed by directors, . . . . 305  
 to give bond, . . . . . 305  
 exempted from serving as juror, . . . . . 680  
 to call special meetings of stockholders, in certain cases, . . . . . 306  
 not to be director of bank of which he is cashier, under penalty upon the bank, 306  
 not to hire money of such bank, under penalty upon the bank, . . . . . 306  
 or clerk to furnish officer, &c., serving execution on lands mortgaged to bank, with a copy of note or obligation, secured by the mortgage, &c., . . . . . 308  
 to make annual returns, under oath, to secretary, . . . . . 311, 312  
 form of return, . . . . . 311

**Officers**, for conducting business of, may be appointed by directors, . . . . . 305  
 such officers not to hire money of their own bank, under penalty upon the bank, . 306  
 liability of, on notes, &c., limited, . . . . . 306  
 penalty on bank, if officer liable to greater amount than allowed by law, . . . . . 306  
 penalty on, for embezzlement, . . . . . 800  
 taking by accomplice of, deemed taking by officer, . . . . . 800  
 money taken in such cases need not be identified, . . . . . 800

**5. BILLS AND NOTES.**

no bank to pay out other than its own, . . . . 306  
 amount of, which may be issued, . . . . . 306  
 not to be issued except at banking house, . . . 306  
 not to be issued to be kept from circulation, under penalty, . . . . . 307  
 in whose names to be issued, . . . . . 306  
 to be signed by president and cashier, . . . . 306  
 signed by either president or cashier, and in circulation, to be redeemed, . . . . . 306  
 altered to larger amount in circulation, bank liable for original amount, . . . . . 306  
 to be redeemed in specie, during banking hours, under penalty, . . . . . 305  
 denominations of, . . . . . 306  
 fractional, not to be issued, under penalty, . . 305

**BANKS—continued.**

worthless and counterfeit, how to be stamped by banks, . . . . . 306  
 penalty for not stamping, &c., . . . . . 306, 307  
 if stamped by mistake, bank liable to holder for its value, . . . . . 307  
 not to be issued, payable at a future day certain, or with interest, except, &c., . . . . . 307  
 property of bank to be first applied for redemption of, . . . . . 307  
 may be replevied by banks if unlawfully detained, . . . . . 307  
 proceedings in such case, . . . . . 307  
 suits on may be brought within twenty years from issue, . . . . . 777  
 when, where, and how redeemable, . . . . . 307, 308  
 penalty for neglect to redeem, . . . . . 308  
 provisions not to extend to certain checks and drafts, . . . . . 308  
 nor restrain a bank from drawing for balances due, . . . . . 308

**6. LOANS AND DISCOUNTS.**  
 not to be made, except at banking house, . . . . . 306  
 not to be made, unless payable by bank, in specie, &c., on demand, under penalty, interest and exchange, exceeding six per cent., not to be taken, under penalty, . . . . . 307

**7. TAKING LAND, &c., ON EXECUTION.**  
 lands of, may be sold on execution, and how officer shall proceed, . . . . . 308  
 officer may adjourn sale, . . . . . 308  
 lands mortgaged to, may be sold on execution, . . . . . 308  
 cashier or clerk to furnish officer, &c., serving execution with a copy of note or obligation, &c., . . . . . 308  
 officer making seizure to file notice in registry of deeds, &c., if required, . . . . . 308  
 transfer of note, &c., not valid after such notice, . . . . . 308, 309

**8. LIABILITY OF STOCKHOLDERS.**  
 stockholders, liability of, in case of loss, &c., of capital stock by mismanagement of directors, . . . . . 309  
 not so liable exceeding the amount of stock actually held by, . . . . . 309  
 liable for redemption of bills when bank stops payment, . . . . . 309  
 transferring shares to avoid such liability, subject to same on the shares transferred, . . . . . 309  
 at expiration of charter, liable for redemption of bills, . . . . . 309  
 who, believing a bank insolvent, transfer shares, &c., subject to the same liability, obliged to pay debt, &c., against bank, may recover from other stockholders, &c., corporations, being stockholders, under the same liabilities, &c., as individuals, . . . . . 309

**9. LOANS TO COMMONWEALTH.**  
 loan, not exceeding five per cent. of capital stock, to be made to the commonwealth, upon requisition of the legislature, . . . . . 309  
 loan reimbursable by five annual instalments, or at shorter period, interest not exceeding five per cent., . . . . . 309  
 neglecting to loan, for thirty days after notice, to pay two per cent. a month, . . . . . 310  
 suits to be instituted by the treasurer for recovery of penalty, . . . . . 310

**BANKS—continued.**

treasurer to give notice to president or cashier of amount required, . . . . . 309  
 amount of loan required, to be forthwith placed to credit of the state, . . . . . 309  
 loan demanded, to be equalized by treasurer among the several banks, having reference to obligation of bank, and amount previously borrowed, . . . . . 309, 310

**10. TAXES.**  
 to furnish to treasurer, in April and October, statement of stock paid in, &c., until capital is paid, . . . . . 310  
 to pay to the treasurer, in April and October, a tax of one half per cent., &c., . . . . . 310  
 treasurer to commence an action for neglect, . . . . . 310

**11. WEIGHTS.**  
 weights to be proved and sealed by treasurer, &c., once in five years, . . . . . 310  
 no tender of goods by banks valid, weighed with other weights, . . . . . 310

**12. RETURNS.**  
 in Boston, to transmit weekly returns to secretary, . . . . . 310  
 in South Boston and out of Boston, to transmit monthly returns to secretary, . . . . . 310, 311  
 penalty for neglect, . . . . . 311  
 blank forms for returns, to be furnished by secretary, . . . . . 311  
 form of return, . . . . . 311  
 annual return, penalty for neglect to make, . . . . . 312

**13. INVESTIGATIONS.**  
 legislature may examine into the doings of, &c., and may declare charter forfeited, . . . . . 312  
 penalty on officer neglecting to exhibit books, &c., one eighth of stockholders in value may choose committee to investigate, &c., . . . . . 312  
 such committee, in certain cases, to report to supreme judicial court, . . . . . 312  
 and court may issue injunction, . . . . . 312

**14. ANNULING AND EXPIRATION OF CHARTERS.**  
 stockholders, by a majority of votes, &c., may annul charters of, . . . . . 312, 313  
 meeting for such purpose, how called, . . . . . 312, 313  
 stockholders not exempt from liability by such annulling, . . . . . 313  
 that have annulled their charters, exempt from bank tax on certificate of commissioners, &c., . . . . . 313  
 supreme judicial court, on application of stockholder or creditor, may limit time of liability of such banks, . . . . . 313  
 plates and dies of bank, when charter expires, &c., to be delivered to court, . . . . . 313

**15. NEW PRIVILEGES.**  
 new or greater privileges granted to any bank hereafter, extended to banks in operation, . . . . . 313

**III. ORGANIZING UNDER GENERAL LAWS.**  
 ten or more persons may be a corporation for banking purposes, &c., . . . . . 313  
 amount of capital stock, . . . . . 313  
 capital stock to be paid in gold and silver, one half before bank goes into operation, &c., . . . . . 313  
 certificate of name, &c., to be made and recorded in registry of deeds, and filed with the secretary, . . . . . 313, 314  
 copies of certificate attested to be admitted as evidence, . . . . . 314

**BANKS—continued.**

by a vote of three fourths of its stockholders, may increase its capital, . . . . . 314

subject to laws relating to other banks, so far as consistent with following provisions, . . . . . 313

business to be carried on at banking house only, neglect to carry on business to work a forfeiture of its privilege, . . . . . 314

and it may be proceeded against, &c., . . . . . 314

annual meetings, when to be held, . . . . . 315

**Notes**, to be engraved and printed by auditor, to be countersigned, registered, and numbered, before delivered to banks, . . . . . 314

when returned to auditor, to be destroyed in presence of president and cashier, . . . . . 314

and certificate thereof to be entered on books, . . . . . 314

to be delivered to banks upon receipt of public stock, &c., . . . . . 314

what stocks and amount thereof to be transferred to auditor for such notes, . . . . . 314

what part of such stock to be exempt from taxation, . . . . . 314

to be at all times secured in full by public stocks, . . . . . 314

securities for, may be exchanged or surrendered, &c., . . . . . 314

to be stamped by auditor, . . . . . 314

when withdrawn, how to be indorsed, . . . . . 315

when signed and executed by bank, may be circulated as money, . . . . . 315

penalty on bank, when payment of, in gold or silver, is refused, . . . . . 315

may be protested in such case, . . . . . 315

if bank neglects to redeem for ten days after notice from auditor, may be redeemed from trust funds in his hands, . . . . . 315

proceedings in such case, . . . . . 315

penalty on auditor for signing excess of, . . . . . 315

plates, dies, &c., of, to remain in custody of auditor, . . . . . 315

expense of such plates, &c., by whom paid, bank to pay out none but its own, and of other banks of this state, . . . . . 315

suits on, may be brought within twenty years from issue, . . . . . 777

**Stocks**, public, to be transferred by banks to auditor to secure notes, . . . . . 314

may be exchanged or surrendered, . . . . . 314

to be stamped, . . . . . 314

when withdrawn, how to be indorsed, . . . . . 315

when to be applied for redemption of notes, banks to receive the interest and dividends on, . . . . . 315

auditor may give powers of attorney for that purpose, and revoke the same, . . . . . 315

dividends on, received by auditor, to be held in trust for bank, . . . . . 315

banks to make returns of, to secretary, . . . . . 315

to be examined by bank commissioners, . . . . . 315

to be exchanged, &c., if commissioners require, . . . . . 315

when to be returned to bank, . . . . . 315

how exonerated from liability to redeem bills, when insolvent, may be restrained by injunction from supreme judicial court, . . . . . 316

when in hands of receivers, auditor to transfer to, stocks belonging to, . . . . . 316

provisions concerning, may be altered or repealed by legislature, . . . . . 316

may be dissolved by special act of legislature, . . . . . 316

**BANKS—continued.**

remedies against bank and its officers not impaired by such dissolution, . . . . . 316

provisions to apply to banks heretofore organized, . . . . . 316

**IV. SAVINGS BANKS.**

by what provisions to be governed, . . . . . 316

**Officers** of, how chosen or appointed, . . . . . 316

to be sworn, . . . . . 316

tenure of office, . . . . . 316

vacancies, how filled, . . . . . 316

chosen, to be notified by clerk, &c., . . . . . 316

list of, who accept, to be published in newspaper by clerk, . . . . . 316

penalty on clerk for neglect or false publication, . . . . . 316

**Treasurer**, how appointed, . . . . . 316

to give bond, . . . . . 316

to make annual returns to assessors, . . . . . 318

to inform overseers of poor, upon request, of deposits of paupers, . . . . . 318

to inform assessors of amount exceeding two hundred dollars of any resident of a city or town, . . . . . 318

penalty on, for refusal of, or false information, . . . . . 318

**Special meetings** of, may be held by order of trustees, . . . . . 317

to be called by treasurer on written request of ten members, . . . . . 317

all meetings to be advertised in newspaper, members of, how elected, and how may withdraw, . . . . . 317

no person to continue a member after removal from state, . . . . . 317

may receive money on deposit, . . . . . 317

limitation of amount of deposit by one person, . . . . . 317

deposits, how to be invested, . . . . . 317

investments restricted, . . . . . 317

may loan on bonds, provided, &c., . . . . . 317

no member of a committee, or officer of, to borrow, &c., . . . . . 317

dividends, how made, and deposits, how withdrawn, . . . . . 317

to make annual returns to the secretary, . . . . . 317, 318

money deposited in the name of minors may be withdrawn by them, . . . . . 318

legislature may make further regulations for the government of, . . . . . 318

**V. BANKS AND SAVINGS BANKS.**

closing concerns, trustees to make annual reports, . . . . . 319

penalty on, for neglect, . . . . . 319

not subject to insolvent laws, . . . . . 598

**BARK.**

measures of, how chosen or appointed, . . . . . 161

to be sworn, . . . . . 161

fees of, . . . . . 278

to be measured, &c., like wood, . . . . . 278

penalty for selling without being measured, . . . . . 278

sale, inspection, &c., of, may be regulated by towns and cities, . . . . . 278, 279

**BARLEY.**

standard weight of bushel of, . . . . . 265

**BARNSTABLE.**

land in, ceded to United States, . . . . . 44, 45

regulations concerning shell fish on south shore, . . . . . 433

**County**, provision concerning registry of deeds, &c., in, . . . . . 154



**BARS.**

- on or across town or private way, how may be removed, . . . . . 251
- punishment for throwing down and leaving open, &c., . . . . . 856

**BASS.**

- provisions respecting the taking of, . . . . . 431

**BASS RIVER.**

- land at, ceded to United States, . . . . . 45

**BASTARD.**

- Mother of, may institute process against alleged father, . . . . . 404
- may testify, &c., in support of complaint, . . . . . 405
- examination of, may be given in evidence on trial, . . . . . 405

- Complaints, how and by whom made, if woman refuses to complain, . . . . . 404**

- where to be made, if woman is in state almshouse, . . . . . 404

- not to be withdrawn without consent of overseers of poor, . . . . . 405

- complainant not required to support defendant in prison, . . . . . 406

- warrant where returnable in different cases, 404, 570

- Alleged father of, may be required to give bond to appear, &c., . . . . . 404**

- may be committed till bond is given, . . . . . 404
- may be subsequently discharged, upon giving bond, . . . . . 405

- bond of, to remain in force till final judgment, . . . . . 404

- may be required to give new bond, if sureties are dissatisfied, &c., . . . . . 405

- to be adjudged the father, if jury find him guilty, . . . . . 405

- if found not guilty, to be discharged; and verdict final in either case, . . . . . 405

- Adjudged father of, to maintain, with assistance of mother, . . . . . 405**

- to give bond to perform order of court, indemnify town, &c., . . . . . 405

- may be committed till he gives such bond, . . . . . 405
- entitled to relief as a poor debtor, after ninety days' confinement, . . . . . 405

- how to give notice of intention to take poor debtor's oath, . . . . . 405

- liable to mother, and town, &c., after discharge, on such oath, . . . . . 405

- settlements made between parents of, not to relieve father from liability to town for support of, . . . . . 405

- prosecutions to be heard at civil term of superior court, . . . . . 405, 406

- for what reasons may be continued, . . . . . 404

- to inherit from mother and maternal ancestors, . . . . . 474

- mother of, heir to, . . . . . 474

- may be bound as apprentice by mother, . . . . . 549
- where parents intermarry, to be considered legitimate, . . . . . 474

- issue of marriage dissolved on account of consanguinity, &c., of parties, to be deemed to be, . . . . . 534

- mother of infant, how punished for concealing death of, . . . . . 818

- how may be indicted, and what verdict given, 818

**BEACHES.**

- provisions respecting improvement of, . . . 750-752
- (See *Meadows*.)

**BEACON.**

- on spit of sand in Boston harbor, ceded to United States, . . . . . 44

**BEASTS.**

- of the plough, exempt from distress for taxes, 82
- how impounded for going at large contrary to law, or doing damage, . . . . . 185, 186
- damage done by, may be sued for in an action of tort, . . . . . 185
- distrained or impounded, how may be replevied, 730, 731

- punishment for wilfully killing, maiming, &c., for cruelly beating and torturing, . . . . . 805

- for driving, &c., on railroads, without leave of proprietors, . . . . . 363

- not ordinarily kept in confinement, when subject of larceny, . . . . . 799

**BEDS AND BEDDING.**

- what exempt from distress and attachment, &c., . . . . . 82, 688

**BEEF.**

- weighers of, when and how appointed, . . . . . 258
- not to be dealers in cattle, . . . . . 258
- to be sworn, . . . . . 258
- fees of, . . . . . 258

**BEER.**

- strong and lager, considered intoxicating liquor, 442
- penalty for setting up exhibitions at which is sold beer, . . . . . 464

**BEGGARS.**

- idle and dissolute, how to be arrested and punished, . . . . . 820

**BELL-ROPE.**

- penalty for wilfully, &c., cutting within twenty-four hours before fire, . . . . . 796
- during the burning, . . . . . 796, 797

**BELLS.**

- to be used with sleds or sleighs, drawn by horses, on roads, . . . . . 423

**BERRIES.**

- to be sold by the strike or level measure, . . . 264

**BIBLE.**

- to be read daily in public schools, . . . . . 218
- exempt from attachment, &c., . . . . . 688
- copy of, to be furnished at expense of county, to each prisoner in jail and house of correction, . . . . . 863

**BIGAMY.**

- prohibited, and how punished, . . . . . 529, 817, 818

**BILL OF DISCOVERY.**

- jurisdiction of, given to supreme court in equity, 559

**BILL IN EQUITY.**

- cases in equity may be commenced by, . . . . . 559
- (See *Equity*.)

**BILL OF LADING.**

- making false, to defraud insurer, how punished, 850

**BILL OF PARTICULARS.**

- to be filed on entry of action, when either common count is used, . . . . . 655
- may be ordered by court to be filed by either party to a suit, . . . . . 660
- items in, to be numbered consecutively, . . . . . 655
- deemed part of record, and to be answered or replied to as such, . . . . . 655
- every item to be answered specifically, . . . . . 656

**BILLS OF EXCHANGE.**

- maturing on Sundays and public holidays, when payable, . . . . . 293
- when may be protested, in such case, . . . . . 293
- damages on protested bills, payable beyond limits of United States, . . . . . 293, 294
- payable without this state, and within United States, . . . . . 294
- payable within this state, . . . . . 294
- grace allowed on, . . . . . 294

**BILLS OF EXCHANGE—continued.**  
 parties severally liable on, may be joined in same action, . . . . . 654  
 how proved against estates of insolvent debtors, . . . . . 584, 598

**BILLS AND RESOLVES.**  
 to be approved by governor, or returned to legislature with objections, . . . . . 17  
 how to become law, if governor objects, . . . . . 17  
 if not returned by governor within five days, to become law, unless legislature adjourns, . . . . . 18, 32  
 to be engrossed on parchment, under direction of secretary, . . . . . 49

**BILLIARD TABLES AND BOWLING ALLEYS.**  
 licenses for keeping, may be granted by selectmen, &c., . . . . . 463  
 penalty for keeping without license, . . . . . 463  
 for admitting minors to, . . . . . 463  
 for allowing play after six o'clock Saturday afternoon, &c., . . . . . 463  
 officers may enter, &c., to enforce laws, . . . . . 463  
 penalty for erecting, &c., bowling alley without license, . . . . . 463  
 jurisdiction of offences for keeping contrary to law, given to justices of peace, . . . . . 609

**BILLINGSGATE ISLAND.**  
 land on, ceded to United States, . . . . . 45

**BIRTHS.**  
 city and town clerks to record and index facts concerning, . . . . . 168  
 form of record, . . . . . 168  
 to be reported to clerks by parents, . . . . . 169  
 return to be made by clerk to secretary, under penalty, . . . . . 169  
 record of clerk concerning, to be prima facie evidence in legal proceedings, . . . . . 169  
 certificate of clerk to be evidence of such record, 169  
 superintendents of state almshouses to make returns concerning, . . . . . 169, 170  
 town clerks, where such almshouses are located, to be exempt from making returns, . . . . . 170  
 towns may make additional rules concerning registration of, . . . . . 170  
 registrars may be appointed in certain towns, &c., to make record, &c., concerning, 170

**BIRD ISLAND.**  
 ceded to United States, . . . . . 44

**BIRDS.**  
 certain, penalty for killing, &c., at certain seasons, . . . . . 429  
 at any time, . . . . . 429, 430  
 for taking by traps, &c., . . . . . 430  
 for killing on salt marshes, at certain seasons, . . . . . 430  
 grouse or heath hen, . . . . . 430  
 penalties may be suspended, . . . . . 430  
 plover, &c., at certain seasons, . . . . . 430  
 or at any time, with unusual implements, 430  
 search warrants for grouse may be issued in certain cases, . . . . . 430  
 not ordinarily kept in state of confinement, when subject of larceny, . . . . . 799

**BLASPHEMY.**  
 how punished, . . . . . 819

**BOARD OF ACCOUNTS.**  
 in Suffolk county, how constituted, and general duties and compensation of, . . . . . 149, 150  
 to settle and allow accounts for expenses of keeping prisoners in house of correction, &c., . . . . . 864, 865

**BOARD OF DIRECTORS OF PUBLIC INSTITUTIONS** for the city of Boston.  
 powers and duties of, . . . . . 394, 395, 858, 859

**BOARD OF EXAMINERS.**  
 of whom to consist, . . . . . 149  
 to examine returns of votes for county commissioners, . . . . . 60  
 when to meet for this purpose, . . . . . 60  
 to notify person chosen, . . . . . 60  
 to file returns, after examination, in clerk's office, . . . . . 60  
 penalties for neglect of duty, . . . . . 60  
 to examine and allow accounts of commissioners, 149  
 compensation of, . . . . . 149

**BOARD OF HEALTH.**  
 may be chosen by towns, if no special provision is made by law, . . . . . 188  
 of what number to consist, . . . . . 188  
 or health officer may be chosen, . . . . . 188  
 selectmen to be, if none chosen, . . . . . 188  
 how appointed, or constituted, in cities, . . . . . 188  
 and if not appointed with full powers, city council to act, . . . . . 188  
 may appoint a physician, and establish his pay, 188  
 to regulate fees, &c., of persons employed in execution of health laws, . . . . . 188  
 to make regulations respecting nuisances, causes of sickness, &c., . . . . . 188  
 as to articles that may contain infection, . . . . . 188  
 penalty for violating such regulations, . . . . . 188, 189  
 to give notice of regulations, . . . . . 189  
 to examine into and abate nuisances, &c., . . . . . 189  
 may order nuisances on private property to be removed by owner, &c., . . . . . 189  
 penalty on owner, &c., for neglect, &c., to remove same, . . . . . 189  
 how such order to be served on owner, . . . . . 189  
 if premises are unoccupied, . . . . . 189  
 may remove nuisance, &c., at expense of owner, &c., if he neglects, . . . . . 189  
 may notify occupants of unfit dwellings to cleanse or to quit premises, . . . . . 189  
 may cleanse the same, or remove occupants forcibly, if they neglect, . . . . . 189  
 such premises not again to be occupied without written permission of, . . . . . 189  
 penalty for occupying without such permission, . . . . . 189  
 courts may order nuisances to be abated under direction of, . . . . . 189  
 may make compulsory examinations of premises, if owners refuse, . . . . . 190  
 how to proceed in such examinations, . . . . . 190  
 may grant permits for removal of nuisances, sick persons, and infected articles, . . . . . 190  
 may remove infected person to separate house, &c., . . . . . 190  
 charges of such removal, &c., by whom to be paid, . . . . . 190  
 proceedings in case infected person cannot be removed, . . . . . 190  
 may prevent entrance of infected persons from other states, without license, . . . . . 190  
 penalty on person coming into the state from infected places without such license, . . . . . 190  
 may, under warrant of two justices, remove sick person, impress houses, nurses, &c., for the sick, . . . . . 190  
 may apply to a justice for warrant to impress men, to secure, &c., infected articles, . . . . . 190, 191

**BOARD OF HEALTH—continued.**

such warrant to be issued by justice, . . . .	191
may authorize impressing of houses, &c., for safe keeping of infected articles, . . .	191
may be executed by breaking open houses, &c., if necessary, . . . . .	191
in execution of, officer may require aid, . .	191
penalty for refusing to aid officer, . . . .	191
expenses of securing infected articles to be paid by owner, . . . . .	191
compensation for houses and services im- pressed to be made by towns, . . . . .	191
may order removal of certain sick prisoners to hospital, &c., . . . . .	191
return of such removal to be made to court,	191
may make regulations concerning quarantine of vessels in seaport towns, . . . . .	192
may remove foul, &c., vessels to quarantine ground, . . . . .	192
to have charge of hospitals, &c., in towns, . .	192, 193
to provide hospitals when dangerous disease breaks out, . . . . .	193
may cause sick, &c., persons to be removed thereto, unless, &c., . . . . .	193
to give public notice, &c., when dangerous dis- ease exists, . . . . .	193
to assign places for trades, &c., which are nu- sances, &c., . . . . .	193
such assignment to be recorded, . . . . .	194
may forbid the exercise of such trades, &c., . .	194
orders forbidding same, how to be served on occupant, . . . . .	194
penalty for disobeying order, . . . . .	194
appeal to superior court and trial by jury, . .	194
trade not to be exercised during pendency of appeal, . . . . .	194
form, return, and effect of verdict, . . . . .	194
costs in such cases, . . . . .	194
when places assigned are nuisances, may be revoked by superior court, . . . . .	194
may make, and shall give notice of, regulations concerning burial grounds, &c., . . . . .	196

**BOARDING-HOUSES AND TAVERNS.**

<b>Keepers of,</b> to give names of persons taxable and liable to enrolment to assessors, under penalty, . . . . .	77, 91
to have lien on baggage and effects of guests or boarders brought to their house, . . . . .	770
how lien may be enforced, . . . . .	770
not to have lien upon wearing apparel of seamen, in certain cases, . . . . .	290, 770

**BOATS.**

for transporting stone, regulations of, . . . .	290, 291
of fishermen exempt from attachment and levy on execution, . . . . .	688
unlawful taking and using of, how punished, .	801

**BONDS.****GENERAL PROVISIONS.**

of corporations and joint stock companies nego- tiable, . . . . .	293
<b>Suits upon,</b> how declared on, . . . . .	654
forms of declaration on, . . . . .	664
judgment to be for penal sum, when it ap- pears that condition is broken, . . . . .	686
execution to issue for sum found due, . . . .	686
amount due for subsequent breaches may be recovered by scire facias, . . . . .	686
in such case, amount how assessed on scire facias, . . . . .	686
above proceedings not to prevent other suits for non-performance of contract, . . . .	686

**BONDS—continued.****PROBATE.**

miscellaneous provisions respecting, . . . . .	505-507
sureties to be residents of this state, and ap- proved by judge, . . . . .	505
to be examined by judge, his approval indorsed thereon and filed, . . . . .	505
when need not contain provision to account for proceeds of real estate, . . . . .	505
when there are two or more persons appointed to a trust, joint or separate bonds may be taken, . . . . .	505
if sureties or penalty is insufficient, new bond may be required, . . . . .	505
surety may be discharged on petition, . . . . .	505
if principal fails to give new bond when re- quired, to be discharged from trust, . . . . .	505
prior sureties to be liable for breaches before new bond is approved, . . . . .	505
<b>By administrators,</b> when to be given, and conditions of, . . . . .	483
by special administrators, . . . . .	484
public administrators, . . . . .	486, 487
<b>By executors,</b> when to be given, and condi- tions of, . . . . .	481
in case executor is residuary legatee, . . . .	481
<b>By guardians,</b> when required, and conditions of, . . . . .	545
<b>By trustees,</b> when required, and conditions of, .	501
<b>May be put in suit,</b> by creditors next of kin, legatees, &c., in different cases, . . . . .	505, 506
how when judge is obligor, . . . . .	506
proceedings in such case, . . . . .	506
writs, how indorsed, &c., . . . . .	506
indorsers of, liable for costs, . . . . .	506
action on, if not brought against, or writ not served on principal resident in state, to be continued at request of sureties, to bring in principal, . . . . .	506
sureties on, when sued without principal, may have writ to arrest or attach property, and summon him to appear as defendant, . . . . .	506
judgment, if for plaintiff, to be rendered against principal and sureties, . . . . .	506
when rendered, how and in whose name, &c., execution shall be awarded, . . . . .	506
execution on such judgment, how issued and served, . . . . .	506, 507
moneys collected by suit on, how disposed of, for new breach of, scire facias may issue on original judgment for further dam- ages, . . . . .	507

**RESPECTING PROPERTY ATTACHED.**

<b>To dissolve attachments,</b> how given and approved, . . . . .	632
<b>By debtor whose goods are attached to pay appraised value, and prevent sale, . . . . .</b>	629
to be taken by officers, if offered by debtor, to be returned with writ, as bail bonds are, if forfeited, may be sued by creditors in officer's name, . . . . .	629
writ on, to be indorsed with names of all the creditors who sue, . . . . .	629
all creditors, whose names are indorsed on writ, liable to execution for costs, . . . . .	629
money recovered on, after deducting ex- penses, to belong to attaching cred- itors, and be distributed by court, . . . . .	629
judgment may be rendered, and execution	



**BONDS—continued.**

awarded to the several creditors, as in suits on administration bonds, . . . 629, 630  
 or one execution may issue for all the creditors, . . . . . 630  
 execution not to be awarded, without reserving for prior attaching creditors, though they did not sue, . . . . . 630  
 before final judgment on, any attaching creditor may become a party to suit, . . . 630  
 after judgment on, attaching creditor not a party to the suit on, may have seire facias to recover what may be due to him, . . . . . 630  
 suit on, and seire facias on judgment on, limited to a year after cause of action. (See Attachment.) . . . . . 630  
**By any of the owners of goods attached on suit against part owner, . . . 630**  
 to be taken by officers, if offered by debtor or other part owner, and property delivered to him, . . . . . 630  
 to be returned, sued, &c., as bonds above mentioned given by debtors to prevent sale, . . . . . 630

**ISSUED BY RAILROAD COMPANIES.**

how issued, secured by mortgage, &c., . . . 363-367

**IN OTHER CASES.**

**By plaintiff on taking out execution against absent defendants, . . . 605, 646**  
**In estates of insolvent debtors, may be required of assignees, . . . . . 586**  
 of assignees, how sued, . . . . . 586  
 bottomry and respondentia, how proved against debtor's estate, . . . . . 584, 598  
**By poor debtor, when final judgment is rendered against him, or when surrendered by bail after judgment, to obtain discharge, . . . . . 640**  
 action of contract may be brought on such bond, . . . . . 641  
**Bail bonds. (See Bail.) . . . . . 642**  
**In actions of replevin. (See Replevin.) . 730, 731**  
**To obtain execution for costs before appeal from taxation is determined, . . . . 782**  
**For keeping conditions of pardon, . . . . 855**  
 where to be deposited and when prosecuted, . . . . . 855  
**By various public officers. (See Titles of respective Officers.)**

**BONFIRES.**

punishment for making within ten rods of building, . . . . . 816

**BOOKS.**

used in schools, provisions concerning, . . 218, 219  
 what exempt from attachment and execution, . . . . . 624, 688

**BOOTS, &c.**

makers of to have exclusive right to stamp, . . 270  
 how stamped, stamp to be deemed warranty, . . 270  
 not deemed merchantable unless stamped, . . . 270  
 penalty for fraudulently stamping with another's name, . . . . . 270

**BOSTON.**

city of, lighthouse, on Light-House Island, in harbor of, ceded to United States, . . . 44  
 beacon and spit of sand in harbor of, ceded to United States, . . . . . 44, 45  
 Castle, Governor's, George's, and Lovel's Islands, in harbor of, ceded to United States, . . 44

**BOSTON—continued.**

land on Long Island Head, in harbor of, ceded to United States, . . . . . 44  
 Nix's Mate, in harbor of, ceded to United States, . . 45  
 Great Brewster Island, in harbor of, land on, ceded to United States, . . . . . 45  
 site for beacon on Point Alderton Bay, ceded to United States, . . . . . 45  
 "Masonic Temple," in, ceded to United States, . . 45  
 harbor of, what to be deemed limits of, for certain purposes, . . . . . 290  
     penalty for boarding vessels in, without leave, except by pilot, &c., . . . . . 290  
 county property in Suffolk, to belong to, . . . . 144  
 to provide county buildings, and pay all county charges, . . . . . 144  
 aldermen to act as county commissioners in, . . . 148  
 criminal jurisdiction over islands and waters in harbor of, . . . . . 145  
 treasurer of, to be treasurer of Suffolk county, . . 149  
 powers and duties of aldermen in laying out ways in, . . . . . 242  
     in laying, maintaining, &c., drains and sewers in, . . . . . 253, 254  
     in relation to signs, gates, &c., at railroad crossings, . . . . . 361  
 lunatic hospital in, special provisions concerning, not repealed, . . . . . 413  
 agents for sale of liquors in, to be appointed by state liquor commissioner, . . . . . 439  
 mayor and aldermen of, to put in suit bond of manufacturers of liquors, upon breach thereof, . . . . . 440  
 actions by and against, in what county to be brought, . . . . . 621  
     how may be removed, when brought in county of Suffolk, by Boston, . . . . 621  
 inhabitants of, not thereby disqualified from being jurors in any case, . . . . . 618  
 members of fire department of, exempt from serving as jurors, . . . . . 680  
 auditor of to audit coroners' accounts in Suffolk, . . . . . 850  
**Board of directors for public institutions in, to make annual returns to secretary concerning paupers, . . . . 394, 395**  
     penalty on, for not making such returns, . . 395  
     powers and duties of, . . . . . 858, 859

**BOTTOMRY.**

contract of, need not be recorded, . . . . . 767  
 how proved against estates of insolvent debtors, . . . . . 584, 598

**BOUNDARIES.**

**Of towns, provisions respecting, . . . . 157, 158**  
**Of counties, . . . . . 43, 144**  
 wilful and malicious injury or destruction of monuments, &c., of, how punished, . . . 803

**BOUNDS.**

permanent, to be erected on roads, . . . . . 243, 244

**BOWLING ALLEYS.**

licenses and regulations of, . . . . . 463  
 jurisdiction of offences for keeping contrary to law, . . . . . 609

**BRAWLERS.**

common, how arrested and punished, . . . . 820, 821

**BREAD.**

weight of loaf, . . . . . 258  
 how sold, . . . . . 258  
 prices of, to be displayed where sold, . . . . . 258  
 to be weighed in presence of buyer, . . . . . 258  
 penalty for violation of these provisions, . . . . 258  
 provisions not to apply to rolls or fancy bread, . . 258

**BREAKING.**

- dwelling-house, with intent to commit felony, after having entered with such intent, the offender being armed, &c., or making an assault, how punished, . . . . . 797
- the offender not being armed, &c., how punished, . . . . . 797

**BREAKING AND ENTERING.**

- dwelling-house by night, to commit felony, any person being lawfully therein, and the offender being armed, or making an assault, how punished, . . . . . 797
- the offender not being armed, nor arming himself, nor making an assault, how punished, . . . . . 797
- any building, ship, or vessel, in night time, with intent to commit felony, how punished, . . . . . 797
- in day time, or entering in the night time without breaking, with such intent, persons lawfully therein being put in fear, how punished, . . . . . 797
- in day time, or entering dwelling-house in night time without breaking, with such intent, no person being put in fear, . . . . . 797

**BRIBERY.**

- conviction of, in obtaining election, &c., to disqualify party from holding office of trust, . . . . . 30
- giving of bribes to officers, how punished, . . . . . 812
- acceptance of bribes by officers, how punished, . . . . . 812
- corrupting jurors, arbitrators, &c., how punished, . . . . . 813
- acceptance of bribes by jurors, arbitrators, &c., how punished, . . . . . 813
- of officers to omit duty, how punished, . . . . . 814

**BRIDGES.**

- On highways, to be kept in repair by towns,** where several towns are required to maintain bridge, county commissioners may make orders for repair, . . . . . 245
- when life is lost, through defect of, county, &c., liable to fine of one thousand dollars, . . . . . 247
- damages caused by defect in, to be recovered of party liable to repair, . . . . . 247
- defendants in such cases may make tender to plaintiffs, . . . . . 247
- penalty on towns for neglect to repair, . . . . . 247
- finer imposed in such cases, how appropriated, . . . . . 248
- in suits for injuries, when location not to be denied, . . . . . 248
- over railroad, construction of, to be determined by county commissioners, . . . . . 357, 358
- over or under railroad, how to be maintained, . . . . . 358
- Private, proprietors of, how organized, &c.,** may choose clerk, surveyor, and assessors, powers and duties of such officers, . . . . . 248
- not to be travelled over by horses faster than a walk, if by-laws forbid, . . . . . 250
- county commissioners, town, or proprietors, to make by-laws, . . . . . 250
- such by-laws made by town, to be approved by county commissioners, . . . . . 250
- penalties for violation of by-laws, how recovered, . . . . . 250
- not to be recovered, unless by-laws are posted up, . . . . . 250
- On turnpikes, damage by breaking, &c., of,**

**BRIDGES—continued.**

- not to be paid by corporation if caused by too great weight, . . . . . 347
- corporation not liable for deficiency in, to any person whose carriage and load exceed six tons, . . . . . 347, 348
- wilful injury to railings, &c., of, how punished, . . . . . 803

**BRIGADIER-GENERALS.**

- how chosen or appointed, and commissioned, 24, 97  
(See *Militia*.)

**BRINGING MONEY INTO COURT.**

- in case of tender, . . . . . 671
- form of defendant's answer in such case, . . . . . 668
- costs, in such case, . . . . . 780

**BROTHERS.**

- when to inherit property of brothers or sisters, . . . . . 474

**BRUSHWOOD.**

- burning of, so as to set fire to woodland in certain portions of Bristol and Plymouth counties, forbidden, . . . . . 807
- forfeitures, how recovered, . . . . . 807

**BUCKWHEAT.**

- standard weight of bushel of, and regulations respecting sale, . . . . . 265

**BUILDINGS.**

- when to be deemed boundaries of highways, . . . . . 251
- may be pulled down by order of firewards, . . . . . 176
- owners, when indemnified in such cases, . . . . . 176
- when adjudged nuisance, taken down, &c.; costs how paid, . . . . . 251
- burnt, dilapidated, &c., when adjudged nuisances, how disposed of, . . . . . 453
- owner aggrieved, may have jury as in case of highways, . . . . . 543
- verdict of jury, costs, &c., in such cases, . . . . . 453
- provisions subject to acceptance by towns, &c., . . . . . 453
- resorted to for prostitution, gaming, &c., to be deemed common nuisances, . . . . . 454
- used as dwellings, and unfit, how cleansed, &c., by order of board of health, . . . . . 189
- liens on for labor and materials, . . . . . 762-766
- punishment for burning, in different cases, . . . . . 796
- for breaking and entering, . . . . . 797
- wilful, &c., injury to by gunpowder, . . . . . 803, 804
- by oil of vitriol, coal tar, &c., . . . . . 804

**BUNKER HILL MONUMENT.**

- exempted from taxation, . . . . . 74

**BUOYS.**

- ceded to United States, . . . . . 44

**BURGLARIOUS INSTRUMENTS.**

- making, mending, having in possession, knowingly, with intent, &c., how punished, 799

**BURGLARS' TOOLS.**

- making, &c., how punished, . . . . . 799

**BURGLARY.**

- how punished, . . . . . 797  
(See *Breaking and Entering*.)

**BURIAL.**

- rights of, exempt from taxation, . . . . . 74
- exempt from levy on execution, . . . . . 688

**BURIAL GROUNDS.**

- exempted from taxation, . . . . . 74
- towns may grant money for, . . . . . 158
- corporations for establishment of, how organized, . . . . . 195, 196
- powers, &c., of, . . . . . 196
- lots in, not divisible, . . . . . 196
- if more than one heir to lot, representative to be designated, . . . . . 196

**BURIAL GROUNDS—continued.**

cities and towns to provide suitable places for, 196  
 private land not to be used for, &c., except, &c., 196  
 regulations concerning, may be made by boards  
     of health, . . . . . 196  
     notice of, how given, . . . . . 196  
 when closed by order of board of health, notice  
     how to be given, . . . . . 196  
 owner of tomb closed by board, may appeal, and  
     have trial by jury, . . . . . 196  
     order to remain in force pending the appeal, 196  
     proceedings, when order is sustained and  
     reversed, . . . . . 196, 197  
 penalty for using private land for, unless, &c., 197  
 use and occupation of, to be evidence of title to, 197  
 highways not to be laid out through, without  
     special authority of law, or consent of  
     town, . . . . . 244  
 not to be laid out through private burial  
     place without consent of proprietors, . . 244  
 opening road, canal, &c., through, without  
     consent, how punished, . . . . . 822  
 when buildings, &c., shall be deemed boundaries  
     of, . . . . . 251  
 wilful injury to, or to enclosures, or appurte-  
     nances, how punished, . . . . 197, 821, 822

**BURIALS.**

provisions concerning, . . . . . 196, 197  
 superintendents of, to make returns to town  
     clerks of certain facts respecting  
     deaths, . . . . . 169  
     compensation for making return, . . . . 169  
 to give notice of burials made without cer-  
     tificate of town clerk, under penalty, . 169  
 of deceased strangers, who are paupers, to be  
     made by overseers of poor, . . . 195, 393  
     expenses, how paid, . . . . . 393  
 of strangers found dead, &c., expense how paid, 850  
 of others found dead, . . . . . 850

**BURNING.**

of dwelling or other buildings, in night or day,  
     how punished, . . . . . 796  
 of wood, lumber, hay, or grain, in stacks or  
     otherwise, standing trees, grass, &c.,  
     or soil itself, . . . . . 796  
 married woman liable for burning such  
     property of her husband, . . . . . 796  
 of property insured to injure the insurers, . . . 796  
 wilfully, &c., cutting, &c., bell rope, or injur-  
     ing fire engine, or apparatus, within  
     twenty-four hours before fire, how  
     punished, . . . . . 796  
 doing the same during the burning, how pun-  
     ished, . . . . . 796  
 accessory before the fact, and after the fact, who  
     decmed, and how punished, . . . 796, 797

**BUSHEL.**

grain, &c., to be sold by, . . . . . 265, 278  
 standard weight of, for various kinds of grain, . 265  
 of potatoes, onions, and salt, . . . . . 278

**BUTTER AND LARD.**

inspector-general of, how appointed, and term of  
     office, . . . . . 258  
     to be sworn and give bond, . . . . . 258  
     may appoint deputies, . . . . . 258, 259  
     deputies to make return semiannually, . . . 258

**BUTTER, &c.—continued.**

to be sworn and give bond, . . . . . 259  
 fees of, . . . . . 259  
     penalty on, for neglect to inspect, &c., . . 259  
 to make returns annually to secretary, . . . 259  
 contents of return, . . . . . 259  
 fees of, . . . . . 259  
     penalty on, for neglect to inspect, &c., . . 259  
 manner of inspecting, . . . . . 259  
 casks of, how to be branded, . . . . . 259  
 size of kegs and quality of casks, . . . . . 259  
 casks to be filled with briue, before packing, . . 259  
 weight and name of packer to be branded on  
     each cask, . . . . . 259  
 imported, may be shipped without inspection, . 259  
 when may be seized and libelled, . . . . . 260  
 penalty for counterfeiting brand of inspector,  
     &c., . . . . . 259, 260  
     for putting other butter, &c., into branded  
     kegs, &c., . . . . . 260  
     for exporting, &c., not inspected, . . . . 260

**BUYING.**

grouse unlawfully killed, &c., how punished, . 430  
 of notes or other demands by attorneys, sher-  
     iffs, &c., with intent, &c., how pun-  
     ished, . . . . . 618  
 property known to be stolen, how punished, . . 801  
     jurisdiction of justices of the peace and  
     police courts, in such cases, . . . 570, 609

**BUZZARD'S BAY.**

Bird Island, in, ceded to United States, . . . . 44  
 Dumpling Rock, in, ceded to United States, . . 44

**BY-LAWS.**

in cities, ordinances are, . . . . . 52  
 By towns, may be made, subject to approval  
     of superior court, . . . . . 158, 159  
     may be annulled by general court, . . . . . 32  
     may be made respecting weighing, &c.,  
         lighters, . . . . . 291  
         regulation of carriages in cities, . . . . 167  
         erection of balustrades in cities, . . . . 167  
         pasturing cattle on highways, . . . . . 250  
         driving fast over bridges, . . . . . 250  
         registration of births, marriages, and  
         deaths, . . . . . 170  
         inspection and sale of bark in cities, . . . 279  
         truant children, &c., . . . . . 230  
         dealing in junk, &c., . . . . . 457  
         pawnbrokers, . . . . . 453  
         gunpowder, camphene, &c., . . . . . 460, 461  
         dogs, . . . . . 463  
     jurisdiction of offences against, given to  
         justices of the peace, . . . . . 608  
     complaints, &c., founded on, need not set  
         forth any part thereof, . . . . . 838  
     prosecutions under, before police courts,  
         &c., how discontinued, . . . . . 842

(See Towns.)

By corporations, . . . . . 336  
 By proprietors of lands, wharves, &c., lying  
     in common, . . . . . 380  
     of bridges, . . . . . 250  
 By fire departments and fire districts, . . 179, 181  
 By library associations, . . . . . 208  
 By county commissioners, respecting fast  
     driving over county bridges, . . . . . 250



C.

**CALENDAR.**  
of prisoner in jails, &c., to be kept, . . . . . 860  
penalty on master, &c., for not keeping, . . . . . 860  
to be presented to superior court, criminal term,  
for inspection, . . . . . 858

**CALVES.**  
penalty for killing for sale, under four weeks old,  
for knowingly selling, or having, with in-  
tent to sell, such meat, . . . . . 822

**CANALS.**  
conductors of boats on, to exhibit certificates of  
lading to collectors of toll, . . . . . 347  
to pay costs of unloading, &c., if loading be  
found greater than in certificate, . . . . . 347  
required contents of such certificate, . . . . . 347  
penalty on such conductors for refusing to ex-  
hibit, or exhibiting false certificate, . . . . . 347  
for false statement as to boat's loading, . . . . . 347  
how penalties to be recovered, . . . . . 348  
collector of tolls may require boat's loading to  
be weighed, . . . . . 347  
proprietors of, to pay for detention of boat, if  
lading is found, on weighing, to con-  
form to certificate, . . . . . 347  
to prepare forms of certificates of lading,  
and furnish them to boatmen without  
expense, . . . . . 347

**CAPE COD.**  
land for lighthouses on, ceded to United States, 44  
land for preservation of harbor of, ceded to  
United States, . . . . . 45

**CAPE POGE.**  
land at, for lighthouses, ceded to United States, 44

**CAMP MEETINGS.**  
penalty on peddling goods, keeping booths, &c.,  
without permission, within mile of  
place of, . . . . . 819  
not to apply to regular and usual place of  
business, . . . . . 819

**CAMPHENE, &c.**  
storage and sale of, how may be regulated, . . . . . 461

**CAPITAL CASES.**  
trial of, to be before supreme court by four jus-  
tices, . . . . . 553, 554  
prisoner in, may be arraigned by single  
judge, . . . . . 553  
if he pleads guilty, single judge may award sen-  
tence, . . . . . 553  
if he does not plead guilty, counsel to be as-  
signed him, and measures taken for  
trial, by single judge, . . . . . 553  
exceptions may be taken, and questions of law  
reserved in, . . . . . 554  
if frivolous or intended for delay, court  
may forthwith enter judgment, . . . . . 554  
after decision upon, judgment may be en-  
tered, and sentence passed, or prelim-  
inary proceedings had for new trial  
by single judge, . . . . . 554  
arising in Duke's county to be tried in Barnsta-  
ble county, . . . . . 555  
other counties where no law term is estab-  
lished, special term to be held, . . . . . 555  
when no law term is to be held within six  
months, court to be convened, . . . . . 555  
provisions in regard to trial of, . . . . . 841

**CARDS.**  
jurisdiction of offences by means of, given to  
justices of the peace, &c., . . . . . 570, 609  
fraudulently obtaining property by, how pun-  
ished, . . . . . 802

**CARRIAGES, &c.**  
laws respecting meeting and passing of, on  
roads, . . . . . 423  
rules for regulation of, may be made in cities, . . . . . 167  
such regulations to be published, . . . . . 167  
penalty for violation of rules, . . . . . 167  
fee for license of, . . . . . 167  
unlawfully taking and using, how punished, . . . . . 801

**CARRIERS.**  
embezzlement by, how punished, . . . . . 800

**CASHIERS OF BANKS.**  
exempt from serving as jurors, . . . . . 680  
(See *Banks, &c.*)

**CASTLE ISLAND.**  
ceded to United States, . . . . . 44

**CAT ISLAND.**  
East Rock of, ceded to United States, . . . . . 44

**CATTLE.** (See *Neat Cattle, Beasts.*)

**CATTLE SHOWS.**  
marshals at, appointment and powers and du-  
ties of, . . . . . 378  
penalty for gaming at, . . . . . 437  
booths, &c., used for gaming within one mile of,  
how removed, . . . . . 454  
(See *Agricultural Societies.*)

**CAUSEWAYS.**  
to be repaired by towns, . . . . . 245  
damages caused by deficiency of, how recov-  
ered, &c., . . . . . 247

**CELLARS.**  
occupied as dwellings, and unfit, how cleansed,  
&c., by order of board of health, . . . . . 189

**CEMETERIES.** (See *Burial Grounds.*) . . . . . 195-197  
provisions concerning, . . . . . 195, 197  
jurisdiction of offences against property in,  
given to justices of the peace, . . . . . 609

**CENSUS.**  
provisions of constitution concerning, . . . . . 34, 35, 38, 39  
of inhabitants, ratable polls, and voters, to be  
taken in 1865, and every tenth year  
afterwards, . . . . . 167, 168  
Of inhabitants, to specify males and females,  
color, &c., . . . . . 168  
natives, foreigners, naturalized voters, &c., . . . . . 168  
Of voters in cities, to specify number in each  
ward, . . . . . 168  
by whom to be taken, . . . . . 168  
persons taking to be sworn, and make re-  
turn under oath, . . . . . 168  
to deliver returns to sheriff or transmit to  
secretary, . . . . . 168  
secretary to transmit blanks for returns of, to  
cities and towns, . . . . . 168  
Of United States, when to be taken, . . . . . 2

**CERTIORARI.**  
writs of, may be issued by supreme court, . . . . . 553, 743  
petitions for to be indorsed before entry  
when brought by parties living out of  
the state, . . . . . 622  
indorser of, when may be required after  
entry, . . . . . 657

**CERTIORARI** — *continued.*

- subject to further regulation by rules of the court, . . . . . 743
- not to issue, unless applied for within six years, &c., . . . . . 743
- pending application for, court may issue injunction as justice and equity require, 743
- costs on, . . . . . 743, 781

**CHALLENGE.**

- penalty for sending or accepting, to fight a duel, 792
- for posting for not accepting, . . . . . 792
- Of trial jurors, when not to be challenged on account of paying taxes, &c., in county, city, &c., . . . . . 618, 683
- in criminal cases, . . . . . 841
- who may challenge, and for what cause, . . 841
- in what cases peremptory challenges allowed, and how many, . . . . . 841

**CHANGE OF NAME.**

- how may be made by probate court, . . . . . 574

**CHAPLAIN.**

- of senate and house of representatives, compensation of, . . . . . 48
- of state prison, appointment and duties of, &c., . . . . . 870-872

**CHARCOAL.**

- burning of forbidden, on woodlands in portions of Bristol and Plymouth counties, . . 807
- forfeitures therefor, how recovered, . . . 807
- form and dimensions of measures for, . . . 279
- such measures to be sealed, . . . . . 279
- penalty for selling, with illegal measures or unsealed, . . . . . 279, 280
- unless by special agreement between buyer and seller, . . . . . 280
- mayor and aldermen, &c., to appoint persons to seize illegal measures, &c., . . . . . 280
- such persons may arrest parties without warrant, . . . . . 280
- illegal measures to be destroyed, . . . . . 280

**CHARITABLE ASSOCIATIONS.**

- seven or more persons to be body corporate for charitable purposes, . . . . . 207
- purpose and location to be specified in articles, . 207
- to have usual corporate powers, . . . . . 207
- may hold real and personal property not exceeding one hundred thousand dollars, . . 207
- estate not exempted from taxation where used for other purposes, &c., . . . . . 207

**CHARITABLE FUNDS.**

- held by towns, trustees to report annually to selectmen concerning, . . . . . 206
- such trustees may be removed and vacancies filled by probate court, . . . . . 206

**CHARLESTOWN.**

- land for navy yard in, ceded to United States, . 44

**CHARTERER.**

- of vessel, when to be deemed owner for certain purposes, . . . . . 289

**CHARTERS.**

- of corporations, revocable by legislature, . . . 340

**CHATHAM,**

- land for lighthouses near harbor of, ceded to United States, . . . . . 44
- regulations concerning shell-fish in, . . . . . 433

**CHEATS.**

- gross, at common law, how punished, . . . . 802

**CHECKS.**

- what not to be issued or passed as currency, . . 307

**CHELSEA.**

- land in, for hospitals and depot of ordnance stores, ceded to United States, . . . . . 44

**CHELSEA** — *continued.*

- returns of votes in, for county commissioners and register of deeds, to whom made, 59
- to vote with Middlesex county for county commissioners, . . . . . 71, 72
- commissioners for Middlesex to have jurisdiction in, . . . . . 148, 242
- not to be taxed for county purposes, . . . . . 78
- to have no interest in county property, . . . . 144

**CHEMIST.**

- may keep intoxicating liquors, &c., . . . . . 442
- aiding in coroner's inquest, compensation of, . 850

**CHESTNUTS.**

- to be sold by the strike or level measure, . . . . 254

**CHILDREN.**

- attendance of, at school, . . . . . 228-230
- unlawfully excluded from schools, remedy of, . 229
- employed in manufacturing establishments instruction of, . . . . . 229, 230
- habitual truants, regulations, by-laws, &c., concerning, . . . . . 228, 230
- stubborn, how may be treated, . . . . . 820, 821
- destitute from neglect of intemperate parents, may be sent to almshouse, . . . . . 392
- of female convicts in certain cases, to be in care of mother, . . . . . 861
- not to gain settlement in town of birth, if parents have none there, . . . . . 390
- to inherit real estate from deceased parents, . . 474
- deceased, issue of, to inherit by right of representation, . . . . . 474
- Legitimate, to follow and have settlement of father or mother, . . . . . 390
- Illegitimate, to follow and have settlement of mother, . . . . . 390
- to inherit from mother and maternal ancestors, . . . . . 474
- may be bound apprentices by mother, . . . 549
- mother of, heir to, . . . . . 474
- whose parents intermarry to be considered legitimate, . . . . . 474
- provisions respecting maintenance of, . . 404-406
- Posthumous, to be considered living at death of parent, . . . . . 475
- having no provision made for them in father's will, &c., to share as if father died intestate, . . . . . 479
- devises to contribute equally to share of, . 479

**ADOPTION.**

- petition for adoption of, to be presented to probate court, . . . . . 547
- not to be granted, unless husband and wife join therein, . . . . . 547
- consent to be given by parents of, . . . . . 547
- how given, if parents are insane, imprisoned, &c., . . . . . 547
- proceedings if parent does not consent, . . . 547, 548
- adoption not to be made without consent of child if fourteen years old, . . . . . 548
- proceedings and decree of, . . . . . 548
- relation, &c., between parents and child by, 548
- rights of natural parents taken away by, . . 548
- appeal may be taken to supreme judicial court by party aggrieved, . . . . . 548
- any decree for may be reversed by supreme court in certain cases, . . . . . 548
- change of name of, in case of adoption, . . . 547, 548

**CHIPPEQUIDDIC INDIANS.**

- appropriations, &c., for schools for, . . . . . 213

**CHOCOLATE.**

- how to be stamped, . . . . . 260

- CHOCOLATE**—*continued.*  
 ingredients of, . . . . . 260  
 boxes, how branded, . . . . . 260  
 may be seized, &c., when made contrary to law, 260
- CHRISTIAN TOWN INDIANS.**  
 appropriations, &c., for schools for, . . . . . 213
- CHRISTMAS DAY.**  
 legislature not to sit, and public offices not to be opened on, . . . . . 49  
 courts not to be opened on, except for certain purposes, . . . . . 617, 618  
 bills of exchange, &c., maturing on, when payable, . . . . . 293
- CHURCH WARDENS.**  
 if citizens of this commonwealth, a corporation to take grants, &c., to their churches, 205  
 when to be such corporation together with minister or vestry, . . . . . 205  
 cannot convey church lands without consent of vestry, . . . . . 206
- CHURCHES.**  
 connected with religious societies, &c., to have their accustomed privileges, &c., . . . . . 200  
 deacons, &c., of, to be bodies corporate to hold donations, &c., . . . . . 205  
 ministers of, together with deacons, &c., when to be corporation, . . . . . 205  
 conveyance of lands of, by deacons, invalid unless with consent of church, . . . . . 206  
 may, if not episcopal, choose committees to settle deacons' accounts, . . . . . 206  
 amount of income of donations to, limited, . . . . . 206  
 and furniture, penalty for wilful, &c., injury to, (*See Parishes and Religious Societies.*)
- CIDER.**  
 deemed intoxicating liquor, . . . . . 442  
 may be made and sold for other purposes than for a beverage, . . . . . 442
- CITATION.**  
 how may be served, . . . . . 151, 164  
 of executors, &c., to defend suit against deceased, . . . . . 648
- CITIES.**  
 included in the word "towns," . . . . . 51  
 when may be chartered by legislature, . . . . . 32  
 powers, &c., of, to continue, . . . . . 166  
 laws relating to towns to apply to, . . . . . 166  
 subject to liabilities of towns, . . . . . 166  
 mayor and aldermen to have powers, &c., of selectmen, . . . . . 166  
 vacancies in, by non-election, how filled, . . . . . 166  
 if mayor is not elected, when chairman of aldermen to act, . . . . . 166  
 when members of city council may hold other offices, . . . . . 167  
 city councils may regulate balustrades, &c., . . . . . 167  
 to have powers of towns, . . . . . 166  
 may require school committee to appoint superintendent of schools, . . . . . 219  
 may make regulations concerning storage and sale of explosive substances, 460, 461  
 who to prosecute for fines, &c., enuring to, . . . . . 167  
 no new division of wards, in certain cities, until next apportionment of representatives, . . . . . 63, 167  
 boards of health in, how constituted, . . . . . 188  
 ways in, provisions applying to laying out, repairing, &c., . . . . . 242, 248  
 liability of, for neglect of mayor and aldermen to place stone bounds at angles of streets, &c., in certain cases, . . . . . 244  
 may make by-laws to prevent pasturing cattle in streets, &c., . . . . . 250
- CITIES**—*continued.*  
 actions by and against, in what counties to be brought, . . . . . 621  
 how summoned, in actions against, . . . . . 622, 623  
 special provisions respecting jurors in, . . . . . 682  
**City officers,** to have powers and liabilities of corresponding town officers, unless, &c., . . . . . 166  
 vacancies, how filled, . . . . . 166  
 when not to be disqualified by removal from ward, . . . . . 167  
 embezzlement by, how punished, . . . . . 800  
**Ward officers,** duties of, at elections, 58, 59, 65, 66, 166, 167  
 duties of, upon new division of wards, . . . . . 166  
 tenure of office, upon new division of wards, . . . . . 166  
 vacancies, how filled, . . . . . 166  
 if absent, officers pro tempore may be elected, . . . . . 167
- CIVIL LAW.**  
 degree of kindred computed according to, . . . . . 474  
 proceedings in cases of seizure of forfeited goods to be according to course of, . . . . . 773
- CLARKE'S POINT.**  
 land at, for lighthouse, ceded to United States, 44  
 for fortifications, ceded to United States, . . . . . 45
- CLAIMANT.**  
 in cases of seizure of intoxicating liquors, . . . . . 446, 447  
 in cases of seizing and libelling forfeited goods, . . . . . 773, 774  
 in cases arising under the act respecting fugitives from service, . . . . . 736
- CLAM BAIT.** (*See Fish.*) . . . . . 264
- CLANDESTINE MARRIAGE.**  
 abduction of unmarried female for, . . . . . 817
- CLERGYMEN.** (*See Ministers of the Gospel.*)
- CLERK OF HOUSE OF REPRESENTATIVES.** (*See Representatives.*)
- CLERK OF THE SENATE.** (*See Senate.*)
- CLERKS OF COURTS.**  
 OF THE SUPREME JUDICIAL COURT FOR COMMONWEALTH.  
**Clerk of,** to be appointed by court; and, until appointed, clerk of supreme court for Suffolk county to act, . . . . . 612  
 may be removed from office by supreme judicial court, . . . . . 553  
 general duties of, . . . . . 612  
 fees of, to be like those of other clerks, except that they shall not exceed one dollar fifty cents in each case, . . . . . 612  
 salary of, to be paid out of state treasury, . . . . . 612  
 to pay over all fees annually to state treasurer, 612  
 exempt from serving as jurors, . . . . . 579  
**Assistant clerks of,** how appointed, and tenure of office, . . . . . 612  
 general duties of, to be performed under direction of clerk, . . . . . 614  
 salary of, to be paid from state treasury, . . . . . 614  
**Clerk and assistant to give bond to state treasurer, and be sworn, . . . . . 613**
- OF THE COURTS IN THE SEVERAL COUNTIES.  
 legislature to prescribe for elections of, by general laws, . . . . . 38  
 those now in office to continue to hold same, . . . . . 70  
 in Suffolk, one to be elected for supreme court, and two, for superior court, one for civil, and one for criminal business, . . . . . 70  
 in each of the other counties, one for all the courts and county commissioners, . . . . . 70  
 how, in case of no choice, . . . . . 71  
 return of votes for, . . . . . 59, 60  
 may be removed from office by supreme court, 553



**CLERKS OF COURTS — continued.**

vacancies in office of, how filled by election, . . . 72  
 by appointment until an election, . . . 612  
 to be sworn, and give bonds, . . . . . 613  
 to be clerks of county commissioners, . . . . . 612  
 exempt from service as jurors, . . . . . 679  
 general duties of, . . . . . 613  
 to keep alphabetical lists of parties to actions, . . 613  
 to exhibit to supreme court, each term, latest  
 book of records, . . . . . 613  
 records of, to be inspected by the judges, and, if  
 found to be left incomplete for six  
 months, bond to be adjudged forfeit-  
 ed, . . . . . 613  
 when there is a forfeiture of bond, judges to no-  
 tify treasurer having custody thereof,  
 who shall cause the same to be sued, . . . 613  
 when recovered, to be applied to making up re-  
 cord, and balance paid to treasurer, 613, 614  
 suit, in such case, not to exempt clerks from  
 suit for any other breach of bonds,  
 nor for any other liability, . . . . . 613, 614  
 to keep an account of all fees, and render account  
 annually to county treasurer, . . . . . 614  
 to make annual return to secretary of common-  
 wealth of moneys received by them,  
 and of criminal cases, according to  
 blanks furnished, under penalty, . . . 129  
 duties of, in regard to organization, &c., of law  
 library associations, . . . . . 208  
 in regard to returns of votes for county com-  
 missioners, . . . . . 60  
 to record estimates of county taxes, and trans-  
 mit copies, &c., to secretary, under  
 penalty, . . . . . 146  
 to furnish certificates of abatements of taxes  
 made by commissioners, . . . . . 80  
 to retain certain portions of fees for their sala-  
 ries, and one half balance, and pay  
 over other half to county treasury, . . . 614  
 when to issue venire for jurors in different  
 cases, . . . . . 680, 681, 682  
 to issue venire, and do other acts respecting  
 special terms of supreme court for  
 trial of capital cases, . . . . . 555  
 to enter on docket time of receiving order for  
 entry of judgment, in cases continued  
 nisi, . . . . . 557  
 to prepare copies and papers for supreme court,  
 in cases entered for determination of  
 full court, . . . . . 557, 563  
 to enter thereon, and on docket, date of orders  
 and decrees in equity cases, . . . . . 560  
 to enter decrees in equity transmitted from other  
 counties, . . . . . 561  
 not to act in relation to naturalization, except in  
 cases prescribed, . . . . . 618  
 to perform duties of criers of courts, without  
 additional compensation, . . . . . 618  
 to note time of writs, and copies returned by of-  
 ficers attaching real estate, record the  
 names of parties thereto, and receive  
 fees therefor, . . . . . 625, 626  
 may, when a justice of the peace, with one other  
 justice, take depositions to perpetuate  
 testimony, . . . . . 676  
 may assess damages in suits upon contracts,  
 when amount due is not disputed, . . . 685  
 duty of, when sentence of death has been award-  
 ed, . . . . . 847  
 when there has been a sentence to state  
 prison, . . . . . 846

**CLERKS OF COURTS — continued.**

to subjoin brief abstract of sheriff's returns to  
 record of the conviction and sentence, 847  
 duty of, where warrant for pardon in commuta-  
 tion of sentence is returned, . . . . . 856  
 fees of, . . . . . 784, 785  
 appeal from taxation of costs by, . . . . . 782  
 how and when to be heard and determined, . . 782  
**Assistant clerks**, to be also assistant clerks  
 of county commissioners, . . . . . 612  
 appointed in counties of Middlesex, Suffolk,  
 and Worcester, to continue in office,  
 and vacancies how filled, . . . . . 612  
 shall be sworn before judge, and give bonds, 613  
 to perform, under direction of clerk, such  
 duties as are not performed by clerk,  
 to whom he shall pay all fees, . . . . . 614  
 to act as clerk, in case of vacancy in office, . 614  
**Salaries of, and how paid**, . . . . . 614  
**Clerk pro tempore**, how appointed, when,  
 from sickness or other cause, the clerk  
 is unable to discharge his duties, . . . 613  
 record of fact to be made by clerk when he  
 resumes his duties, . . . . . 613  
 to be sworn, and give bonds, . . . . . 613  
 when clerk is absent, how appointed, . . . 613  
 to be sworn, . . . . . 613  
 compensation of clerk pro tempore, . . . . . 614

**OF POLICE COURTS.**

to be elected by certain cities and towns where  
 courts are established, . . . . . 569  
 may be removed from office by supreme judicial  
 court, . . . . . 553  
 vacancies in, how filled by election, . . . . . 569  
 to be sworn, give bonds, and keep records, . . . 569  
 may be appointed by judges of those courts for  
 which the office of clerk is not estab-  
 lished by law, . . . . . 569  
 may appoint assistants, with approval of judge  
 or court, . . . . . 569  
 shall be responsible for, and may remove, their  
 assistants, . . . . . 569  
 justice to act when no clerk is appointed, . . . 571  
 exempt from serving as jurors, . . . . . 679  
 on death, absence, or removal of, clerk pro tem-  
 pore to be appointed, . . . . . 569  
 duties, compensation, and oath of clerks pro  
 tempore, . . . . . 569  
 to make certain returns to secretary of com-  
 monwealth respecting criminal cases, 129  
 not to be retained as counsel in cases pending  
 or tried in their courts, . . . . . 569  
 to sign writs and processes, . . . . . 571  
 to make warrants, processes, tax costs, receive  
 fees, fines, and costs, and make re-  
 turns, . . . . . 572  
 to indorse on copies, their fees, . . . . . 572  
 to account for fees, fines, and costs quarterly, . 572  
 to pay certain fines to cities and towns, . . . 572  
 certain fees to parties entitled thereto on ac-  
 count thereof to county treasurer, . . . 572  
 in Boston, to account with board of accounts,  
 and pay to city treasurer, . . . . . 573, 574  
**Salaries of**, . . . . . 572, 573

**COAL. (See Charcoal.)**

certain, to be sold by weight, . . . . . 279  
 standard weight of ton to be two thousand  
 pounds, . . . . . 279  
 weighers of, to be appointed, . . . . . 279  
 not to be engaged in business of selling coal, 279  
 fees of, . . . . . 279

**COAL—continued.**  
 certificate of weight to be furnished to buyer, . . . 279  
 penalty for violation of these provisions, . . . 279

**COAST SURVEY, by United States.**  
 persons employed to make, may enter upon  
 lands, and make erections, &c., . . . 45  
 damages thus occasioned to be assessed by coun-  
 ty commissioners, . . . 46  
 tender of, may be made, and effect of, . . . 46  
 commissioners to give notice to, and hear, all  
 parties interested, . . . 46  
 to file report in office of clerk of courts, . . . 46  
 either party may have a trial by jury, on peti-  
 tion filed within thirty days after next  
 term of court, . . . 46  
 costs in such cases, . . . 46  
 penalty for injuring, defacing, &c., any signal,  
 monument, &c., erected for, . . . 46

**CODICILS, included in the term "wills," . . . 52**

**COCCULUS INDICUS.**  
 fish not to be taken by use of, . . . 431  
 penalty for adulterating liquor with, . . . 822

**COHABITATION.**  
 lewd and lascivious, how punished, . . . 818  
 penalty for, after divorce, . . . 533, 534

**COHASSET.**  
 land in, ceded to United States, . . . 45

**COIN.**  
 provisions of United States constitution re-  
 specting, . . . 4, 5  
 may be taken on execution, and paid to credit-  
 or as money, . . . 687  
 may be attached, . . . 624  
 punishment for counterfeiting, &c., . . . 809

**COLLATERAL SECURITY.**  
 when stock transferred as, debt to be specified  
 in transfer and certificate, . . . 385  
 sale or disposal of, without authority, before the  
 principal debt becomes due, how pun-  
 ished, . . . 803  
 penalty on consignee or factor for deposit or  
 pledge of, with intent, &c., . . . 803  
 how may be disposed of, by creditors of insol-  
 vent debtors, . . . 584  
 by pledgee, &c., . . . 767-770

**COLLECTORS.**  
 of taxes may be chosen by towns, . . . 164  
 unless specially chosen, constables to be, . . . 160  
 vacancies in office of, how filled, . . . 162  
 may, by vote of town, have powers of treasurer  
 in collecting taxes, . . . 165  
 to give bond, . . . 164  
 to collect taxes according to warrant, . . . 81  
 to complete collection, though term of office ex-  
 pires, . . . 81  
 to demand payment before distraining, . . . 81  
 may collect forthwith, if assessors so order, . . . 81  
 may collect, although error in name of person  
 taxed, . . . 82  
 to keep lists of persons who have paid taxes,  
 and to give receipt upon request, . . . 56  
 and deliver to selectmen, twice in each year,  
 under penalty, . . . 56  
 duties of, to be expressed in warrant for collec-  
 tion, . . . 79  
 to make discounts, as directed, . . . 79  
 certificate to be exhibited to, by person claim-  
 ing abatement, . . . 81  
 duties of, in collection of school taxes, . . . 224  
 to levy, by distress, &c., upon refusal to pay  
 taxes, . . . 82  
 not to levy upon certain property, . . . 82

**COLLECTORS—continued.**  
 to keep distress four days, and within seven  
 days sell by auction, . . . 82  
 to post notice forty-eight hours before sale, . . . 82  
 may adjourn sale once, not exceeding three  
 days, . . . 82  
 to post notice of such adjournment, . . . 82  
 how to make seizure and sale of shares, &c., in  
 corporations, . . . 82  
 to return surplus, upon demand, if distress ex-  
 ceeds taxes, &c., . . . 82  
 may commit to prison person neglecting four-  
 teen days after demand, if sufficient  
 goods not found, . . . 82  
 and to deliver to jailer attested copy of war-  
 rant, with certificate of amount of tax,  
 &c., . . . 82  
 if person committed is unable to pay, may  
 be discharged, as committed on execu-  
 tion, . . . 82  
 and notice to be given to collector or asses-  
 sors, . . . 82  
 collector liable for tax, &c., unless person is  
 committed within one year, &c., un-  
 less, &c., . . . 82, 83  
 may demand aid, under penalty, if resisted in  
 exercise of his office, . . . 83  
 may demand payment of persons removing  
 from precinct, and distrain, &c., or  
 issue warrant to sheriff therefor, . . . 83  
 may sue in his own name person removing, &c.,  
 after tax assessed, . . . 83  
 may sue executor, &c., for tax on personal es-  
 tate of deceased person, . . . 83  
 may, after demand, distrain, within nine months,  
 stock and produce, when estate taxed to  
 occupant who is not owner, . . . 83  
 when demand, in such case, need not be  
 made, . . . 83  
 may sell real estate for taxes fourteen days after  
 demand, . . . 83  
 and after two years, if estate has not been alien-  
 ated, . . . 83  
 to demand payment of resident mortgagee, be-  
 fore selling mortgaged real estate, in  
 case, &c., . . . 83  
 and to demand of attorney of non-resident  
 owner or mortgagee, in case, &c., . . . 83, 84  
 not to advertise sale until two months after  
 such demand, . . . 84  
 affidavit of, to be evidence of demand, . . . 84  
 to advertise sale of real estate three weeks suc-  
 cessively, in what newspaper, &c., . . . 84  
 and state therein names of owners, amount of  
 taxes, &c., . . . 84  
 to give old and new name of town, where name  
 changed within three years, . . . 84  
 to post notice in town similar to advertisement, . . . 84  
 to sell by auction as much of real estate, or rents  
 and profits, as will pay taxes, &c., . . . 84  
 and when whole lot is sold, to pay surplus to  
 owner on demand, . . . 84  
 may adjourn sale from day to day, not exceed-  
 ing seven days in whole, . . . 84  
 to give notice of such adjournments, . . . 84  
 to give deed to buyer, . . . 84  
 contents of deed, . . . 84, 85  
 collector may sue mortgagee in possession of  
 real estate, for taxes, &c., due, . . . 85  
 to give receipt to mortgagee for taxes paid, . . . 85, 86  
 when treasurer is appointed collector, may issue  
 warrant for collection to sheriff, &c., . . . 86

**COLLECTORS—continued.**

collector to exhibit accounts under penalty to selectmen, &c., every two months, if required, . . . . . 86

to be credited with abatements, and amount of taxes of persons committed, &c., . . . . . 86

how to supply deficiency, if without his own default, in state or county taxes, . . . . . 86

liability of, if he neglects to pay state and county taxes, . . . . . 87

if insane, unable to discharge duty, absconds, &c., selectmen may remove him, . . . . . 87

if he dies before completing collection, selectmen may appoint temporary collector, . . . . . 87

in case of death or removal of, executors, &c., to deliver to selectmen unsettled tax lists, . . . . . 87

compensation of, . . . . . 87

duties of, in collecting taxes in watch and fire districts, . . . . . 175, 181

**Of parishes, to be chosen at annual meeting, and sworn, . . . . . 201**

oath of, by whom administered, . . . . . 201

to be sworn forthwith if present, if not present, to be notified, . . . . . 202

if oath is not taken within seven days, society to make new choice, . . . . . 202

**COLLEGES.**

officers of, exempt from serving as jurors, . . . . . 680

to impress upon students principles of piety, temperance, &c., . . . . . 216

students in, not to be credited by innkeepers, stable-keepers, &c., . . . . . 457

professors of anatomy in, when to have for dissection body of person executed, . . . . . 791

**COMMANDER-IN-CHIEF.**

governor to be, . . . . . 23

general powers of, . . . . . 23, 24

may order out militia in case of war, insurrection, &c., . . . . . 92, 109, 110

power and duty of, as to organizing, disbanding, &c., military companies, . . . . . 94, 95

aids of, . . . . . 24, 95, 97

may arrange militia into divisions, brigades, &c., . . . . . 94

to commission military officers, . . . . . 24, 98

orders of, by whom distributed, . . . . . 101

with advice of council, may sell certain military stores, . . . . . 104

may detail an officer at any time to examine condition of armories, . . . . . 104

may order out any portion of militia for escort, &c., . . . . . 107

may reverse judgment of court martial, . . . . . 119

may call boards of officers to settle military questions, . . . . . 120

**COMMERCE.**

provisions of United States constitution concerning, . . . . . 4, 5

**COMMISSARY-GENERAL.**

how appointed, . . . . . 32

not to be member of legislature, . . . . . 30

**COMMISSIONERS.**

compensation of those appointed by governor, . . . . . 141

travelling expenses of, in certain cases, . . . . . 141

**To administer oaths to public officers, to be appointed by governor, . . . . . 131**

may administer oath of office to all public officers, except where different provision is made, . . . . . 131, 132

**To take depositions in other states, may be appointed by governor, . . . . . 132**

tenure of office, . . . . . 132

**COMMISSIONERS—continued.**

how to be qualified, . . . . . 132

to have official seal, . . . . . 132

signature, oath, and impression of seal to be filed in secretary's office, . . . . . 132

powers and duties of, . . . . . 132

official acts to have same effect as if done by justice of peace in this state, . . . . . 132

to be furnished by secretary with instructions and forms, . . . . . 132

**To take acknowledgment of deeds, &c., in foreign countries, may be appointed by governor, . . . . . 132**

how qualified, . . . . . 132

signature, oath, and impression of seal to be filed in secretary's office, . . . . . 132

powers and duties of, . . . . . 132

effect of official acts the same as if done by authorized officer in this state, . . . . . 132

**On repairs, &c., of state house, who to be, . . . . . 134**

powers and duties of, . . . . . 134

**To commit girls to state industrial school, powers and duties of, . . . . . 414**

**Of wrecks, appointment, powers, and duties of, . . . . . 427-429**

to make complaint for injury to property, &c., of Humane Society, . . . . . 806

**To receive claims against estates of deceased persons, . . . . . 490-499**

**To examine convicts in state prison alleged to be insane, who to be, their duty, and compensation, . . . . . 878**

**To determine upon improvements to meadows, swamps, marshes, &c., appointment, duties, and powers of, . . . . . 751**

compensation of, . . . . . 751

shall make return of their doings, . . . . . 751

may apportion expense of improvements, 751, 752

may open floodgates, &c., on lands of others, . . . . . 752

may erect and maintain dams, . . . . . 752

what notice to be given to owner of land, 752

damages therefor, how to be determined, . . . . . 752

persons aggrieved may appeal, . . . . . 752

proceedings on such appeal, . . . . . 752

appeal by owner of land, after notice that commissioners intend to open floodgates, &c., on his land, . . . . . 752

such appeal to suspend all proceedings, . . . . . 752

**To take bail, may admit to bail, . . . . . 834**

not in less sum than the amount ordered on commitment, . . . . . 834

**To defend fugitives from service, &c., 740, 741**

**Of circuit court of United States, to hold no judicial office under laws of this state except that of justice of the peace, . . . . . 742**

**Respecting connecting railroads, to fix compensation for depot accommodations, &c., . . . . . 364, 365**

**Bank, . . . . . 300-302**

**Insurance, . . . . . 320, 321**

**Pilot, . . . . . 287**

**COMMISSIONERS OF INSOLVENCY.**

when and how chosen, . . . . . 38, 70

return of votes for, . . . . . 59, 60

term of office, . . . . . 71

number of, in each county, . . . . . 71

in case of failure to elect, governor to order new election, . . . . . 71

vacancies, how filled, . . . . . 72, 153



**COMMISS'RS OF INSOLVENCY**—*continued.*  
 to be sworn, . . . . . 153  
 may be removed from office by supreme judicial court, . . . . . 553  
 may finish insolvency cases commenced before them, . . . . . 601  
 to return all papers in such cases to register of probate and insolvency, . . . . . 601  
 removed from charge of insolvency cases, or dying, cases to be removed to court of insolvency, . . . . . 601  
 may approve bail bonds, . . . . . 642  
 take affidavits for, and authorize arrest of poor debtors on mesue process and execution, . . . . . 633

**COMMISSIONS.**  
 tenure of office to be expressed in, . . . . . 27  
 how to be signed, attested, and sealed, . . . . . 30, 31  
 to take depositions, when and how to issue in criminal cases, . . . . . 840

**COMMITMENT.**  
 of persons charged with bailable offences, failing to recognize as ordered, . . . . . 831, 832, 833  
 of witnesses failing to recognize as ordered, . . . . . 833

**COMMON AND NOTORIOUS THIEF.**  
 who to be deemed, and how punished, . . . . . 798

**COMMON LANDS, WHARVES, &c.**  
 suits against proprietors of, summons how served on them, . . . . . 623  
 provisions respecting proprietors of, . . . . . 379-384

**COMMON CARRIERS.**  
 railroads, &c., to publish lists of unclaimed effects of passengers, . . . . . 426  
 articles so advertised to be examined by selectmen, &c., . . . . . 426-427  
 may be sold at auction by order of selectmen, &c., . . . . . 427  
 net proceeds of sale to be paid into state treasury, . . . . . 427  
 penalty on, for neglect to advertise, . . . . . 427  
 perishable articles transported by, may be sold without advertising, upon notice to owners, &c., . . . . . 427  
 net proceeds to be paid to owner or consignee, . . . . . 427  
 when liable for loss of life of passengers, . . . . . 794  
 to be punished by fine, . . . . . 794  
 fine, how recovered, and to whom paid, . . . . . 794  
 how punished for gross carelessness in the common carriage of passengers, . . . . . 794

**COMMON DRUNKARDS.**  
 how arrested, secured, and punished, . . . . . 820, 821

**COMMON LEWD, WANTON, AND LASCIVIOUS.**  
 persons in speech or behavior, how punished, . . . . . 820, 821

**COMMON NIGHT WALKERS.**  
 how arrested, secured and punished, . . . . . 820, 821  
 conviction of, . . . . . 821  
 may be discharged or bound out, &c., upon reform, after conviction, . . . . . 859, 860

**COMMON PILFERERS.**  
 how arrested, secured and punished, . . . . . 820, 821

**COMMON PIPERS AND FIDDLERS.**  
 how arrested and punished, . . . . . 820, 821

**COMMON RAILERS AND BRAWLERS.**  
 how arrested and punished, . . . . . 820, 821

**COMMON RECEIVERS.**  
 of stolen or embezzled goods, who to be deemed, and how punished, . . . . . 801

**COMMON SEWERS.**  
 provisions respecting laying out, &c., . . . . . 253-255

**COMMON UTTERER.**  
 of forged and counterfeit bills, who to be deemed and how punished, . . . . . 808  
 of counterfeit coin, . . . . . 809, 810

**COMMON VICTUALLERS.**  
 provisions respecting, . . . . . 455-457

**COMMON WAY.**  
 how construed, . . . . . 51

**COMMONWEALTH.**  
 territorial limits of, how far to extend from seashore, . . . . . 43  
 sovereignty and jurisdiction, . . . . . 43  
 jurisdiction of, concurrently with United States, 43  
 property of, except, &c., exempted from taxation, . . . . . 74  
 banks, to loan money to, . . . . . 309  
 treasurer, to give notice in writing to the president or cashier of amount required, 309  
 not entitled to demand of any bank loans exceeding one-tenth of its capital, . . . . . 309  
 treasurer, to equalize the amount demanded among the several banks, . . . . . 309  
 banks, to pay two per cent. per month for refusal, after thirty days, . . . . . 310  
 treasurer, to institute an action to recover the penalty, . . . . . 310  
 information of intrusion to recover lands against persons unlawfully entering or intruding upon, or holding same, . . . . . 717-719  
 writs of entry, how brought for lands recovered by, upon information of intrusion, when parties are not concluded by judgment in such information, . . . . . 718, 719  
 may purchase railroads after twenty years from opening, . . . . . 370  
 suits by, for recovery of lands, to be barred after twenty years, . . . . . 776  
 except as to province lands and back bay lands, . . . . . 776  
 limitation of actions brought by or for benefit of, 779  
 costs in suits by, in its own behalf, . . . . . 782  
 not to include travel of attorney-general or district-attorneys, . . . . . 782  
 in behalf of a private person, . . . . . 782  
 judgment for costs against, how to be paid, . . . . . 782

**COMMUTATION OF PUNISHMENT.**  
 provisions respecting, . . . . . 855, 856

**COMPLAINTS.**  
 for threatening to break the peace, how made, . . . . . 827  
 when frivolous or malicious, complainant to pay costs, . . . . . 828  
 that a criminal offence has been committed, . . . . . 831  
 proceedings in such case, . . . . . 831  
 to recover damages for flogage of lands, 502, 755, 759  
 what to contain, and proceedings thereon, . . . . . 755, 759  
 not to abate by reason of death of any party, . . . . . 759  
 nor be defeated by any errors of form, . . . . . 759  
 new complaint may be brought, and when, . . . . . 757

**To supreme court, for non-entry of appeals and exception, . . . . . 554, 555**  
 for non-entry of probate appeals, . . . . . 576

**To superior court, for non-entry of appeals from justices of the peace and police courts, . . . . . 607**

**COMPOUNDING FELONIES, &c.**  
 how punished, . . . . . 814

**CONCEALMENT.**  
 of property or of person, when cause for proceeding against a debtor as an insolvent, 596  
 of property, &c., by a debtor after petition for proceedings in insolvency is filed against him, how punished, . . . . . 596, 597

**CONCEALMENT** — *continued.*  
of effects and of insolvent debtors, persons  
suspected of, how examined, . . . . . 597  
by mother, of death of infant bastard, how  
punished, . . . . . 818  
of felonies, how punished, . . . . . 814

**CONDITIONAL SENTENCE.**  
in the case of common drunkards, night walk-  
ers, raiiers and brawlers, &c., . . . . . 820  
how to be carried into execution, &c., . . . 820, 845

**CONDITIONAL PARDON.**  
provisions respecting, . . . . . 855, 856

**CONFECTIONERS.**  
not to give credit to students under penalty, . . 457

**CONFINEMENT.**  
of persons forcibly, &c., without authority, how  
punished, . . . . . 794

**CONNECTICUT RIVER.**  
provisions respecting floating timber, &c., in, . 424

**CONSIGNEE.**  
of merchandise, when entitled to lien thereon  
for money, &c., advanced to shipper  
though not true owner, . . . . . 294, 295  
contracts or pledges by, concerning merchan-  
dise, &c., in his possession, to be  
binding, . . . . . 295  
lien of, for expenses and charges not affected by  
these provisions, . . . . . 295  
penalty on for fraudulently pledging consigned  
property, . . . . . 803  
or disposing of proceeds thereof, . . . . . 803

**CONSTABLES.**  
to be chosen by ballot at annual town meeting, 160, 161  
if present, to forthwith accept or refuse the  
office, . . . . . 161  
to be sworn, . . . . . 161  
certain persons exempted from liability to serve  
as, . . . . . 163  
penalty for refusing to take oath and serve as, . 163  
in cities, may be removed for gross misconduct, 166  
to collect taxes in certain cases, . . . 79, 81, 83, 160  
to serve process directed to them by county  
commissioners, . . . . . 145  
may serve civil process upon giving bond, &c., 163, 164  
and writs and criminal process where their town,  
&c., is interested, . . . . . 164  
may serve certain notices, &c., . . . . . 164  
returns of service to be prima facie evidence, . 164  
time of filing bond to be noted by town clerk, . 164  
remedies on bond, . . . . . 164  
may require aid in execution of their duties, . . 164  
to serve all warrants, &c., lawfully directed to  
them by selectmen, . . . . . 164  
to prosecute for violations of law respecting  
Lord's day, &c., . . . . . 164  
may convey prisoners, &c., beyond limits of  
town, . . . . . 164  
may serve warrants in certain cases, beyond  
limits of town, . . . . . 164  
may serve process, in unincorporated place an-  
nexed to town, . . . . . 164  
to abate nuisance, &c., under direction of board  
of health, . . . . . 190, 191  
to inquire into, &c., violations of Lord's day, . 434  
in the execution of warrants in liquor cases,  
protected, . . . . . 448  
penalty on, for neglect to serve warrant in  
liquor cases, . . . . . 448  
exempt from serving as jurors, . . . . . 679, 680  
to serve processes legally directed to them, &c., 618  
shall not appear in court, &c., as attorneys and  
counsellors, . . . . . 164, 616

**CONSTABLES** — *continued.*  
nor make, nor fill up writs, declarations, or  
processes, under penalty, . . . . . 616  
nor buy, nor procure by certain means,  
claims for collection, &c., under pen-  
alty, . . . . . 618  
to serve venire and summon jurors, . . . 681, 682  
fees of, for official duties, . . . . . 786  
when not entitled to witness fees in criminal  
cases, . . . . . 786  
to make complaint for injury to property, &c.,  
of Humane Society, . . . . . 806  
penalty on persons refusing to assist, . . . . . 813  
falsely assuming to be, . . . . . 814  
penalty on, for neglecting or failing to execute  
a warrant for summoning coroner's  
inquest, . . . . . 848

**CONSTITUTION OF MASSACHUSETTS.**  
to be published with acts and resolves, . . . . . 50  
analysis of, . . . . . 11  
preamble, . . . . . 13

DECLARATION OF RIGHTS.  
natural and essential rights of all men, . . . . . 14  
right and duty of public worship, and establish-  
ment of religious freedom, . . . . . 14, 34  
exclusive right of self-government, unless ex-  
pressly delegate d to United States, . . 14  
magistrates and officers of government account-  
able to the people, . . . . . 14  
exclusive privileges only for services rendered  
to the public, . . . . . 14  
hereditary offices absurd and unnatural, . . . . . 14  
right of people to institute and change govern-  
ment, . . . . . 15  
rotation in office, . . . . . 15  
all elections ought to be free, . . . . . 15  
taxation to be by consent of the people or their  
representatives, . . . . . 15, 16  
remedies for injuries to be free, complete, and  
prompt, . . . . . 15  
rights of subject in prosecutions, . . . . . 15  
trial by jury, . . . . . 15, 16  
crimes to be proved in the vicinity where they  
happen, . . . . . 15  
warrant to make search or arrest to be sup-  
ported by oath, and accompanied with  
a special designation of the object of  
search or arrest, . . . . . 15, 16  
warrant not to be issued, except as prescribed  
by law, . . . . . 16  
liberty of the press not to be restrained, . . . . . 16  
right to bear arms for the common defence, . . 16  
military power subordinate to civil, . . . . . 16  
moral qualifications for office, moral obligations  
of lawgivers, &c., . . . . . 16  
right of people to instruct representatives, . . . 16  
right of petition, . . . . . 16  
power to suspend and execute laws, . . . . . 16  
freedom of debate, . . . . . 16  
frequent sessions of the legislature to be had, . 16  
ex post facto laws prohibited, . . . . . 16  
no man to be declared guilty of treason or fel-  
ony by legislature, . . . . . 16  
soldier not to be quartered in any house, in time  
of peace, without the owner's consent, 16  
how so quartered in time of war, . . . . . 16  
no person to be subjected to law martial, except  
in the army, and navy, and militia in  
actual service, but by authority of the  
Legislature, . . . . . 16  
Judges of the supreme judicial court to hold office

**CONSTITUTION OF MASS.—continued.**  
 during good behavior, and have salaries established by standing laws, 17, 25, 27  
 opinions of, may be required by either branch of the legislature, and the governor and council, . . . . . 27  
 separation of executive, judicial, and legislative departments of the government, . . . 17  
 "inhabitant" defined, . . . . . 19  
 qualifications of voters, . . . . . 19, 32, 38, 39  
 title of body politic, . . . . . 17

**GENERAL COURT.**  
 legislative department to consist of two branches, and styled the General Court of Massachusetts, . . . . . 17  
 governor to approve bills and resolves, or return to legislature with objections, . . 17  
 how bills and resolves to become a law, if the governor objects, . . . . . 17  
 if not returned within five days, . . . . 18, 32  
 courts may administer oath, . . . . . 18  
 general court may constitute courts of record, &c., may make laws not repugnant to the constitution, provide for the appointment of officers, and prescribe their duties, impose taxes, &c., . . . . . 18  
 how adjourned, prorogued, and dissolved, 23, 33  
 valuation of estates to be taken once in ten years at least, . . . . . 18  
**Senate**, number of, and by whom elected, 18, 19, 35, 39  
 first branch of the legislature, . . . . . 19  
 districts for choice of, . . . . . 19, 35, 39  
 votes for, by whom received, and return of, by whom to be examined, &c., . . . . . 20  
 how summoned to take their seats, . . . 20  
 to be final judge of election, &c., of its own members, . . . . . 20  
 vacancies in, how filled, . . . . . 20  
 qualifications of members of, . . . . . 20, 36, 39  
 may adjourn not exceeding two days, . . 20  
 shall appoint its own officers and make its own rules of proceedings, . . . . . 20  
 to try all impeachments made by house of representatives, . . . . . 20, 21  
 to be specially sworn for trial of impeachments, . . . . . 20  
 limitation of sentence by, . . . . . 20  
 sixteen members a quorum, . . . . . 21, 39  
 may punish for contempt, . . . . . 22  
 cases where rights and privileges of, are concerned, how tried, . . . . . 22  
**Representatives** in general court, by whom, and when, chosen, . . . . . 21, 34, 35, 36, 38  
 travelling expenses of, paid from state treasury, . . . . . 21  
 qualifications of, . . . . . 21, 38, 39  
 how far privileged from arrest, . . . . . 22  
 number and apportionment of, . . . . . 38, 39  
**House of representatives** may impose fines on towns that neglect to return members, . . . . . 21  
 the grand inquest of the commonwealth, . 21  
 impeachments made by, and tried by senate, 20, 21  
 to originate all money bills, . . . . . 21  
 may adjourn not exceeding two days, . . 21  
 one hundred members of, a quorum, . . . 22, 39  
 judge of returns, elections, and qualifications of its members, . . . . . 22  
 to choose speaker and appoint its own officers, . . . . . 22

**CONSTITUTION OF MASS.—continued.**  
 to establish rules of proceedings, . . . . 22  
 may punish for contempt, &c., . . . . . 22  
 cases where rights and privileges of, are concerned, how tried, . . . . . 22

**EXECUTIVE POWER.**  
**Governor**, style and title of, . . . . . 22  
 to be chosen annually, . . . . . 22, 34  
 qualifications of, . . . . . 22, 23  
 oath of, . . . . . 29, 33  
 when and how elected, . . . . . 22, 23, 34, 36  
 return of votes for, . . . . . 22, 23  
 to be commander-in-chief, . . . . . 23  
 may convene council, . . . . . 23, 26  
 pardoning power vested in, with advice of council, . . . . . 24  
 judicial officers to be appointed by, . . . . 24  
 officers of the militia to be commissioned by, money to issue from treasury only on warrant of, except, &c., . . . . . 24  
 salary of, . . . . . 25  
 to be president of the council, . . . . . 25  
 all publicboards to make quarterly returns to, 25  
**Council** for advising the governor, . . . . 23, 26, 36  
 members of, and how chosen, . . . . . 26, 36, 37  
 rank of, . . . . . 26  
 proceedings to be recorded, &c., . . . . . 26  
 to have full executive power, when offices of governor and lieutenant-governor are vacant, . . . . . 26  
**Lieutenant-governor**, title of, . . . . . 25  
 to be chosen annually, . . . . . 25, 34  
 qualifications of, . . . . . 25  
 oath of, . . . . . 29, 33  
 when and how elected, . . . . . 25, 34, 36  
 in absence of governor, to be president of council, . . . . . 25  
 to be member of council, except, &c., . . . . 25  
 when to be acting governor, . . . . . 25, 26  
**Secretary of commonwealth**, how chosen, 37  
 records of the commonwealth to be kept in office of, . . . . . 27  
 may appoint deputies, . . . . . 27  
 to attend the governor and legislature when required, . . . . . 27  
 vacancy in office of, how filled, . . . . . 32, 37  
**Treasurer and receiver-general**, how chosen, . . . . . 37  
 vacancy in office of, how filled, . . . . . 32, 37  
 limitation of office, . . . . . 27  
**Judicial officers**, tenure of office to be expressed in commissions, . . . . . 27  
 may be removed by governor and council, upon address of legislature, . . . . . 27  
**Harvard college**, powers, rights, and privileges of, confirmed, . . . . . 28  
 gifts, grants, &c., to be held according to intent of donors, . . . . . 24  
 overseers of, . . . . . 28  
 alteration of government of, may be made by general court, . . . . . 28  
 encouragement of literature, &c., . . . . . 28, 29, 38

**OATHS AND SUBSCRIPTIONS, INCOMPATIBILITY OF OFFICES, WRITS, ENACTING STYLE, &C., COMMISSIONS, &C.**  
 oath of office, . . . . . 29, 33  
 affirmation allowed, . . . . . 30  
 tests abolished, . . . . . 33  
 incompatibility of offices, . . . . . 30, 33  
 bribery, person convicted of, not to hold office of trust or importance, . . . . . 30



CONSTITUTION OF MASS.—continued.

money, sums of, how computed, . . . . . 30  
 commissions, how to be signed, attested, and  
 sealed, . . . . . 30, 31  
 writs, issuing out of the clerk's office, how to  
 be signed, sealed, and bear teste, . . . 31  
 habeas corpus, writ of, benefit of, secured, &c., 31  
 continuation of former laws, except, &c., . . . 31  
 enacting style of statutes, . . . . . 31  
 constitution to be enrolled on parchment, and  
 published, . . . . . 31  
 city charters, when may be granted by legisla-  
 ture, . . . . . 32  
 notaries public, appointment, removal, and ten-  
 ure of office, . . . . . 32  
 military officers, how commissioned and re-  
 moved, . . . . . 24, 32  
 amendments to constitution, how made, . . . 33  
 political year, commencement and termination of, 33  
 religious freedom established, . . . . . 34  
 plurality of votes by the people to elect civil  
 officers, . . . . . 36  
 election of state officers, time of, . . . . . 36  
 school money not to be applied to sectarian  
 schools, . . . . . 38  
 sheriffs, registers of probate, commissioners of  
 insolvency, and clerks of courts, how  
 chosen, . . . . . 38  
 census of legal voters and inhabitants, when to  
 be taken, . . . . . 34, 35, 38, 39

CONSTITUTION OF THE UNITED STATES.

preamble, purposes of, . . . . . 2  
 legislative powers granted by to vest in con-  
 gress, . . . . . 2  
 to be the supreme law of the land, . . . . . 8  
 powers not delegated nor prohibited to remain  
 in states, . . . . . 9  
 ratification and mode of amendment of, . . . 8  
 articles of amendment of, . . . . . 9

CONGRESS.

to consist of senate and house of represent-  
 atives, . . . . . 2  
 shall assemble at least once a year, and where, . 3, 6  
 each house shall be the judge of the election,  
 &c., of its own members, . . . . . 3  
 majority of each house to constitute a quorum, 3  
 smaller number may adjourn from day to day, . 3  
 may compel attendance of absent members, . . 3  
 may make rules, punish or expel members, . . 3  
 shall keep journal, and publish the same, except,  
 &c., . . . . . 3  
 yeas and nays may be called by one fifth  
 present, . . . . . 3  
 when either house, during the session, may  
 adjourn, and to what place, . . . . . 3  
 place, &c., of election of senators and repre-  
 sentatives to be prescribed by state  
 legislatures, . . . . . 3  
 such regulations, except place of choosing  
 senators, may be altered by congress, . . . 3  
 powers specifically granted to, . . . . . 4, 5, 6, 7, 8  
 may make laws to carry out such powers, . . . 4  
 what congress cannot do, . . . . . 5, 9  
 may fix time of choosing electors of president  
 and vice president, . . . . . 6  
 day to be the same throughout the United  
 States, . . . . . 6  
 may provide who shall act as president, in  
 case of the inability of president and  
 vice president, . . . . . 6

CONSTITUTION OF U. S.—continued.

may vest appointment of inferior officers as  
 they think proper, &c., . . . . . 6  
 may declare the punishment of treason, . . . . 7  
 attainder not to work corruption of blood  
 or forfeiture, except, &c., . . . . . 7  
 may prescribe how proof shall be made of acts,  
 &c., of states, . . . . . 7  
 may assent to formation of new from old states, 8  
 may make needful regulations for property  
 and territory of the United States, . . . 8  
 when may prepare amendments to the con-  
 stitution, . . . . . 8  
 shall be bound by oath to support the con-  
 stitution, . . . . . 8  
 powers not granted reserved to states, . . . . 9

**Members.**  
 compensation of, . . . . . 3  
 privileged from arrest, except, &c., . . . . . 3  
 not to be questioned elsewhere for words  
 spoken in debate, . . . . . 3  
 not to be appointed to certain civil offices, . . 3  
 persons holding office under the United  
 States not to be members, . . . . . 3

HOUSE OF REPRESENTATIVES.

members of, how and by whom chosen, . . . . 2, 3  
 qualifications, apportionment, and number, . . 2  
 vacancies in, how filled, . . . . . 2  
 shall choose their officers, . . . . . 2  
 shall have sole power of impeachment, . . . 2  
 shall judge of the elections, &c., of own  
 members, . . . . . 3  
 quorum, adjournments, rules, journals, &c., . 3, 6  
 compensation, privileges, disqualifications, . 3, 5  
 cannot be appointed a presidential elector, . . 5  
 to originate all revenue bills, . . . . . 3  
 two thirds of, may pass bill over president's  
 veto, . . . . . 4  
 shall be bound by oath to support the con-  
 stitution, . . . . . 8

SENATE.

members, how chosen and classified, . . . . . 2  
 qualifications, quorum, adjournments, rules,  
 journals, compensation, privileges, dis-  
 qualifications, . . . . . 3, 5, 6  
 cannot be electors of president or vice presi-  
 dent, . . . . . 5  
 vacancies, how filled, . . . . . 2  
 vice president to preside over, but not to  
 vote, unless, &c., . . . . . 3  
 president pro tempore. when to be chosen, . . 3  
 has sole power to try impeachments, . . . . 3  
 proceedings in cases of impeachment, . . . 3  
 may propose, &c., amendments to money  
 bills, . . . . . 3  
 two thirds of, may pass a bill over presi-  
 dent's veto, . . . . . 4  
 may concur in making treaties, . . . . . 6  
 may advise and consent to appointments by  
 president, . . . . . 6

PRESIDENT.

his term of office, . . . . . 5  
 electors of, number, and how appointed, . . 5, 6  
 who cannot be, . . . . . 5  
 how and where to meet, and choice of  
 president, . . . . . 5, 9, 10  
 qualifications of president, . . . . . 6  
 provisions in case of vacancy in office of, . . 6  
 compensation and oath of, . . . . . 6  
 powers and duties of, . . . . . 4, 6, 7

**CONSTITUTION OF U. S.—continued.**  
 may veto bills, . . . . . 4  
 proceedings in case of impeachment of, . . . 3, 7  
 president cannot pardon in cases of impeach-  
 ment, . . . . . 6

**VICE PRESIDENT.**

mode of election, qualifications, &c., . . . 5, 6, 9, 10  
 to be president of the senate, . . . . . 3  
 but to have no vote, except, &c., . . . . . 3  
 when to be president, . . . . . 6

**JUDICIAL POWER.**

how vested, . . . . . 7  
 to what cases it extends, . . . . . 7, 9  
 to what cases it does not extend, . . . . . 9  
 tenure of office of judges, and their pay, . . . 7  
 original and appellate jurisdiction, . . . . . 7  
 trial of crimes, where to be held, and by jury, . . . 7  
**Judicial proceedings, &c.,** in each state, to  
 have full credit in other states, . . . . . 7

**STATES.**

individual, each to have republican form of  
 government, . . . . . 8  
 to be protected against foreign invasion and  
 domestic violence, . . . . . 8  
 cannot be sued, . . . . . 9  
 powers not delegated, nor prohibited, re-  
 main to, . . . . . 9  
 prohibited from the exercise of certain pow-  
 ers, . . . . . 5  
 privileges and immunities of citizens of, . . . 7  
 full faith and credit to be given to acts, &c.,  
 of, . . . . . 7  
 admission of new states, provisions respect-  
 ing, . . . . . 8  
 members of legislatures of, to be bound by  
 oath, &c., to support the federal con-  
 stitution, . . . . . 8  
 judges in, to be bound by federal constitu-  
 tion and laws, &c., . . . . . 8

**MISCELLANEOUS PROVISIONS.**

**Adjournment** of congress or either house, . . . 3  
**Amendments**, how to be made, . . . . . 8  
 articles of, . . . . . 9, 10  
**Arms**, right to keep and bear, not to be in-  
 fringed, . . . . . 9  
**Army**, congress has power to raise and sup-  
 port, . . . . . 4  
**Arrest**, members of congress privileged from, . . . 3  
**Attainder**, no bill of, to be passed, . . . . . 5  
 of treason not to work corruption of blood,  
 except, &c., . . . . . 7  
**Bail**, excessive, prohibited, . . . . . 9  
**Bankruptcy**, congress may establish system  
 of, . . . . . 4  
**Census**, United States, when to be taken, . . . 2  
**Citizens of states**, privileges and immunities  
 of, . . . . . 9  
**Coin and coining**, provisions respecting, . . . 4, 5  
**Commerce**, congress may regulate, . . . . . 4, 5  
**Copyright**, congress may grant by law, . . . . 4  
**Counterfeiting**, congress may punish, . . . . 4  
**Crimes**, where and how to be tried, . . . . . 7, 9  
 persons not to be held to answer for, unless,  
 those charged with, to have trial by jury, &c., . . . 9  
**Debts**, contracted before the adoption of the  
 constitution, to be valid against the  
 United States, . . . . . 8  
**Duties**, authority of congress to establish, . . . 4, 5  
**Excessive bail**, fines, and punishments, pro-  
 hibited, . . . . . 9  
**Ex post facto laws** not to be passed, . . . . 5

**CONSTITUTION OF U. S.—continued.**  
**Fines**, excessive, prohibited, . . . . . 9  
**Freedom of speech and press** and of petition  
 secured, . . . . . 9  
**Fugitives** from justice, provisions respecting, . . . 7, 8  
 from service and labor, . . . . . 7, 8  
**Grand jury**, presentments and indictments by, . . . 9  
**Habeas corpus**, writ of, not to be suspended,  
 unless, &c., . . . . . 5  
**Immigration** of certain persons, provisions  
 respecting, . . . . . 5  
**Impeachment** under federal constitution, . . . . 2  
 house of representatives has sole power of, . . . . 2  
 senate has sole power to try, . . . . . 3  
 proceedings in trials of, . . . . . 3, 7  
 when president is tried, . . . . . 3  
 judgment and sentence in cases of, . . . . . 3  
 those convicted still liable to indictment, . . . 3  
 president cannot pardon in cases of, . . . . . 6  
**Importation** of certain persons, provisions  
 respecting, . . . . . 5  
**Jury**, trial by, secured to those charged with  
 crimes, . . . . . 9  
 in suits at common law, when, &c., . . . . . 9  
**Measures and weights**, standard may be  
 fixed, . . . . . 4  
**Militia**, provisions respecting the arming and  
 disciplining of, . . . . . 4, 9  
**Money** may be coined, and value regulated, . . . 4  
 counterfeiting of, may be punished, . . . . . 4  
**Naturalization**, uniform rule of, may be es-  
 tablished, . . . . . 4  
**Nobility**, titles of, not to be granted, . . . . . 5  
**Navy**, power of congress over, . . . . . 4  
**Officers** not to accept presents, titles, &c., . . . 5  
**Petition**, right of, secured, . . . . . 9  
**Post offices and roads** may be established, . . . 4  
**Presents**, &c., officers not to receive, . . . . . 5  
**Press**, freedom of, secured, . . . . . 9  
**Private property** not to be taken for public  
 uses without, &c., . . . . . 9  
**Punishments**, excessive, prohibited, . . . . . 9  
**Quorum** of senate and house of representa-  
 tives, . . . . . 3  
 of senate for choice of vice president, . . . . 10  
 of the house of representatives for the  
 election of president, . . . . . 10  
**Ratification** of constitution and of amend-  
 ments, . . . . . 9  
**Religious establishment** prohibited, . . . . . 9  
**Revenue**, power of congress to raise, . . . . . 3, 4, 5  
**Searches and seizures**, freedom from unrea-  
 sonable, . . . . . 9  
**Speech**, freedom and right of, secured, . . . . . 9  
**Soldiers** not to be quartered in any house with-  
 out consent of the owner, . . . . . 9  
**Taxes**, direct, how to be apportioned, . . . . . 2, 4, 5  
**Tender**, only gold and silver coin to be made  
 a legal, . . . . . 5  
**Treason**, how defined and punished, . . . . . 7  
 person not to be convicted of, unless, &c., . . . 7  
 attainder of, not to work forfeiture, &c., . . . 7  
**Treasury**, money how to be drawn from, . . . . 5  
**Treaties**, how may be made, . . . . . 6  
 to be the supreme law of the land, . . . . . 6  
 individual states not to make, . . . . . 5  
**Trial by jury** secured in trials for crimes, . . . 9  
 in suits at common law, . . . . . 9  
**Veto** of president, . . . . . 4  
 two thirds of both houses may pass bill  
 over, . . . . . 4  
**Warrants** not to issue, except, &c., . . . . . 9

**CONSTITUTION OF U. S.—continued.**  
**Weights and measures, standard of, may be established, . . . . .** 4  
**Witness, person charged with crime may summon, . . . . .** 9  
 may be confronted with those against him, . . . . . 9  
 no one compelled to be against himself, . . . . . 9  
**Yeas and nays, when to be entered on journal, . . . . .** 3

**AMENDMENTS.**  
 how made and ratified, . . . . . 8  
 articles of, when made and ratified, . . . . . 9, 10  
 religious establishment prohibited, . . . . . 9  
 freedom of speech and of the press, and right of petition, secured, . . . . . 9  
 right of people to keep and bear arms not to be infringed, . . . . . 9  
 soldiers not to be quartered in any house, unless, &c., . . . . . 9  
 security from unreasonable searches and seizures, . . . . . 9  
 warrants not to issue but on probable cause, &c., . . . . . 9  
 persons not to be held to answer for crimes, unless, &c., . . . . . 9  
 to have trial by jury; to be confronted with witnesses; to compel the attendance of witnesses, and to have counsel, not twice to be put in jeopardy, . . . . . 9  
 not be compelled, in a criminal case, to be a witness against himself, . . . . . 9  
 nor be deprived of property but by process of law, . . . . . 9  
 private property not to be taken for public use without just compensation, . . . . . 9  
 trial by jury secured in suits at common law, when amount in controversy is over twenty dollars, . . . . . 9  
 excessive bail, fines, and punishments prohibited, . . . . . 9  
 rule of construction as to powers granted, . . . . . 9  
 powers not delegated nor prohibited to remain to the states, . . . . . 9  
 judicial power does not extend to suits against a state, . . . . . 9  
 manner of choosing president and vice president, . . . . . 9, 10

**CONSUL.**  
 of United States, in a foreign country, when may take acknowledgment of deeds, . . . . . 467  
 may solemnize marriages, . . . . . 531

**CONTEMPT.**  
 magistrate, neglecting or refusing to return recognizances, &c., to court, may be proceeded against by attachment, . . . . . 835  
 in refusing to serve, &c., habeas corpus, how punished, . . . . . 738  
 punishment for by governor and council, senate, and house of representatives, . . . . . 22  
 courts martial, . . . . . 119  
 county commissioners, . . . . . 145  
 by justices of the peace and police courts, . . . . . 610  
 by judges of probate courts in like manner as by superior court, . . . . . 577  
 of courts of insolvency, . . . . . 581  
 when witnesses fail to appear before any court, justice, referee, master in chancery, &c., on being summoned, . . . . . 673

**CONTESTED ELECTIONS.**  
 committee to certify necessity of attendance of witnesses in, . . . . . 787

**CONTINGENT REMAINDER.**  
 when may be sold, &c., subject to contingency, . . . . . 472, 473

**CONTINUANCE.**  
 of actions, may be made by agreement of parties, . . . . . 660  
 may be ordered to enable absent parties to defend, or either party to set off judgment or execution, . . . . . 646  
 may be made by any other justice, when the justice before whom a case is returnable, &c., fails to attend, . . . . . 605  
 of petitions and writs of partition to enable absent persons interested to appear, 699, 700  
 court may impose costs as condition of allowing, 782

**CONTRACT.**  
 what, not valid unless in writing, . . . . . 527, 528  
 by spendthrifts, . . . . . 544  
 on gaming consideration, . . . . . 436  
 on consideration of liquor illegally sold, . . . . . 443  
 for sale of certain stocks void, unless vendor is owner, . . . . . 528  
 may be made by married women in relation to their separate property, . . . . . 533  
 between parties before marriage, how made, &c., 541  
 when may be made by towns, . . . . . 153  
 on account of state prison, how to be made, . . . . . 873  
 suits thereon, . . . . . 873, 874  
 no officer to be interested therein, . . . . . 874  
 to be executed on Sunday and public holidays, when performable, . . . . . 293  
 made by or with aqueduct corporation, to remain in force after its dissolution, . . . . . 375  
 liability of shareholders in such case, . . . . . 375

**Action of, substitute for actions of assumpsit, covenant, and debts, except for penalties, . . . . .** 653  
 forms of declaring in, . . . . . 653-655, 663-665  
 not to be joined with actions of tort, but a count in contract and count in tort for same cause of action may in certain cases be joined, . . . . . 654  
 cases in equity may be commenced by, . . . . . 559

**Specific performance of written, may be enforced in equity by supreme court, 559**  
 for conveyance of real estate made in writing by a person subsequently put under guardianship or deceased, how enforced by probate court, &c., . . . . . 575

**Written, how declared on in suits, . . . . .** 654  
 persons severally liable on, may be joined in same action, . . . . . 654

**CONTRIBUTION.**  
 by heirs and legatees, &c., when property is taken, &c., to pay debts of deceased, &c., . . . . . 479, 508  
 by posthumous child in like case, . . . . . 479  
 by heirs, &c., for payment of taxes on real estate of deceased persons, . . . . . 75  
 proceedings in cases for, . . . . . 480  
 between officers and stockholders liable for debts of corporation, &c., . . . . . 386  
 by persons summoned in trustee process who pay more than their proportion of costs, . . . . . 728

**Suits for, may be brought in supreme court in equity, . . . . .** 559  
 between heirs, devisees or legatees liable for debts of deceased, or other persons liable for same debt, . . . . . 559  
 where two or more parties have distinct rights which cannot be adjusted at law, 559



**CONUSEE AND CONUSOR.**

in recognizances for debts, provisions concerning, . . . . . 770, 772  
(See *Recognizances for Debt.*)

**CONVEYANCE OF PUBLIC LANDS.**

to be subject to approval of governor and council, . . . . . 55, 139

**CONVEYANCE OF REAL ESTATE.**

provisions respecting, . . . . . 465-467  
how made by towns, . . . . . 158  
by counties, . . . . . 144  
by corporations, . . . . . 385  
by married women, . . . . . 538  
incumbrances in case of, to be made known to grantee, . . . . . 467  
when incumbrance exists, liability of grantor, . . 467  
(See *Deed.*)

penalty for making, of encumbered real estate, without disclosing incumbrance, . . . . . 802  
of attached real estate, without notice, . . . 802, 803

**CONVICTIONS.**

of persons indicted, what necessary to, . . . . 790  
to precede punishment, . . . . . 790  
of part, and acquittal of part of offence, effect of, 842

**CONVICTS.**

provisions for classifying, &c., . . . . . 858, 862  
In the state prison, provisions respecting, . . . 870-875

**Insane**, provisions concerning, . . . . . 878  
**Poor**, discharge of, provisions concerning, . . 878

**COPARTNERSHIPS.**

suits in equity between copartners may be brought in supreme court, and receivers appointed, . . . . . 559  
embezzlement by clerks and servants of, . . . 800  
except by apprentices and persons under sixteen years, . . . . . 800  
(See *Partnerships.*)

**COPYRIGHT.**

congress may grant by law, . . . . . 4

**CORN.** (See *Grain.*)

regulations respecting weight and sale of, . . . 265  
punishment for cutting down, &c., any kind of, 805

**CORONERS.**

appointed by the governor, . . . . . 124  
to be sworn and give bond, . . . . . 152  
bonds to be examined annually, by superior court, and new ones required if insufficient, . . . . . 152  
sureties on, how discharged, . . . . . 152  
penalty for neglect to give, . . . . . 152  
suits on, how brought, &c., . . . . . 152  
to serve processes legally directed to them, &c., directed to them by county commissioners, . . 145  
when sheriff is interested, . . . . . 152  
may serve process when their town is a party, 152  
to perform duties of sheriff, when sheriff's office is vacant . . . . . 152  
not to act as attorney, &c., . . . . . 151, 153, 616  
not to advise suit, &c., under penalty, . . 151, 153, 616  
nor buy, nor procure by certain means, claims for collection, &c., under penalty, . . . 618  
may require aid in execution of official duty, in criminal and certain other cases, . . . 151, 153  
exempt from serving as jurors, . . . . . 679  
jurors before, not subject to provisions respecting other jurors, . . . . . 684  
fees for official duties, . . . . . 786  
when not entitled to witness fees in criminal cases, . . . . . 786  
refusing to assist, how punished, . . . . . 813  
falsely assuming to be, how punished, . . . . 814

**CORPORATION, SOLE.**

limitation of entry, by successor after dissection of, . . . . . 775

**CORPORATIONS.**

petitioners to general court, for alteration of charter, to publish notice thereof, . . . 47, 48  
not to be taxed for parochial purposes, . . . . 202  
moneyed, shares in, taxable, . . . . . 74  
funds of, for support of schools, to be held as heretofore, . . . . . 217  
bonds, &c., of, negotiable, . . . . . 293  
real estate, and machinery of, to be taxed in school districts where situated, . . . . . 223  
seizure and sale of shares in, for non-payment of taxes, how made, . . . . . 82  
general powers of, when other special provision is not made, . . . . . 384  
time of organization of, limited to two years from passage of charter, . . . . . 384  
first meeting of, how to be called, . . . . . 384, 385  
notice of first meeting of religious societies, may be affixed to the door, or some other conspicuous part of their meeting-house, . . . . . 385  
when meetings may be called by a justice, &c., what may be done at such meetings, . . . 385  
at such meetings shall elect officers to fill vacancies, and act upon other business as at regular meeting, . . . . . 385  
may by their by-laws, &c., determine manner of calling meetings, &c., . . . . . 385  
may annex penalties to by-laws, &c., . . . . 385  
may convey lands, . . . . . 385  
shares in not to be issued at less than par value, unless by special authority, . . . . . 385  
list of stockholders in, to be kept by officer and exhibited upon written application to any stockholder, . . . . . 385  
penalty on officer of, refusing to exhibit list of stockholders, . . . . . 385  
executor, &c., may vote as stockholder, . . . 385  
records of transfers of stock, to be made and kept in the state, &c., . . . . . 385  
in transfers of stock as collateral security, debt intended to be secured, to be described in deed of transfer, . . . . . 385  
certificate of stock issued to pledgee, or holder of such collateral security, to express on the face of it, that the same is so holden, and name of pledgee, &c., . . . 385  
records of transfers, to be exhibited upon written request of creditor, under penalty, 385, 386  
foreign corporations having property in this state liable to be sued, &c., . . . . . 386  
service of writ, how to be made, . . . . . 386  
for manufacturing, mechanical, mining, or quarrying business, &c., stockholders in, individually liable, for debts to operatives, &c., . . . . . 386  
suit in equity in supreme court may be maintained against officers, &c., when liable, 386  
executors, &c., not personally liable as stockholders, but estates liable, &c., . . . . 386  
to publish in newspapers once in five years, list of unclaimed dividends and balances, . . 386  
certain, to register names, &c., of stockholders, and not to issue certificate until purchaser informs of his place of residence, &c., . . . . . 386  
to make return to assessors, of names of stockholders, number of shares belonging to each, &c., . . . . . 386

**CORPORATIONS — continued.**

banks and insurance companies to make like returns to assessors, &c., . . . . . 387

penalty on for neglect, or making false returns, shareholders in, penalty on, for fraudulent transfer of shares to avoid taxation, . . . . . 387

warrants of distress may issue against, for damages assessed by county commissioners or jury, &c., . . . . . 387

franchise of a turnpike or other corporation, authorized to receive toll, may be attached, &c., . . . . . 387

officer to leave copy of process, &c., with the clerk, treasurer, or some one of the directors, &c., . . . . . 387

franchise, &c., may be sold on execution, . . . . . 387

mode of sale, &c., . . . . . 387

sale may be adjourned, &c., . . . . . 387

who to be deemed the highest bidder at such sale, . . . . . 388

officers return on execution or warrant of distress to transfer to purchaser rights, &c., of corporation so far as relates to right of demanding toll, . . . . . 388

officer immediately after sale to deliver to purchaser possession of tollhouses, &c., . . . . . 388

purchaser of franchise, &c., to have same remedies as corporation, &c., . . . . . 388

liabilities of corporation to continue after sale of franchise, . . . . . 388

franchise may be redeemed by corporation at any time within three months, &c., . . . . . 388

all proceedings respecting attachments, &c., may be had in county in which president, treasurer, clerk, &c., reside, . . . . . 388

may be dissolved by supreme judicial court, on petition of majority of members, in number or interest, . . . . . 388

so dissolved, to be deemed extinct, . . . . . 388

to continue three years after charter expires, to close their concerns, . . . . . 388

but not for the business for which they were established, . . . . . 388

when charter expires, or is annulled, or the corporation is dissolved, the supreme judicial court, on petition, &c., at any time within three years may appoint receivers, &c., . . . . . 388, 389

powers of such receivers to continue as long as the court deems necessary, . . . . . 389

the court to have equity jurisdiction, &c., . . . . . 389

receivers to pay debts and distribute surplus, . . . . . 389

corporations now existing, provisions concerning, . . . . . 389

every act of incorporation passed after March 11 1831, to be subject to amendment, &c., . . . . . 389

actions, by and against, in what counties to be brought, . . . . . 621

how summoned in suits against, . . . . . 623

when parties to suits, how officers of may be interrogated by opposite party, . . . . . 659

agents and officers of, may, upon being authorized, sign and make oaths to all precepts, answers, &c., required in suits at law, . . . . . 663

when execution against, has been satisfied by levy on property of stockholders, and the property or damages have been recovered back, how new execution may be obtained, . . . . . 686

may be summoned in trustee process, . . . . . 721

**CORPORATIONS — continued.**

how may appear, answer, and be examined in trustee process, . . . . . 722

shares in, how attached, taken on execution, and sold, . . . . . 627, 687, 689, 690

recording officer of, to give certificate of shares held by debtor, upon officer exhibiting a writ on execution, . . . . . 627, 689

dividends of, made after attachment of shares, held thereby, . . . . . 627, 690

when entitled to costs for travel how to be computed, . . . . . 783

fraudulent over issue of stock in, how punished, . . . . . 801

fraudulent issuing, or transferring, or signing certificates of stock, with intent, . . . . . 801

false entries in books of, of transfer of stock, . . . . . 802

omitting to make true entry of transfer, . . . . . 802

on trial of such case, book to be evidence, . . . . . 802

when indicted and served with process, failing to appear, may be defaulted, . . . . . 847

in such cases the charge to be taken to be true, and judgment to be rendered, . . . . . 847

warrant of distress may issue for the penalty and costs, . . . . . 847

IN INSOLVENCY.

proceedings by, how commenced, . . . . . 598

against for not dissolving attachments, and other causes, . . . . . 599

warrant to contain order requiring messenger to state that corporation is forbidden to make contracts, . . . . . 598

claims may be proved at any time before making final dividend, . . . . . 598

officers of, to furnish schedules and do other acts, in like manner as debtor, . . . . . 598

sale of franchises of such as are authorized to take tolls and proceedings thereafter, . . . . . 598, 599

damages against, for land and materials taken, preferred claims, . . . . . 599

discharges not to be granted to officers or members of, . . . . . 599

mortgages by, not invalidated by insolvency proceedings, . . . . . 599, 600

foreclosed pending proceedings and before choice of assignee, may be redeemed by assignee within sixty days, . . . . . 599

proceedings to be generally like those in case of insolvent debtors, . . . . . 598

**CORPORATIONS ORGANIZED UNDER GENERAL STATUTES.**

**I. COMPANIES FOR CUTTING AND SELLING ICE, OR FOR MECHANICAL, MINING, QUARRYING, AND MANUFACTURING PURPOSES.**

three or more persons may become such corporation, . . . . . 341

not to carry on business of distilling or manufacturing intoxicating liquors, . . . . . 341

to remain a corporation under any name, &c., not previously in use by other corporation, &c., . . . . . 341

purpose for, and place within which established, to be specified in articles of association, . . . . . 341

not to direct its operations, or appropriate its funds, to any other purpose, . . . . . 341

first meeting to be called by notice of one or more persons named in agreement, . . . . . 341

such notice to state time, place, and purposes of meeting, . . . . . 341

CORPORATIONS, &c.—*continued.*

- copy of notice to be given to each member seven days at least before meeting, or published in some newspaper, &c., . . . . . 341
- organization, and all proceedings, &c., may be confirmed, &c., . . . . . 341
- to what provisions liable, . . . . . 342
- secretary of the commonwealth to prepare, and cause to be printed, annual abstracts, for legislature, . . . . . 342, 343
- Officers**, how chosen, . . . . . 336, 342
- liability of, . . . . . 342
- liability of, how may be limited, . . . . . 342
- Capital stock** of, how fixed, increased, and diminished, . . . . . 342
- not to be less than five thousand, nor more than five hundred thousand, dollars, . . . . . 342
- no share to be issued for less than par value, certificate of, &c., to be made, published, &c., before commencing business, . . . . . 342
- when increased or reduced, certificate to be made, &c., . . . . . 342
- Stockholders**, if doubts arise whether corporation is legally organized, &c., may by vote confirm organization, &c., . . . . . 341
- by so doing, and depositing copy of vote with clerk of town, &c., and with secretary, such corporation to be held legal, &c., . . . . . 341
- before commencing business, certificate of name, and purpose of association, &c., to be published, and copy filed with city or town clerk and secretary, . . . . . 342
- similar certificate to be made, &c., when capital stock and shares are increased or diminished, . . . . . 342
- certificate of capital, when paid in, to be made, signed, &c., by president, treasurer, &c., and recorded in registry of deeds, . . . . . 338, 342
- to be made and recorded when stock is increased or diminished, . . . . . 338, 342
- organized for manufacture of cotton or woollen goods, may manufacture certain other goods, . . . . . 340, 341, 343
- these provisions may be amended or repealed by legislature, . . . . . 343

## 2. GASLIGHT COMPANIES.

- how organized, powers of, &c., . . . . . 343  
(*See Gaslight Companies.*)

## 3. BANKS.

- how organized, and provisions respecting, . . . . . 313-316  
(*See Banks.*)

## COSTS.

## IN CIVIL CASES.

- prevailing party entitled to, except, &c., . . . . . 780
- In personal actions** commenced in the supreme judicial court or superior court, except replevin, . . . . . 780
- when plaintiff recovers only twenty dollars, when plaintiff's claim is reduced by set-off, . . . . . 781
- in actions which might have been joined, . . . . . 781
- where there are several counts for distinct causes of action, and verdicts for plaintiff on some, and defendant on others, . . . . . 781
- of former suit to be paid, or proceedings to be stayed, or dismissed, . . . . . 781
- In actions at law** in the supreme judicial court, . . . . . 781
- when plaintiff does not recover three hundred dollars, . . . . . 781

COSTS—*continued.*

- when defendant brings money into court in satisfaction of the damages, . . . . . 781
- of copies, when cases are reported, or appeals or exceptions taken to be entered in supreme court, how paid and taxed, . . . . . 563
- on plea of non tenure, disclaimer, &c., allowed only after plea filed, . . . . . 603
- executors and administrators, when and how liable for, . . . . . 648, 651, 652
- paid by executors and administrators, when may be allowed in their accounts, . . . . . 651
- in cases before police courts, how taxed and paid, . . . . . 572
- may be awarded, and execution thereof issued by probate court, . . . . . 576
- defendant not entitled to, when discharged solely by insolvency, . . . . . 780
- is entitled to, when issue joined upon discharge is found for, . . . . . 780
- on proceedings to assess damages by United States coast survey, . . . . . 46
- accrued before an abatement of taxes is made, to be paid by applicant for abatement, . . . . . 79
- recognizances for, in applications for laying out, &c., highways, &c., . . . . . 232, 241
- in trials by jury of questions of damages, &c., in laying out highways, &c., . . . . . 235, 241
- how paid, in such cases, . . . . . 237, 239
- questions of, in such cases, to be determined by supreme court, . . . . . 237
- on petitions for alimony, . . . . . 536
- in real actions, full costs recoverable, . . . . . 781
- in complaints for fowage, . . . . . 755-759
- in actions of contract to recover damages awarded by jury in cases of fowage, plaintiff to recover full, though verdict does not amount to twenty dollars, . . . . . 757
- in writs of quo warranto, . . . . . 744
- on certiorari, at discretion of court, . . . . . 743
- provisions as to payments of, on seire facias, when bail surrender their principal, . . . . . 825
- when bail cannot surrender their principal, by act of God, &c., . . . . . 835
- in proceedings to enforce liens, . . . . . 766, 769, 770
- for travel, not to be taxed in suits on forfeited recognizance, . . . . . 835
- commonwealth to have in certain cases, on petition for review of judgment on forfeited recognizance, . . . . . 836
- in replevin, full costs recoverable, . . . . . 781
- in petition and suits for partition, . . . . . 700, 703, 704
- in suits for redemption and foreclosure of mortgages, . . . . . 712, 714
- in cases of information for intrusion, . . . . . 719
- in trustee process, . . . . . 727, 759
- on appeal from justices of the peace, or police court, . . . . . 780
- if plaintiff appeals and fails to recover more than in the court below, . . . . . 780
- on petitions for certiorari, mandamus, quo warranto, &c., . . . . . 781
- in suits in equity, for discovery only, and not for a decree, . . . . . 781
- and in such suits where a decree is prayed for, if court deems the prayer frivolous, or a pretence, &c., . . . . . 782
- in equity suits and civil proceedings, where no express provision is made, . . . . . 782
- to be wholly in the discretion of the court, . . . . . 782
- but not greater than for similar charges at common law, . . . . . 782



**COSTS — continued.**

in civil suits by the commonwealth, in its own behalf, . . . . . 782

in such suits in behalf of a private person, . . . . . 782

judgment for costs against the commonwealth, how to be paid, . . . . . 782

how to be taxed for the commonwealth, . . . . . 782

travel not to be allowed the attorney-general or district-attorney, . . . . . 782

power and discretion of arbitrators and referees not hereby limited, . . . . . 782

nor of any court to impose or refuse costs as the condition of an amendment, continuance, &c., . . . . . 782

**How to be taxed, and items of taxation,** full, double and treble, when and how to be taxed, . . . . . 777, 780, 781, 788

notice of taxation, when to be given to adverse party, . . . . . 782

notice to the attorney equivalent to notice to the principal, . . . . . 782

appeal from the taxation of costs, . . . . . 782

how conducted, . . . . . 782

judgment in such cases when to be considered as rendered, . . . . . 782

when appeal is by person who is to pay the costs, the other party may have execution before the appeal is settled, by giving bond, &c., . . . . . 782

costs of the appeal, . . . . . 782

how may be collected, . . . . . 782, 783

attorney's fee in supreme judicial court or superior court when issue is joined, . . . . . 783

in all other cases, . . . . . 783

declaration in each writ in any court, . . . . . 783

term fee in supreme judicial court or superior court, . . . . . 783

only one where defendant is defaulted without appearing, . . . . . 783

attendance before justice of the peace or police court, . . . . . 783

for three days only allowed in cases of default, . . . . . 783

nor after the day the case is finally disposed of for the term, . . . . . 783

such day to be entered on the docket, . . . . . 783

travel, in any court or before a justice of the peace, . . . . . 783

not to be allowed for more than eighty miles out and home, . . . . . 783

unless more than forty miles is actually travelled, . . . . . 783

allowed to corporations, when they are entitled to costs, . . . . . 783

to be computed from its principal place of business, . . . . . 783

not to be allowed to commonwealth for any attorney for commonwealth, . . . . . 782

**In insolvency cases,** contested before supreme or superior court, or court of insolvency, may be awarded to either party, . . . . . 600

execution for such costs may be issued, . . . . . 600

before courts of insolvency, costs of court, messenger, &c., amount of, and how allowed and paid, . . . . . 600

costs of attachment, how preferred, . . . . . 595, 600

(See Fees.)

**IN CRIMINAL CASES.**

two thirds of, to be paid by state, and one third by county, . . . . . 851

**COSTS — continued.**

to include grand, and traverse jurors' fees, . . . . . 851

how taxed before justices of the peace, . . . . . 851

on complaints for sureties of the peace, . . . . . 828

where warrant is served, where it is not served, . . . . . 851

where justices of the peace exercise final jurisdiction, . . . . . 851

taxation to be revised in superior court, . . . . . 851

when person so sentenced pays his fine and costs, the justice may retain his own fees, and pay the residue to persons entitled, . . . . . 851

otherwise to county, city, or town, . . . . . 851

how may be certified, . . . . . 851

how taxed in supreme judicial court or superior court, . . . . . 851

to be taxed by prosecuting officer, and certified by the clerk, . . . . . 851, 852

duty of clerk as to transmitting bills of costs, . . . . . 852

to make statement to state treasurer as to fines, &c., . . . . . 852

sheriff alone, or deputy, or jailer, authorized to receive, . . . . . 852

must pay to county treasurer in thirty days, without deduction, . . . . . 852

remedy against sheriff for neglect, . . . . . 852

permitting an escape of person under sentence for, makes the sheriff liable for costs, . . . . . 852

county treasurer to transmit sworn accounts of costs twice each year to the state auditor, . . . . . 852

form of accounts; penalty for neglect, . . . . . 852

certificate of clerk of court to be sufficient voucher for all sales taxed for costs, or allowed to prosecutors, . . . . . 851

accounts to be audited by auditor, . . . . . 852

balance found due, to be paid to or by county treasurer, . . . . . 852

to transmit annually to governor and council a general account of moneys received for costs, &c., . . . . . 853

and statements of sums due for costs to or from any person, . . . . . 853

to pay over to persons entitled, if demanded within three years, . . . . . 853

penalty for neglect, . . . . . 853

discharge of poor convicts for non-payment of, . . . . . 878, 879

in cases of seizing and libelling forfeited goods, . . . . . 773, 774

of magistrates in criminal cases may be disallowed in certain cases, by district-attorney, with approval of the court, . . . . . 788

witnesses in criminal trials attending in two or more cases, to have their fees apportioned, . . . . . 788

when not to have any fees allowed, . . . . . 788

**COUNCIL.**

for advising the governor, . . . . . 23, 26, 36

may be convened by governor, . . . . . 23, 26

governor to be president of, . . . . . 25

lieutenant-governor to be member of, except, &c., . . . . . 25

number, and when and how chosen, . . . . . 26, 36, 37, 62

return of votes for, . . . . . 59, 60

rank of members of, . . . . . 26

vacancies when and how filled, . . . . . 37

proceedings to be recorded, &c., . . . . . 25

to have full executive power, when offices of

**COUNCIL**—*continued.*

governor and lieutenant-governor are vacant, . . . . . 26  
 members of, exempt from serving as jurors, . . . 680  
 oath of members of, . . . . . 29, 33  
 certain officers not to be members of, . . . . 30, 33  
 qualifications of members of, . . . . . 37  
 compensation of members of, . . . . . 128  
 two members of, may administer oaths of office to public officers, . . . . . 131, 132  
 governor and, may punish for contempt, . . . . 22  
 districts for choice of members of, . . . . . 62  
 committee of, to examine books and accounts of auditor, . . . . . 136

**COUNSEL.**

may be assigned by one judge, to prisoner indicted for a capital offence, . . . . . 553  
 persons accused, entitled to, . . . . . 9, 15, 790  
 not more than two, for a party to a suit, without leave of court, . . . . . 615

**COUNSELLORS AT LAW,**

and attorneys at law, distinction of, abolished, . 615  
*(See Attorneys.)*

**COUNTERFEITING.**

congress may punish, . . . . . 4  
 private labels, stamps, and trade marks, how punished, . . . . . 802  
 selling goods, knowingly, with such marks, and not disclosing, . . . . . 802  
 public records, &c., with intent to defraud, . . 807  
 knowingly uttering counterfeit instruments, . . 807  
 notes of state treasurer, &c., . . . . . 808  
 bank bills, &c., . . . . . 808  
 having in possession with intent, &c., ten or more counterfeit bank bills, &c., . . . . . 808  
 knowingly uttering counterfeit bills, . . . . . 808  
 effect of second conviction for, and three convictions at same term, . . . . . 808  
 bringing into state or having in possession counterfeit bills, &c., with intent to pass, . . 808  
 engraving plates, &c., or making paper for counterfeiting bills, &c., . . . . . 808  
 having such plates, &c., or paper, &c., in possession, . . . . . 808, 809  
 in prosecutions for counterfeiting, &c., bank bills, when testimony of president and cashier may be dispensed with, . . . . . 809  
 how bank bills may be shown to be counterfeit, . . . . . 809  
 for counterfeiting, &c., United States securities, &c., how securities may be shown to be counterfeit, . . . . . 809  
 intent to defraud, how may be alleged and proved, . . . . . 809  
**Gold and silver coin, how punished, . . . . . 809**  
 having in possession with intent, &c., two or more pieces of false coin, . . . . . 809  
 any number of pieces less than ten, . . . . . 809  
 effect of second conviction, or of three convictions at same term, . . . . . 809, 810  
 making, mending, or knowingly having in possession moulds or tools for counterfeiting coin with intent, &c., . . . . . 810  
**Sheriff** to seize counterfeit bank bills, plates, tools, &c., and court shall order them to be destroyed, . . . . . 811  
**Recompense** to prosecutors of counterfeiters and counterfeiting, . . . . . 811

**COUNTS.**

costs, where there are several, and some are found for plaintiff and some for the defendant, . . . . . 781

**COUNTIES.**

what may be joined, . . . . . 654  
 boundaries to remain as now established, . . . . 144  
 bordering on sea, boundaries of, . . . . . 43  
 offences committed within one hundred rods of boundary lines may be tried in either county, . . . . . 838  
 separated by waters within the state, to have concurrent jurisdiction over such waters, . . . . . 43  
 to continue bodies politic for certain purposes, . 144  
 property formerly conveyed to, to be held as county property, . . . . . 144  
 in Suffolk, to belong to Boston, . . . . . 144  
 lands of, how may be conveyed, . . . . . 144  
 to provide court houses, jails, &c., except in Suffolk, . . . . . 144  
 to provide fire proof offices, &c., . . . . . 144, 198  
 special provision for Dukes county, . . . . . 144  
 maps of, to be corrected from time to time by county commissioners, . . . . . 144  
 of Suffolk and Middlesex, to have common jurisdiction over part of Charles River, 144, 145  
 Suffolk, to have concurrent criminal jurisdiction with other counties, over certain islands and waters, . . . . . 145  
 accounts, receipts, and expenditures of, to be allowed and settled by county commissioners, . . . . . 145  
**Taxes,** estimate of, to be made by county commissioners, . . . . . 145, 146  
 and to be apportioned by them according to the last state valuation, . . . . . 146  
 and transmitted to secretary, &c., . . . . . 146  
 account of receipts and expenditures to be published annually, . . . . . 146  
**Debts,** commissioners may renew, &c., and contract new at the rate of thirty dollars for each one thousand inhabitants, 146  
 damage to county property, by whom prosecuted, . . . . . 149  
 liability of, for neglect of commissioners to fix permanent bounds at angles of highways, &c., . . . . . 244  
 actions by and against, where to be brought, . . 621  
 how summoned, in suits against, . . . . . 622, 623

**COUNTY COMMISSIONERS.**  
 when and how chosen, and term of office, . . . 70, 71  
 number in each county, . . . . . 71  
 but one, to be chosen from same town, &c., except in Dukes county, . . . . . 71  
 to furnish blanks for return of votes for county commissioners, county treasurer, &c., 147  
 returns of votes for, to be transmitted to clerk of courts, . . . . . 60  
 to be delivered by clerk to board of examiners, and be by them examined, &c., 60  
 in case of failure to elect, examiners to issue warrant for new election, . . . . . 71, 72  
 vacancies, how filled, . . . . . 72  
 to be sworn, . . . . . 145  
 exempt from serving as jurors, . . . . . 679  
 clerks and assistants, of courts, to be clerks of, to choose chairman by ballot, . . . . . 145  
 times and places for meetings of, . . . . . 147, 148  
 to examine returns of votes for county treasurer and register of deeds, and notify person elected, . . . . . 61  
 and to issue warrant for new election, if failure of election, . . . . . 72  
 proceedings by, for assessment of damages occasioned by coast survey, . . . . . 45, 46

COUNTY COMMISSIONERS — *continued.*

to appoint suitable persons to assess state, &c., taxes, if assessors neglect, . . . . . 77

power of, to abate taxes, . . . . . 79, 80

their clerk to furnish certificate of abatements made by them, . . . . . 80

to provide fire proof offices, &c., . . . . . 141, 198

to cause county maps to be corrected from time to time, . . . . . 144

proceedings, when either is interested, &c., . . 145

contested cases to be determined by three disinterested commissioners, . . . . . 145

special provision for Dukes county in such cases, . . . . . 145

witnesses before, how summoned and compelled to testify, . . . . . 672, 673

may administer oaths to witnesses and punish for contempt, . . . . . 145, 673

to provide for erecting and repairing county buildings, . . . . . 145

to have care of county property, and to represent county, . . . . . 145

to examine and allow accounts of county treasurer, . . . . . 145

to allow and settle accounts of county receipts and expenditures, . . . . . 145

to make estimate of county taxes, . . . . . 145, 146

such estimates to be recorded by clerk, . . . . 146

and with statement of borrowed money, &c., and treasurer's account, to be transmitted to secretary, . . . . . 146

penalty for neglect, . . . . . 146

to apportion taxes according to last state valuation, . . . . . 146

to publish annually account of county receipts and expenditures, &c., . . . . . 146

may renew county debts, &c., and restricted as to amount of new debts to be contracted, . . . . . 146

may require recognizances for costs, &c., of persons, &c., applying for assessment of damages, &c., . . . . . 146

may add costs to damages assessed, . . . . . 146

may receive, &c., certain petitions at other times than at regular meetings, . . . . . 146

petitions so received, to be returned at regular or special meeting, . . . . . 147

costs of special meeting how paid, . . . . . 147

costs for attendance of, when petition is disallowed, . . . . . 147

laws applying to commissioners and their clerks, to include all persons acting as such, . . 148

to appoint county treasurer in case of vacancy, . 149

accounts of, to be examined by board of examiners, . . . . . 149

sheriff to attend meetings of, when ordered by board, . . . . . 152

may remove registers of deeds for incapacity, &c., except in Suffolk, . . . . . 153, 154

may impose fine on towns for neglecting to choose selectmen or assessors, . . . . . 161

may appoint assessors of taxes, in case towns neglect to choose, &c., . . . . . 161

may appoint enginemen for private engines, if selectmen, &c., refuse, . . . . . 177

duties of, in regard to law library associations, . 208

duties of, in relation to damages for land taken for schoolhouses, . . . . . 220

powers and duties of, in laying out, &c., highways, . . . . . 232-239

powers of in laying out, &c., town ways and private ways, in certain cases, . . . . . 240

COUNTY COMMISSIONERS — *continued.*

in keeping in repair ways and bridges, . . . . 245

in regard to damages occasioned by repairs in highways, . . . . . 247

as to ferries, &c., . . . . . 252

to cause permanent bounds to be erected at angles, &c., of highways laid out by them, . . 244

may make by-laws concerning fast driving over county bridges, . . . . . 250

may license auctioneers, if selectmen, &c., refuse, . . . . . 280

may authorize persons to make and sell spirituous, &c., liquors, for exportation, &c., . . 439

to put in suit bond of manufacturers of liquors, upon breach thereof, . . . . . 440

may grant licenses to innholders, &c., upon certificate of selectmen, . . . . . 455, 456

clerks of, to transmit to selectmen lists of persons licensed the preceding year, . . 456

powers of, if selectmen refuse to grant such certificate, . . . . . 456

not required to grant licenses, . . . . . 457

to charge no fee for license, . . . . . 457

to furnish summary of laws relating to licenses, to persons licensed, . . . . . 457

may lay out turpikes as highways, . . . . . 346

to apportion damages, . . . . . 346

proceedings if town refuses to pay, . . . . . 346

powers and duties of, when turnpike is out of repair, . . . . . 346, 347

powers, &c., of, in assessment, &c., of damages for land taken for railroad, &c., 352, 353, 354

as to removal of turpike gates, . . . . . 344

to order railroad corporations to construct embankments, culverts, fences, &c., . . . . . 355

powers, &c., of, in relation to crossings by railroads over highways, &c., . . . . . 356, 357

in the regulation of dams, . . . . . 750

may authorize laying out of highways across railroads, . . . . . 357

to give notice, hear parties, &c., in such cases, . . . . . 357

not to permit highway to cross at grade, unless public necessity requires, . . . . . 357

to have original jurisdiction of all questions touching obstructions to highways, &c., by railroads, . . . . . 358

powers, &c., of, in relation to sign-boards and gates at railroad crossings, &c., . . . . . 360, 361, 362

duties of, in assessing damages, &c., by aqueduct corporations, . . . . . 376

on petition for constructing roads, &c., to swamps, &c., . . . . . 752, 753

exempt from serving as jurors, . . . . . 679

processes of, to be served by officers, to whom they are legally directed, . . . . . 618

proceedings of, to be recorded by clerk of the courts, . . . . . 612

records of, to be in custody of the clerk, . . . 613

awards of, to bear interest, . . . . . 685

applications to, may be made by executor, administrator, heir, or devisee, of person dying before making same, . . . . 650

to audit coroner's accounts for inquests, except in Suffolk, . . . . . 850

to appoint overseers of houses of correction, . . 858

may remove them, and fill vacancies, . . . . . 858

may establish rules and regulations for houses of correction, . . . . . 858, 859

shall provide materials for work of prisoners in, . . . . . 858, 859



**COUNTY COMMISSIONERS—continued.**  
 may employ prisoners on public lands, . . . . . 859  
 shall establish fixed salaries for officers, &c., of  
     houses of correction, . . . . . 860  
 may furnish instruction in reading and writing  
 to prisoners, for one hour each even-  
 ing, except Sundays, . . . . . 863  
 shall procure necessary supplies, except in Suf-  
 folk, for jails, &c., . . . . . 864  
 may advance money from county treasury for  
 purchase of tools, &c., . . . . . 865  
 shall allow reasonably for fuel, bedding, cloth-  
 ing, &c., . . . . . 865  
 may direct specific rations to prisoners, . . . . 865  
 may sue, in name of county, to recover for sup-  
 port of convicts, . . . . . 865, 866  
     and for penalty on jailers for neglecting to  
     keep prison book, &c., . . . . . 866  
 shall be inspectors of prisons, except in Suf-  
 folk, . . . . . 866  
     powers and duties of, in this capacity, . . 866, 867  
     compensation of, . . . . . 147, 149  
**Special commissioners, how and when**  
     chosen, and term of office, . . . . . 70, 71  
     number of in each county, . . . . . 71  
     proceedings in case of failure to elect, . . . 71, 72  
     vacancies, how filled, . . . . . 72  
     to act when commissioners are interested, &c., 145  
     exempt from serving as jurors, . . . . . 680  
     compensation of, . . . . . 147  
**In Nantucket, selectmen to act as, . . . . . 148**  
**In Suffolk, aldermen of Boston to act as, . . . 148**  
**In Chelsea, North Chelsea, and Win-**  
**throp, commissioners of Middlesex**  
     to have jurisdiction, . . . . . 148

**COUNTY OFFICERS.**  
 embezzlement by, to be deemed larceny, and  
 how punished, . . . . . 800

**COUNTY TREASURERS.**  
 except in Suffolk and Nantucket, how and when  
 chosen, and term of office, . . . . . 70, 71  
 to be resident in county, . . . . . 71  
 not to hold certain other offices, . . . . . 149  
 return of votes for, . . . . . 59, 60, 61  
 proceedings in case of failure to elect, . . . . . 72  
 vacancies, how filled, . . . . . 72, 149  
 to be sworn and give bond, . . . . . 148  
 to be furnished with office by county, . . . . . 148  
 salaries of, . . . . . 148, 149  
 may recover of town, county taxes not as-  
 sessed, . . . . . 77  
 to publish annually account of county receipts  
 and expenditures, . . . . . 146  
 to pay over money as commissioners direct, . . 149  
 to account with commissioners at close of each  
 year, . . . . . 145, 149  
 penalty for neglect, . . . . . 149  
 may sue on bonds, &c., given to county, &c.,  
 and prosecute for injury to county  
 property, . . . . . 149  
 may prosecute for trespasses on building owned  
 jointly by a town and county, . . . . . 163  
 to give notice to district attorney if public offi-  
 cer fails to pay over money, &c., . . . . 149  
 to pay certain money from treasury to law li-  
 brary associations, . . . . . 208  
 duties of, in regard to standard weights, meas-  
 ures, and balances, . . . . . 284, 285  
 bond to, from register and assistant register of  
 probate and insolvency, . . . . . 602, 603  
 bond to, from clerk and assistant clerk of courts, 613  
     to be sued by, in case of forfeiture, . . . . . 613

**COUNTY TREASURERS—continued.**  
 sums recovered on, how appropriated, . . . . 613  
 returns and payments to, from justices of the  
     peace and police courts, . . . . . 571, 572, 610  
     from clerks of the courts, . . . . . 614  
 may commence suit on contracts, &c., made with  
     his predecessors, and prosecute suits  
     commenced by them, . . . . . 650  
 to transmit twice a year sworn account to auditor,  
     of costs, &c., in criminal prosecutions, . 852  
     form of account, . . . . . 852  
     penalty for neglect, . . . . . 852  
 certificate of clerk of court to be sufficient  
     voucher for all sums taxed for costs,  
     or allowed to prosecutors, . . . . . 852  
     such account to be audited, and balance, if  
     any, paid, . . . . . 852  
 to transmit annually to governor and council a  
     general account, &c., . . . . . 852, 853  
 shall pay over to persons entitled the costs due  
     them, . . . . . 853

**To pay out of treasury expenses incident**  
     to courts, . . . . . 567  
     certain expenses of police courts, . . . . . 571  
     and of probate courts, . . . . . 577

**In Suffolk, treasurer of Boston to be, . . . . 149**  
**In Nantucket, town treasurer to be, . . . . . 149**

**COUNTY WAY.**  
 how construed, . . . . . 51

**COURTS.**  
 general court may constitute, . . . . . 18  
 may administer oaths, . . . . . 18  
 may make requisitions for militia in case of riot,  
     &c., . . . . . 110  
 first day of term, how designated, . . . . . 567, 617  
 appointed to be held at a time and place which,  
     by reason of calamity, is unsafe, judge  
     may order same to be held at another  
     time and place, . . . . . 617  
 such order, how made, and notice given, . . . 617  
 not to be opened on Sundays and holidays, ex-  
     cept for special purposes, . . . . . 617, 618  
 processes of, to be served by sheriffs, deputy  
     sheriffs, coroners and constables, when  
     legally directed to them, . . . . . 618  
 may be adjourned by any officer, on order of judge, 618  
 may be adjourned from one shire town to an-  
     other, in certain cases, . . . . . 568  
 matters common to supreme and superior court,  
     . . . . . 565-568

**Courts of insolvency, . . . . . 581**  
     (See *Insolvency*.)

**Justices court for county of Suffolk, ju-**  
     isdiction of, transferred to police  
     court of Boston, . . . . . 573

**Police courts, . . . . . 568**  
     (See *Police Courts*.)

**Probate courts, . . . . . 574**  
     (See *Probate Courts*.)

**Supreme judicial court, . . . . . 553**  
     (See *Supreme Judicial Court*.)  
     equity jurisdiction of, . . . . . 558  
     (See *Equity*.)

**Superior court, . . . . . 562**  
     (See *Superior Court*.)

**Martial and inquiry, . . . . . 117-120**  
     (See *Militia*.)

**COURTS OF RECORD.**  
 judgments and decrees of, suits on, limited to  
     twenty years, . . . . . 777  
     presumed to be paid after lapse of twenty  
     years, . . . . . 779

**COVENANT.**  
 action of abolished, and action of contract substituted for, . . . . . 653  
 forms of declaring on, . . . . . 653, 654, 664  
 against incumbrances, measure of damages in actions on, when incumbrance appears by the records, . . . . . 467

**COW.**  
 one exempt from levy on execution and from attachment, . . . . . 624, 688

**CRACKERS.**  
 penalty for selling and firing, &c., without license, . . . . . 460

**CRANBERRIES.**  
 to be sold by the strike or level measure, . . . 264

**CRANBERRY MEADOWS.**  
 wilful and malicious injury to, how punished, . 806

**CREDITORS.**  
 of persons deceased intestate, when entitled to administration, . . . . . 483  
 of persons deceased insolvent, how to proceed, . . . . . 497-499  
 how to proceed against executors, &c., . 491-493  
 how to proceed against heirs, legatees, &c., . . . . . 507, 508  
 trusts created for benefit of, how terminated, . 502  
 bills in equity by, to reach property which cannot be come at to be attached, how brought, . . . . . 559  
 proceedings and rights of, &c., respecting insolvent debtors, . . . . . 583-600  
 when and how may commit debtors on mesne process and execution, . . . . . 633-641

**CREDITORS' BILL.**  
 equity jurisdiction in case of, . . . . . 559

**CRIER OF COURTS.**  
 duties of to be performed by clerks of courts, sheriffs, or their deputies, without additional compensation, . . . . . 618

**CRIME.**  
 statistics of, provisions for obtaining, . . . . 129  
 not to exclude from being witnesses, except to wills, . . . . . 673, 674  
 conviction of, may be shown to affect credibility of witnesses, . . . . . 673  
 against nature, how punished, . . . . . 819

**CRIMINAL OFFENCES.**  
 insane persons charged with and in prison, provisions concerning, . . . . . 838  
 in prosecutions for under by-laws, ordinances, and the like, . . . . . 838  
 jurisdiction over when committed on boundary of two counties or within 100 rods of dividing line, to be in either county, . 838

**CRIMINAL OFFENCES — continued.**  
 when on the sea and within one league of shore, to be in adjacent county, . . . . . 838  
 where mortal injury, &c., is inflicted in one county, and death ensues therefrom in another county, . . . . . 838  
 where mortal injury, &c., is inflicted on the high seas, or on the land, within or without the limits of the state, and death ensues therefrom in the state, . . 838, 839  
 prosecutions for murder may be found at any period, . . . . . 839  
 other within six years, . . . . . 839  
 time of absence from the state, to form no part of six years, . . . . . 839  
 process for arrest to issue forthwith after indictment found for a capital offence, . . . 839  
 further proceedings in such cases, . . . . 839  
 prosecutions for, not to affect civil remedies for same matter, . . . . . 840

**CRIMINAL PROSECUTIONS.**  
 when may be stayed, on reparation to party injured, . . . . . 834, 839  
 certain defects of form, not to invalidate, . . . 842  
 limitations of, . . . . . 839

**CROSS ACTIONS.**  
 against plaintiffs out of state, how brought, &c., . . . . . 645, 646

**CROSSINGS.** (See Railroads.)

**CRUELTY.**  
 to apprentices and servants, how redressed, . . 550  
 of husband or wife, when cause of divorce, . . 532  
 to horses, oxen, and other animals, how punished, 822

**CURRENCY.**  
 passing any bills, notes, &c., as, except, &c., how punished, . . . . . 810  
 any bills, notes, &c., as, for less than five dollars, except, &c., . . . . . 810  
 fractional bills, . . . . . 810

**CURSING AND SWEARING.**  
 profane, how punished, . . . . . 819  
 prosecutions to be commenced in twenty days, . 819

**CURTESY.**  
 tenant by, who to be, . . . . . 471  
 to hold lands during his life, . . . . . 471  
 title of, not affected by advancements, . . . 475  
 tenants by, how liable for waste, . . . 708, 709, 710  
 tenancy by, how to affect limitation of real actions, in certain cases, . . . . . 775  
 not affected by wife's right to hold property to to her sole use, . . . . . 538, 539

**CUSTOM HOUSE OFFICERS.**  
 exempted from military duty, . . . . . 92  
 exempted from serving as jurors, . . . . . 680

D.

**DAMAGES.**  
 on default, may be assessed by court, or on motion of either party, by jury, . . . . . 685  
 assessment of, may be referred in all cases by court to jury, . . . . . 685  
 in actions of replevin, . . . . . 732  
 may be assessed by clerk on contracts where amount due is not disputed, . . . . . 685  
 in actions on bonds, covenants, and agreements, with penalty, how determined, . . 685, 686

**DAMAGES — continued.**  
 in writs of entry, may be recovered for rents and profits, and for destruction or waste of the buildings or other property by tenant, . . . . . 693  
 how recovered, in a writ of dower, for detention of dower, . . . . . 697  
 subsequently, for rents and profits of a prior tenant on whom demand of dower was made, . . . . . 697

**DAMAGES—continued.**

for waste, against tenants in dower, by the curtesy, for years, and for life, . . .	708-710
against joint tenants, tenants in common, &c., for waste, . . . . .	709
against persons who commit waste after action brought concerning lands, . . .	709
for wilful trespass, . . . . .	709
for casual and involuntary trespass, and how amends may be tendered, . . .	709, 710
for injury done by beasts of other persons, . . . . .	185, 730
in actions of tort for acts of deceased, commenced or prosecuted by executors or administrators, to be only for value of property, or actual injury, . . . .	651
for wrongs or injuries, not to be deducted in settling amount due from trustee in trustee process, . . . . .	724
measure of, not changed by statutes relating to pleading and practice, . . . . .	602
in complaints for flouage, how estimated, . . .	756
for what time to be allowed, . . . . .	756
what to be allowed by way of set-off, . . . .	756
jury to determine what sum shall be paid annually, . . . . .	756
and what sum to be paid in gross, . . . . .	756
owner may elect which to pay, . . . . .	756
within what time election to be made, . . . .	756
to be a lien on mill and appurtenances, . . . .	756
annual compensation may be assessed anew, . .	757
gross damages assessed only once in ten years, . . . . .	757

**DAMS.** (*See Mills.*)

may be erected and maintained on streams not navigable, . . . . .	754
not to be erected, or raised, to damage of existing mill, . . . . .	754
height of, to be regulated by jury, . . . . .	755, 756
damages for flouage, proceedings to recover, . . . . .	755-757
material change in, to be deemed a new mill or dam, . . . . .	757
provisions concerning the regulation of, . . . .	759
county commissioners to view and examine, after notice to adverse party, on application by persons owning property liable to be destroyed by breaking of, . . . . .	759
if not sufficiently strong, commissioners may require them to be made secure, . . . . .	759
directions to owner to make repairs, &c., to be in writing, . . . . .	759
result of examination to be recorded, . . . .	759
record to be evidence, if owner had opportunity to be heard before commissioners, . . . . .	759
if owner neglects or refuses to make repairs, &c., commissioners to cause dam, or parts thereof, to be removed, . . . . .	759
after removal, no structure to be erected except as commissioners direct, . . . . .	759
if dam cannot be removed without danger, the commissioners shall make it safe, . . . . .	759
if commissioners require no alteration, &c., costs of application to be paid by petitioner, otherwise by owner, . . . . .	759
in all cases to be paid by owner if he is petitioner, . . . . .	759
supreme court has jurisdiction in equity to compel owner to make alterations, &c., . . . .	760
penalty for wilful, &c., injury to, . . . . .	804

**DAMS—continued.**

penalty for raising water by, so as to injure mill, . . . . .	804
not to apply where court may abate, . . . . .	804

**DARTMOUTH.**

penalty for taking certain fish in waters of, by persons living out of state, &c., . . . . .	431
--	-----

**DEACONS.**

of churches, if citizens of the United States, a corporation to take, &c., grants to their churches, . . . . .	205
when to be corporation for such purpose, together with minister, . . . . .	205
cannot convey church lauds without consent of church, &c., . . . . .	206

**DEAD BODIES.**

may be furnished to physicians, &c., by overseers of poor, &c., . . . . .	195
physicians to give bond in such case, &c., . . . .	195
remains to be decently buried, . . . . .	195
when not to be delivered to physicians, &c., . . .	195
not to be taken on mesne process or execution, . .	821
penalty for so taking, . . . . .	821
unauthorized removal or disinterment of, how punished, . . . . .	821
accessories thereto, how punished, . . . . .	821
buying, or selling, or having in possession to sell, how punished, . . . . .	821
inquest on certain, to be held, . . . . . 848, 849, 850	
expense of bringing to land, when found in any waters of the state, how paid, . . . . .	850
except for services in searching for, . . . . .	850
money, &c., found upon, to be kept in charge by the coroner, . . . . .	850
of strangers, expense of burial, &c., how borne, . .	850
of others, how borne, . . . . .	850

**DEATH.**

of parties to actions, petition for partition, &c., ( <i>see Surviving of Actions</i> ), . . . . .	648-650
of insolvent debtors, after proceedings commenced by or against them, not to affect same, . . . . .	583
of justices of peace, after rendering judgment in civil actions, proceedings thereon, . . . . .	607
of officers or party after commencement of levy of execution, effect of, . . . . .	690
sentence of, how to be executed, . . . . .	847

**DEATHS.**

city and town clerks to record and index facts concerning, . . . . .	168
form of record, . . . . .	169
to be reported by parents, householders, shipmasters, &c., to clerk, under penalty, . . . .	169
return to be made by clerk to secretary, under penalty, . . . . .	169
physician to certify certain facts concerning, when requested, under penalty, . . . . .	169
sextons, &c., to make return of facts concerning to clerks, . . . . .	169
compensation of sextons, . . . . .	169
record of clerk concerning, to be prima facie evidence in legal proceedings, . . . . .	169
certificate of clerk to be evidence of such record, . . . . .	169
superintendents of state almshouses, to make return concerning, . . . . . 169, 170	
town clerks, where such almshouses are located, to be exempt from making returns, . . . . .	170
towns, &c., may make additional rules concerning registration of, . . . . .	170
registrars may be appointed in certain towns, to make record, &c., concerning, . . . . .	170



**DEBT.**

action of, abolished and actions of contract substituted, except for penalties, . . . . . 653  
 for penalties, action of tort substituted for, . . . 653

**DEBTORS.** (*See Insolvency.*)

Insolvent, proceedings by and against, . . . 582-601  
 provisions for arrest, discharge, and punishment of poor, . . . . . 633-642  
 (*See Poor Debtors.*)

**DECLARATION.**

in actions at law, charge in, taken to be true on default of defendant, . . . . . 658

**In personal actions, how named, and forms of, . . . . . 653, 654, 663-666**

need not aver what is not required to be proved, . . . . . 653

may state the substantive facts, without verbiage, . . . . . 653

need contain but one count, but with any number of breaches, . . . . . 654

may assign breaches in the alternative, . . . 654

same count not to include two causes of action on same contract except the count on the account annexed, . . . . . 654

may include different causes of action, belonging to same division, . . . . . 654

in actions of contract and tort not to be joined, unless it is doubtful to which class a cause belongs, . . . . . 654

a count in contract and a count in tort for the same cause of action may be joined, with an averment that they are for the same cause, . . . . . 654

common counts not to be used unitedly, . . 654  
 count on account annexed, may be used in certain cases, . . . . . 654

supplemental may be made alleging facts occurring or becoming known after former declaration, . . . . . 657

**On written instruments, except policies of insurance, to set out copy or legal effect of instrument, . . . . . 654**  
 need not contain profert or excuse, . . . . . 654  
 to state substance of instruments, lost or destroyed, . . . . . 354

**On bonds, conditional obligations, and contracts, or grants, to set forth condition and breaches, . . . . . 654**

against parties severally liable on same written contract, how made, . . . . . 654

referring to a general statute, may specify chapter, or make some other general reference, . . . . . 654

in actions of tort for breaking and entering plaintiff's close, shall designate the place by name, abutments, or otherwise, . . . . . 654, 655

need not be inserted in writ in actions of contract and tort unless an arrest is made, . . . 655

may be filed in clerk's office on or before return day unless an arrest is made, . . . 655

to be furnished, with bill of particulars, to defendant within three days after demand, when attachment is made, . . . 655

if not inserted in writ, or filed, action shall be discontinued, . . . . . 655

may be filed on leave of court during return term, . . . . . 655

on the common counts, bill of particulars to be filed with, and numbered, . . . . . 655

not to be abated for circumstantial errors, &c., or defects in form, . . . . . 657

**DECLARATION, &c. — continued.**

demurrer to, for what causes, and how may be made, . . . . . 655

counts in, unnecessary, or upon which no evidence is given, to be stricken out, . . . 661

not to be deemed evidence, . . . . . 661

costs allowed for in civil cases, . . . . . 783

**In real actions, on mortgage, title to allege seisin to be in mortgage, . . . . . 654**

**In set-off, may be filed with answer, proceedings, . . . . . 670, 671**

**In trover, . . . . . 654, 656**

**In writs of entry, what to be alleged, . . . 692**

**Forms of, in different cases, . . . . . 663-667**

**FOR NATURALIZATION.**

not to be received by any court, except the supreme judicial and superior courts, . . . 618

**DECLARATION OF RIGHTS, . . . . . 14**

**DECREES.**

**Of probate courts, may be appealed from to supreme court, . . . . . 548, 575**

to be in writing, &c., . . . . . 576

when validity of not to be drawn in question, . . . . . 576

(*See Probate Courts.*)

**In equity cases, how made, appealed from, &c., . . . . . 560, 561**

process for execution of not to issue for thirty days, unless an appeal is waived, . . . 560

**Of courts of record, suits on, limited to twenty years, . . . . . 777**

presumed to be paid after lapse of twenty years, . . . . . 779

**DEDICATION OF WAYS.**

provisions respecting, . . . . . 243

**DEED.**

executed by person having authority, or by his attorney, and acknowledged and recorded, conveys real estate, . . . . . 466

by agents of counties to be under their proper hauds and seals, . . . . . 144

conveyance of estates, &c., without deed in writing, to have force of estates at will only, . . . . . 466

in fee simple, fee tail, or for life, or more than seven years, not valid unless by deed recorded, . . . . . 466

by tenant in tail in common form, to convey a fee simple and bar estates tail and remainders and reversions expectant, . . . 466

by tenant for life and owner of vested remainder in tail, to convey a fee simple, and bar, &c., . . . . . 466

of quitclaim and release in common form, to pass estate, like deed of bargain and sale, . . . 466

by tenant for life or years purporting to convey greater estate to pass estate of grantor, . . . . . 466

such conveyance not to work a forfeiture of estate, . . . . . 466

by owner of precedent estate not to defeat estate expectant, except estates tail, . . . . . 466

to person for life and his heirs in fee, shall so vest estate, . . . . . 466

to two or more shall create estate in common, and not in joint tenancy, unless expressly provided, &c., . . . . . 466

exceptions to foregoing provision, . . . . . 467

purporting to be absolute, not to be defeated by deed of defeasance, unless recorded, except, &c., . . . . . 467

**DEED**—*continued.*

grantor to make known to grantee, if incumbrances exist upon estate conveyed, . . . 467  
 to be liable in damages for neglect, &c., . . . 467  
 void, if in consideration of money lost in gaming, except, &c., . . . . . 436  
**Of defeasance**, not to have any force against third parties without notice, unless recorded, . . . . . 467  
 when may constitute a mortgage, . . . . . 716  
 form of declaration on warranty in, . . . . . 664

**ACKNOWLEDGMENT AND RECORD.**

acknowledgment of, to be made by grantors, or one of them, . . . . . 467  
 before whom to be taken, . . . . . 132, 467  
 by agents of counties, . . . . . 144  
 certificate of, to be indorsed on deed by person taking, . . . . . 468  
 execution of, how proved if grantor dies, &c., without acknowledgment, . . . . . 467  
 how, if witnesses are also dead, &c., . . . 467  
 how, when grantor refuses to acknowledge, 467  
 how, when subscribing witnesses are dead, 467, 468  
 not to be proved, in such manner, unless it has at least one subscribing witness, . . 468  
 when copy of, not acknowledged, may be filed in registry of deeds, and effect thereof, . . 468  
 proof of execution to be indorsed on deed by clerk or justice, &c., before whom proved, . . . . . 468  
 powers of attorney for execution of, to be acknowledged, . . . . . 468  
 when to be acknowledged by both husband and wife, . . . . . 468  
 not to be recorded without certificate of acknowledgment or proof, . . . . . 468  
 where to be recorded, . . . . . 154  
 (*See Register of Deeds.*)

**DEER.**

penalty for hunting at certain seasons, except, &c., . . . . . 430  
 with dogs, at any time, in Plymouth and Barnstable counties, . . . . . 430

**DEFACING.**

of public records, how punished, . . . . . 199  
 of tombs, gravestones, &c., in cemeteries, &c., 197, 821, 822  
 of other property, . . . . . 252, 803

**DEFAULT.**

if defendant, duly summoned, does not appear, to be recorded, and plaintiff's declaration taken to be true, . . . . . 658  
 may be taken off at first term, on payment of costs, to be entered against defendant, unless within ten days after return of writ, or before last day of return term, he files an affidavit of merits, . . . . . 658, 659  
 time may be extended by order of court, . . . 659  
 how and when to be entered against absent defendants, . . . . . 646  
 of defendant, for not answering interrogatories or refusing to amend, &c., answers, . . 660  
 judgment upon, how to be entered, . . . . . 658, 685  
 when part only of defendants are defaulted, in actions upon judgments by default, defendant may, in certain cases, make same defence as on review, . . . . . 663  
 of trustees, in trustee process, effect of, . . . 722  
 of executors and administrators, cited in cases commenced against deceased, effect of, 648

**DEFEASANCE.**

when to operate as a mortgage, . . . . . 716  
 not valid against third parties without notice, unless recorded, . . . . . 467

**DEGREE.**

of murder, to be found by jury, . . . . . 791

**DEMURRER.**

may be made in answer or replication, . . 655, 656, 657  
 causes for, specified, . . . . . 655  
 to be certified by the attorney, . . . . . 655  
 not to be made for defect of form, &c., . . . 657  
 deemed to be joined in by opposite party, unless awarded, . . . . . 657  
 may be amended, . . . . . 657  
 how heard and determined, . . . . . 661  
 decision of one judge on, respecting misjoinder of counts, final, . . . . . 661  
 appeal from, may be had in other cases, . . 661  
 if adjudged frivolous, &c., court may order party to plead, &c., notwithstanding appeal, . . . . . 661  
 when sustained, overruled, or withdrawn, court may make further orders, &c., . . . . . 661  
**In equity cases**, defence may be made by, . . 559  
 to be accompanied by certificate that it is not intended for delay, . . . . . 559

**DEPOSITIONS.**

**IN CIVIL CASES.**

**OF WITNESSES IN THE STATE.**

when and how taken, . . . . . 674, 675  
 may be taken to be used in all civil proceedings in this state, . . . . . 674  
 when witness lives more than thirty miles from place of trial, or is sick, infirm, or aged, or about to go out of the state, . . . . . 674  
 witness, in such case, may be summoned and compelled to attend and give his deposition at any place within twenty miles of his place of abode, . . . . . 675  
 may be taken when witnesses live out of, but are at the time in, this state, . . . . . 675  
 such witnesses from other states may be compelled to attend at any place within ten miles of place where summoned, . . 675  
 taken *ex parte*, when to be admitted, 675, 676, 736, 737

**Applications** for the taking of, may be made to any justice of the peace, after service of process, or a case is submitted to arbitrators or referees, . . . . . 674

**Notice** of time and place of taking to be issued to adverse party, . . . . . 674  
 how served, . . . . . 674  
 may be verbal, or wholly omitted, if waived, in writing, by adverse party, . . . . . 674

**Deponent** to be sworn, or to affirm, . . . . . 674  
 to be examined by justice and the parties, and his testimony taken in writing, . . 674  
 on written or verbal interrogatories, first by party producing him, then by adverse party, and afterwards by either party, . . . . . 674  
 to subscribe his deposition after it is read to or by him, . . . . . 674  
 to be written by the justice, the deponent, or some disinterested person in presence of the justice, . . . . . 674  
 to be read to or by the deponent, . . . . . 674  
 how certified and used, . . . . . 674, 675  
 certificate of time and manner of taking, and

**DEPOSITIONS — continued.**

of other facts to be annexed thereto by justice, . . . . . 674

to be sealed up and delivered, or directed by the justice to the court or magistrate before whom the case is pending, . . 674

when sealed, to remain so until opened by court, . . . . . 674

when taken on written interrogatories, objections to any interrogatory must be made before it is answered, and objections noted, . . . . . 675

objections to the competency or credibility of deponent, and the propriety of questions, and to answers, how made when deposition is produced. . . . . 675

not to be used, if reason for taking no longer exists, . . . . . 675

when taken for a suit afterwards discontinued or nonsuited, may be used in a second suit for same cause, if it was filed and remains with court, . . . . . 675

rules concerning the opening, filing, keeping, taking, and using, may be made by courts, . . . . . 675

**To be used in other states and countries,** may be taken before justices of the peace, or commissioners appointed by such states or countries, . . . . . 676

witnesses may be summoned and compelled to testify in such cases, . . . . . 676

may be taken and used in cases of seizing and libelling forfeited goods, . . . . . 773

**OF WITNESSES OUT OF THE STATE.**

may be taken under a commission issued by court to persons in other states or countries, . . . . . 675

or by commissioners appointed in other states and countries, . . . . . 675

such commissioners, how appointed, and their duties, . . . . . 132

to be taken on interrogatories exhibited to adverse party, and cross interrogatories, may be used subject to same objections and conditions as if taken in this state, . . . 675

rules concerning the issuing commissions, filing interrogatories, and other matters respecting taking depositions out of the state, may be made by courts, . . . . 675

taken in any other manner than as above, may be admitted or rejected at discretion of court under certain circumstances, . 675

when so taken, not to be admitted, unless adverse party had notice, if possible to be given, . . . . . 675

**TO PERPETUATE TESTIMONY.**

of witnesses in or out of the state, . . . . 676-678

**Of witnesses in the state,** may be taken on such notice to all persons interested, as is required to be given to adverse party in other cases, . . . . . 676

when sufficient notice is not provided for by law, such notice shall be given as justices deem proper, . . . . . 676

brief statement of claim or interest to be made in writing, and delivered to two justices of the peace, . . . . . 676

one of said justices to be a judge or register of probate and insolvency, a clerk of supreme court, a master in chancery, or counsellor at law, . . . . . 676

**DEPOSITIONS — continued.**

not to be taken, when certain objections are made, and justices may examine party as to the reasons for taking the same, 670

to be written, read, subscribed, and certified, and witness sworn, in like manner as in taking other depositions, . . . . . 676

to have annexed an additional certificate, that it was taken in perpetual remembrance; the names of persons at whose request taken; who were notified, and who were present, . . . . . 676

to be recorded, with statement of claim, within ninety days, in registry of deeds, . 676

may be used in suits between parties taking and those notified, or persons claiming under them, . . . . . 676, 677

copy of, from registry of deeds, may be used in suit, . . . . . 677

used in subsequent suits to be subject to same conditions as when taken for those suits, . . . . . 677

**Of witnesses out of the state, . . . . . 677, 678**

may be taken under a commission issued by supreme or superior courts, . . . . . 677

party applying for, to file in court a brief statement of claim, in like manner as when proposed to be taken in the state, 677

in what county such statement to be filed in different cases, . . . . . 677

statement may be filed and notice issued in vacation, . . . . . 677

notice to be served fourteen days before time of hearing, on all persons mentioned as adversely interested, if living in the state, . . . . . 677

on hearing parties who appear, court may issue commissions, if there is sufficient cause, . . . . . 677

to be taken on written interrogatories, and cross-interrogatories, and returned, as in other cases of commissions issued, . . . . . 677

may be used as if taken in this state, . . . 677

rules respecting taking, filing, and recording, may be made by supreme court, . . . 677

**TO PERPETUATE TESTIMONY AGAINST ALL PERSONS.**

may be taken, as of witnesses in or out of state, 677

may be taken on commission issued after public notice, by supreme or superior courts, 677

party desiring to take, may apply as above, in case of witnesses out of the state, . . 677

proceedings to be substantially same as in case of other witnesses out of the state, . . 677

court, in addition, to inquire upon oaths of applicant or otherwise, as to persons interested, . . . . . 678

shall direct commissioners what notice to give, 678

such notice to be directed by name to all persons supposed to be interested, and generally to others, . . . . . 678

when taken and returned, if found to have been correctly done, shall be recorded in registry of deeds within thirty days, . 678

the original, or a copy, may be used in evidence in all cases wherein the claim or title set out in the statement is brought in question, . . . . . 678

**OF PARTIES TO SUITS.**

may be taken of parties who might be witnesses, 678



**DEPOSITIONS — continued.**

**IN CRIMINAL CASES.**

- of witnesses ordered to recognize with surety, and unable to find bail, may be taken, with defendant's consent, . . . . . 833
- who to be notified, . . . . . 833
- defendant's consent to be indorsed on deposition, 833
- to be returned to court, to which witness was ordered to appear, . . . . . 833
- may be used at trial by either party, if witness is unable to attend, . . . . . 833, 834
- Of witnesses out of the state,** may be taken by defendant in criminal cases, after issue of fact joined on an indictment, prosecuting officer may join in commission and name witnesses for commonwealth, . . . . . 840
- how to be taken and returned, . . . . . 840
- if defendant declines to use such deposition at trial, government not to use it without defendant's consent, . . . . . 840

**DEPOSITS.**

- in bank by assignees of insolvent estate, may bear interest, . . . . . 307, 587
- by cities and towns, may bear interest, . . . . . 307

**DEPUTY INSPECTORS.**

- of various articles, how appointed, &c., 258, 261, 267, 269, 276
- (See *Inspectors General*.)

**DEPUTY-SHERIFF.**

- how appointed, and sworn, . . . . . 150
- to serve all writs, &c., lawfully directed to them, . . . . . 151, 618
- may require aid in execution of their office, in criminal cases, . . . . . 151
- not to act as attorney, under penalty, . . . . . 151
- not to buy, &c., any demand, &c., with intent, &c., . . . . . 618
- liability of sheriff for default or misfeasance of, 151
- may serve process in their hands at time of vacancy in office of sheriff, . . . . . 151, 152
- (See *Sheriff*.)

**DEPUTY WARDEN.**

- of state prison, (see *State Prison*.) . . . . . 870, 872

**DESCENT OF REAL ESTATE.**

- rules of, . . . . . 474, 475
- not to defeat rights of entry and real actions, 692, 776

**DEVISE.**

- to children, &c., not to lapse by death before that of devisor, if they leave issue who survive him, . . . . . 479
- such issue shall take the devise, unless, &c., . . 479
- to a subscribing witness to a will void, unless there are three other competent witnesses, . . . . . 477

**DEVISEES.**

- to contribute proportions, when estate is taken from a devisor to pay testator's debts or for dower of widow, . . . . . 479, 480
- how liable to contribute to posthumous or other child omitted in father's will, . . . . . 479
- when and how liable for debts of testator, . . . 507
- actions against, for such debts, not barred by provisions for actions against executors, &c., . . . . . 492
- estates of, liable for such debts after their death, 507
- not liable to pay more than amount received from testator's estate, . . . . . 507, 508
- when liable to contribute among themselves, . 508
- liable, in certain cases, to scire facias on judgment recovered against devisor, for penalty of bonds, covenant, &c., . . . . . 686

**DEVISEES — continued.**

- how may become parties to real and mixed actions and proceedings for partition, commenced by or against devisor, 649, 650
- may tender amount due on mortgage of land devised to them, . . . . . 715
- and bring suits for redemption, . . . . . 715
- suits for contribution among, may be brought in supreme court in equity, . . . . . 559

**DIET.**

- of convicts in hospital of state prison to be under direction of physician, . . . . . 876

**DIRECTORS.**

- Of public institutions in Boston,** . . . . . 858
- compensation of, . . . . . 858
- powers and duties of, as to house of correction for Suffolk county, . . . . . 858, 859
- may recover forfeiture of jailer for not keeping calendar, . . . . . 860
- may remove children under eighteen months of age, from their mothers, . . . . . 861
- to oversee execution of sentences to solitary imprisonment and hard labor, . . . . . 862
- to remove forthwith any officer by them appointed, known to use intoxicating liquors as a beverage, . . . . . 863, 864
- record of prisoner's conduct to be exhibited to, . . . . . 864
- to fix the rate of pay for board of prisoners, 865
- to audit, twice each year, or oftener, accounts for support of convicts, . . . . . 865
- may commence action for sum due for support of prisoner, . . . . . 865
- blank forms of returns to be furnished to, . 867
- forfeiture for not making returns, . . . . . 868
- Of banks,** . . . . . 305
- Of other corporations.** (See *their Titles*.)

**DISCHARGE.**

- Of insolvent debtors,** (see *Insolvency*), . . . . . 591
- Of poor debtors,** on mesne process and execution, (see *Poor Debtors*), . . . . . 635-637
- Of bail,** in civil cases how made of principal, 643, 644
- (See *Bail*.)
- Of military officers,** (see *Militia*), . . . . . 100, 101

**DISCHARGED CONVICTS.**

- forfeitures for failing to keep prison book, &c., or to make official returns, to go to relief of, . . . . . 866, 868
- from state prison, provisions respecting, . . . 877

**DISCIPLINE.**

- of convicts in state prison, . . . . . 874, 875
- in other prisons, . . . . . 860-864

**DISCLAIMER.**

- may be pleaded in abatement, or given in evidence under general issue, . . . . . 693
- party pleading not to have costs before plea is filed, . . . . . 693

**DISCONTINUANCE.**

- not to defeat rights of entry, or real actions, 692, 776
- of actions by plaintiff, not allowed after set-off filed, unless defendant consents, . . . . . 671
- when caused by insolvency, &c., defendant not to have costs, . . . . . 780
- costs on, must be paid, or second suit for same cause will be stayed or dismissed, . . . . . 780

**DISCOUNT OF TAXES.**

- may be allowed by towns, . . . . . 79
- how made, and notice of how given by assessors, . . . . . 79

**DISCOVERY.**

- suits for, may be brought in supreme court in equity, . . . . . 559

**DISCOVERY** — *continued.*  
 answers in such cases to be made without delay, and questions on, how determined, . . . 559  
 by interrogatories and answers between parties to suits, . . . . . 659, 660

**DISEASED PROVISIONS.**  
 penalty for knowingly selling, without notifying buyer, . . . . . 822

**DISEASES.**  
 dangerous to public health, . . . . . 190-193  
 proceedings when persons are sick with, . . . . . 190, 191, 192  
 hospitals for reception of persons sick with, . . . . . 192, 193  
 householders, &c., to give notice of, to board of health, &c., under penalty, . . . . . 193  
 regulations concerning persons sick with small pox, . . . . . 193  
 fence erected to prevent spread of, not to be removed by surveyors of highways, . . . 246

**DISORDERLY CONDUCT.**  
 in presence of senate or house of representatives, . . . 22  
 at elections, penalty for, . . . . . 61  
 at town and parish meetings, . . . . . 160, 202  
 (*See Contempt.*)

**DISORDERLY PERSONS.**  
 common, how punished, . . . . . 820, 821  
 in night time, how may be arrested and detained, . . . . . 821

**DISQUALIFICATION.**  
 of persons from acting as attorneys, &c., in cases in which they have acted as magistrate or judge, . . . . . 610, 615, 616  
 of judges of probate and insolvency, when by reason of interest, . . . . . 602  
 jurors not disqualified in certain cases, . . . 618, 683  
 nor on account of being inhabitants of Boston, &c., . . . . . 618  
 not to arise on account of judge, magistrate, appraiser, or officer being an inhabitant of town which is interested, . . . . . 618  
 of persons convicted of fighting duel, &c., from holding office, . . . . . 792

**DISSECTION.**  
 when body of person executed, to be delivered up for, . . . . . 791

**DISSEISIN.**  
 when right of entry or action for, accrues, . . . 775  
 of minister or other sole corporation, entry to be in five years, . . . . . 775  
 of precedent estate not to bar or defeat estate in expectancy, . . . . . 566  
 of deviser, after devise made, not to affect devisee's right to the estate, . . . . . 476  
 what to be considered, for purpose of trying title, . . . . . 520, 692  
 (*See Writ of Entry.*)

**DISSOLUTE PERSONS.**  
 going about begging, how to be arrested and punished, . . . . . 820, 821

**DISTRAINING.**  
 of cattle being at large contrary to law, or doing damage, . . . . . 185  
 when person distraining, to leave with pound-keeper memorandum of cause, amount of damage, &c., . . . . . 185  
 when to give like memorandum to owner of beasts, . . . . . 185  
 beasts not to be delivered until costs, &c., are paid, . . . . . 185  
 how notice of impounding to be given to owner, &c., . . . . . 186

**DISTRAINING** — *continued.*  
 how, if owner is not known, &c., or does not appear within seven days, . . . . . 186  
 how damages to be determined in case of dispute, when owner does not pay damages within fourteen days after notice, &c., cattle to be appraised, &c., and damages determined, . . . . . 186  
 if damages so determined are not paid forthwith, cattle to be sold at auction, . . . 186  
 notice of auction, how given, . . . . . 186  
 proceeds of sale, how disposed of, . . . . . 186  
 penalty for reseizing beasts distrained, . . . . . 186  
 beasts impounded, &c., escaping or rescued, may be retaken within seven days, . . . 186  
 legality of distress, how to be tried, . . . . 187, 730

**DISTRAINING FOR TAXES.**  
 provisions concerning, . . . . . 82

**DISTRIBUTION.**  
 of personal estate after payments of debts of deceased, rules of, . . . . . 485  
 of land held in mortgage or taken on execution, to be like that of personal estate, 490  
 advancements to issue, not to be computed in distribution to widow, . . . . . 485  
 of estates of insolvent debtors, . . . . . 581-600  
 of insolvent estates of deceased persons, . . 496-498

**DISTRICT-ATTORNEYS.**  
 how and when chosen, . . . . . 38, 70  
 for what districts, . . . . . 130  
 salaries of, . . . . . 130, 131  
 term of office, . . . . . 70  
 return of votes for, . . . . . 59, 60  
 to be a resident in district, . . . . . 70  
 in case of failure to elect, governor to order new election, . . . . . 71  
 vacancies, how filled, . . . . . 72, 131  
 may be removed from office by supreme judicial court, . . . . . 553  
 one for each district, . . . . . 130  
 in absence of, court may appoint person to act, not to receive any fee from prosecutor, nor be counsel in certain cases, . . . . . 130  
 to account with state treasurer for fees, costs, &c., 150  
 general duties of, . . . . . 131  
 may interchange official duties, . . . . . 131  
 to enforce payment from public officers of money due county, . . . . . 149  
 to prosecute overseers of poor, &c., for neglect to make returns of paupers to secretary, . . . . . 395  
 to institute suits for recovery of expenses of support of state lunatic paupers in certain cases, . . . . . 409  
 to bring suits on defaulted recognizances given under liquor prosecutions, &c., . . . 448  
 to prosecute public administrators for neglect of official duties, . . . . . 488  
 to file information, &c., against persons unlawfully intruding or holding lands of commonwealth, . . . . . 717-719  
 or certain Indian lands, . . . . . 719  
 to attend examination of poor debtors seeking to be discharged from imprisonment on warrants of distress in favor of state, 639  
 may disallow magistrates' fees in certain criminal cases, in whole or in part, . . . 788  
 to institute complaint against overseers of house of correction, or, in Suffolk, against directors of public institutions, for forfeiture for neglecting to make official returns, . . . . . 868

**DISTRICT-ATTORNEYS** — *continued.*

Assistant, for Suffolk district, may be appointed by governor and council, . . . 131  
 salary of, . . . . . 131

**DISTRICTS.**

to have powers, &c., of towns, . . . . . 165  
 for choice of senators, . . . . . 19, 35, 39, 62, 63, 64  
 representatives in congress, . . . . . 67, 68  
 representatives in general court, . . . . . 38, 39, 64  
 councillors, . . . . . 19, 37, 62  
 for administration of criminal law, . . . . . 130  
 for registry of deeds in Berkshire, Bristol, and Middlesex, . . . . . 153

**DISTURBANCE.**

of assemblies for religious worship, how punished, . . . . . 819  
 of camp meetings, . . . . . 819  
 of school, or other lawful assembly, . . . . . 820  
 of a funeral procession or assembly, . . . . . 820

**DIVIDENDS.**

of estates of insolvent debtors, how made, . . . 594, 595  
 may be attached and held by trustee process, . . . 723

**DIVORCE.**

proceedings of court in matters of, how regulated, &c., . . . . . 536  
 certain marriages void without decree of, . . . 531, 532  
 obtained out of state, for cause not sufficient here, of no effect, . . . . . 537  
 provisions as to polygamy, in case of, . . . . . 818  
**From bond of matrimony, for adultery or impotency of either party, . . . . . 532**  
 when one party, without consent of the other, has united with a sect that professes the marriage relation to be void, &c., and so continues for three years, &c., . . . 532  
 when a party is sentenced to hard labor in jail, &c., for life or five years, . . . . . 532  
 a pardon granted after a divorce in such case, not to restore conjugal rights, . . . 532  
 when one has deserted the other for five years consecutively, . . . . . 532  
 but when application for, is made by party deserting, it must appear that desertion was caused by extreme cruelty, . . . 532  
 or that desertion by wife was caused by neglect to provide maintenance, &c., . . . 532  
 libel not defeated by temporary return of party deserting, . . . . . 532  
 in certain cases, after divorce from bed and board, . . . . . 532  
 when parties have lived separately for ten consecutive years, . . . . . 532  
 penalty for living together again, . . . . . 533, 534  
**From bed and board, for extreme cruelty, utter desertion, gross and confirmed habits of intoxication contracted after marriage, or cruel and abusive treatment, and on libel of wife when husband refuses to suitably maintain her, . . . . . 532**  
 may be decreed when libellant has lived in state five years, unless he removed here to procure it, . . . . . 532  
 not to be granted, if parties have not cohabited in this state, except, &c., . . . . . 532, 533  
**Libels for, where to be heard and determined, 533**  
 either party to, may have trial by jury, . . . 533  
 proceedings as in suits at common law, . . . 533  
 to be signed by libellant or guardian, . . . 533  
 how to be filed, and notice thereof served, . . 533  
 if service is insufficient, court may order further notice, . . . . . 533

**DIVORCE** — *continued.*

to be answered by guardian, if respondent is insane, . . . . . 533  
 during pendency of, wife may have alimony, and allowance to carry on suit, . . . . . 533  
 wife to be protected from husband's restraint, . . . . . 534  
 court may make order concerning care, &c., of children, . . . . . 534  
**Alimony** may be allowed during pendency of suit, . . . . . 533  
 upon or after decree of divorce, in certain cases, . . . . . 535, 536  
 decrees of, may be enforced by the court, . . . 536  
 may be revised or altered by the court, . . . 536  
**Children, care and custody of, during pendency of libel, . . . . . 534**  
 after divorce, . . . . . 534  
 of parents divorced in another state, . . . . . 534  
 of parents who live separately, although not divorced, . . . . . 535  
 to be determined by their happiness and welfare, . . . . . 535  
 and rights of parents, in the absence of misconduct, to be held to be equal, . . . . . 535  
 of persons divorced not to be removed from state without their consent, &c., . . . 534, 535  
**General provisions, woman divorced may resume her former name, . . . . . 533**  
 innocent party divorced from bonds of matrimony may marry again, . . . . . 534  
 in what case either party may be authorized to marry again, . . . . . 534  
 issue of marriages dissolved, &c., by, for consanguinity, &c., illegitimate, . . . . . 534  
 for certain other causes, not affected, . . . 534  
 in what cases wife entitled to dower, . . . . . 535  
 when granted for adultery of wife, husband to hold her estate, except, &c., . . . 535  
 for any other cause, wife to hold her estate, &c., . . . . . 535  
 court may appoint trustee of wife's property, . . . . . 535  
 husband may be examined on oath as to wife's personal property, . . . . . 535  
 husband's property may be attached on certain libels for, . . . . . 536  
 attachment may be made on summons or order of notice, . . . . . 536  
 laws relating to, to apply, . . . . . 536

**DOGS.**

to be annually registered and licensed, . . . . . 461  
 fees for license, . . . . . 461  
 clerk to issue license, and treasurer to keep account of money concerns, . . . . . 461  
 to post list of dogs licensed, . . . . . 461  
 to furnish copy of list to constables, &c., . . . 461  
 license when to expire, . . . . . 461  
 new, not required, if owner removes to another town, unless, &c., . . . . . 461  
 penalty for keeping dogs without, . . . . . 461  
 penalty for removing collar from, or stealing or killing, if licensed, . . . . . 461  
 for exposing poisons for, . . . . . 461, 462  
 may be killed when not licensed, . . . . . 462  
 bounty for killing, . . . . . 462  
 owner of, to forfeit double the damage done by, . . . . . 462  
 may be killed by any person assaulted, &c., and when found worrying cattle, &c., . . . 462  
 dangerous, to be confined or killed by owner, . . 462  
 penalty on owner for neglect in such case, . . . 462



**DOGS—continued.**

- may be killed by any person, after notice to owner, . . . . . 462
- liability of owner for damage done by, . . . 462
- towns liable for damages done by, in certain cases, 462
- may recover same of owner, . . . . . 462
- persons damaged by, to have choice of remedy, . 462
- mayor and alderman to require dogs not licensed, &c., to be destroyed, . . . . . 462
- penalty on officers for neglect of duties imposed, 463
- additional by-laws concerning, may be made by towns, &c., . . . . . 463
- finer, &c., how recovered, . . . . . 463

**DOORKEEPERS.**

- of senate and house of representatives, . . . 22, 48

**DOUBLE COSTS. (See Costs.)**

- when, how, and what to be taxed, . . . . . 781

**DOWER.**

**RIGHTS OF.**

- in husband's land, after his death, unless lawfully barred, . . . . . 469
- after divorce, for his adultery, or imprisonment, &c., . . . . . 535
- what, in mortgaged estates, . . . . . 469
- in lands taken in execution for husband's debts, held by husband under a demise for one hundred years, &c., . . . . . 471
- tenant in, liable for part of rent in such case, and prior devises of such terms not affected, &c., . . . . . 471
- in wood lot, &c., used with husband's farm or dwelling-house, . . . . . 470
- not in other lands that were wild when husband died or conveyed them, . . . . . 470
- title to, not affected by advancements, &c., . . . 475
- in case of divorce for adultery of husband, or his being sentenced to confinement to hard labor, . . . . . 697
- provisions in lieu of, . . . . . 540
- if widow waives provision for her in husband's will, entitled to dower, . . . . . 478
- if husband dies intestate, without issue, widow entitled to one half of estate for life, 470, 471
- if any part of such estate is wild, &c., widow may use, &c., the same, . . . . . 471
- widow may have dower instead, if claiming within six months, . . . . . 471
- undivided estate of widow in estate of husband may be set off same as, . . . . . 471
- to be claimed within twenty years from death of husband, except, &c., . . . . . 469, 470
- tenant in, if evicted or deprived of jointure or provision in lieu of, may be endowed anew, 470
- may be enjoyed by widow, by joint occupation with heirs, without being assigned, . . 470

**HOW RELEASED AND BARRED.**

- barred by wife's release of claim to, in deed by husband and herself, . . . . . 470
- in deed by his guardian and herself, . . . . 539
- by divorce for her adultery, &c., . . . . . 535
- by jointure settled by wife's assent, before marriage, . . . . . 470
- by pecuniary provision in lieu of, by similar assent, . . . . . 470
- by jointure, &c., without assent, or after marriage, unless waived, within six months, . . . . . 470
- by provision in husband's will, if widow elect to take it, . . . . . 470
- if widow does not waive provision in husband's will, unless, &c., . . . . . 478

**DOWER—continued**

- by sales under mortgages with power of sale, . . . . . 716, 717
- in case of insane married women, how released, &c., . . . . . 540
- not barred by divorce from bed and board, . . . 525

**HOW ASSIGNED, RECOVERED, &C.**

- in what cases, and in what manner, assigned by probate court, . . . . . 469
- commissioners appointed to assign, to be sworn, 469
- fees of, . . . . . 786, 787
- how assigned when estate is not divisible, . . . 469
- may be assigned and set out by guardian of the heir, &c., . . . . . 400
- partition of lauds may be made before assignment of, . . . . . 469
- when not set off by heir or tenant, nor assigned by probate court, may be recovered by writ of dower, . . . . . 697
- must be demanded of tenant of freehold one month before action brought, . . . . . 697
- what a sufficient demand, . . . . . 697
- action for, to be brought against tenant of freehold, . . . . . 697
- in action of, certain general provisions respecting dower to apply, . . . . . 697
- Damages** for detention of, may be recovered in action for, . . . . . 697
- tenant liable for, only while he held the premises, if demand had been made previously, . . . . . 697
- may, after judgment for dower, be recovered for rents and profits in an action of tort of a prior tenant of the freehold on whom demand was made, . . . . . 697
- How set off**, if recovered in an action of dower, writ of seisin to issue to officer, . . . . . 697
- to be set off by three commissioners, . . . . 697
- may be set off from the rents and profits, if the land cannot be divided without damage, . . . . . 697
- Tenant in**, how liable for waste, . . . 708, 709, 710
- penalty on, if she commit or suffer waste, . . 470
- liable for part of rent, . . . . . 471
- to contribute to redemption of mortgage, when endowed of mortgaged estate, . . 469

**DRAFTS, (see Bills of Exchange.)** . . . . . 293

**DRAINS AND SEWERS.**

- in Boston, how laid and maintained, . . . . . 253
- land taken and damages appraised as in case of highways, . . . . . 253
- in certain other places, how laid and maintained, 254
- expense of, how to be assessed on proprietors of private drains, entering main drains, 254
- in Boston, one fourth to be paid by city, . . 254
- such assessments to constitute lien upon real estate for one year, . . . . . 254
- may be levied by sale, if not paid within three months after demand, . . . . . 254
- party aggrieved may have jury, as in case of highways, . . . . . 254
- proceedings in such case, . . . . . 254
- part of expense of, may be paid by town, &c., . 254
- highways not to be dug up for laying, without consent of selectmen, under penalty, 254
- how to be constructed, . . . . . 254
- persons benefited, to share expense of making and maintaining, &c., drain built by individuals, . . . . . 254, 255
- expense to be determined by selectmen, subject to right of trial by jury, . . . . . 254, 255

**DRAINS, &c. — continued.**  
 persons refusing to pay, shall pay double amount assessed, &c., . . . . . 255  
 such amount, how recovered, . . . . . 255  
 notice to be given before opening, &c., . . . . . 255  
 parties interested may object, &c., . . . . . 255  
 if objections adjudged reasonable, objectors exempted from expense, . . . . . 255  
 if objections not made, &c., selectmen may authorize opening, &c., . . . . . 255  
 agreements of proprietors of, not affected by these provisions, . . . . . 255  
 expenses of opening to be paid by persons interested, . . . . . 255

**DRAWBRIDGES** in railroads, (*see Railroads,*) . . . . . 350, 360

**DRINK.**  
 penalty for fraudulently adulterating articles intended for, for purposes of sale, . . . . . 822, 823  
 knowingly selling such articles, . . . . . 823  
 such liquors to be forfeited, . . . . . 823

**DRIVERS.**  
 of carriages on roads, regulations for when meeting or passing other carriages, . . . . . 423  
 of coaches, &c., how punished for leaving horses untied, if person is in coach, . . . . . 794

**DRUGS AND MEDICINES.**  
 fraudulent adulteration of, for purposes of sale, how punished, . . . . . 823  
 knowingly selling such drugs, how punished, . . . . . 823  
 such drugs to be forfeited, . . . . . 823

**DRUGGISTS.**  
 may sell pure alcohol for medicinal purposes to physicians, &c., . . . . . 442

**DRUNKENNESS.**  
 by voluntary use of intoxicating liquor, first and second offence how punished, . . . . . 820  
 prosecution not to be commenced after six months, . . . . . 820  
 on second conviction, may be committed to workhouses, . . . . . 820  
 in Boston, may be committed to house of industry, . . . . . 820  
 imprisonment, pardon, and discharge to be as in cases of persons held for non-payment of fine and costs, . . . . . 820  
 when cause for divorce, . . . . . 532

**DUEL.**  
 penalty for engaging in, with deadly weapon, 791, 792

**DUEL — continued.**  
 for challenging to fight such duel, . . . . . 792  
 penalty for accepting, &c., such challenge, . . . . . 792  
 present at such duel as aid, surgeon, &c., . . . . . 792  
 promoting or encouraging such duel, . . . . . 792  
 conviction of fighting such duel to disqualify for holding office, . . . . . 792  
 resident of this state engaging here to fight out of state, and there giving wound from which party dies here, is guilty of murder, and where tried, . . . . . 791, 792  
 resident of this state, &c., if second to either party in such duel, is accessory to such murder, &c., . . . . . 792  
 former conviction or acquittal in other state a bar to proceedings here, . . . . . 792  
 posting, &c., another for not fighting a duel, &c., how punished, . . . . . 792

**DUKES COUNTY.**  
 need not provide house of correction, . . . . . 144  
 county commissioners of, . . . . . 71, 145  
 cases arising in, cognizable by single judge of supreme court, to be heard in county of Barnstable, . . . . . 556, 557  
 law questions in, to be heard by supreme court for commonwealth, . . . . . 555, 556  
 capital cases in, to be heard by supreme court in Barnstable county, . . . . . 555  
 special term of court, how held for such cases, . . . . . 555  
 jurors in, liable to be drawn and serve once in two years, . . . . . 680  
 list of, may include one for every thirty inhabitants, . . . . . 680  
 how obtained when inhabitants of any town are interested, . . . . . 681

**DUMPLING ROCK.**  
 ceded to United States, for lighthouse, . . . . . 44

**DUTIES.**  
 provisions of United States constitution concerning, . . . . . 4, 5

**DWELLING-HOUSE.**  
 masters, &c., of, to give names of persons taxable and liable to enrolment to assessors, under penalty, . . . . . 77  
 punishment for wilful, &c., injury to, by gunpowder, &c., . . . . . 803, 804

**DWELLING-PLACES.**  
 unfit for occupancy, how may be cleansed, vacated, &c., by order of board of health, 189

**E.**

**EASEMENT.**  
 not acquired by maintaining electric telegraph lines, . . . . . 374  
 of light and air, not to be acquired by use, . . . . . 472  
 from, in, upon, or over, land of another, not acquired except by twenty years' uninterrupted adverse use, . . . . . 472  
 acquiring may be prevented by written notice from owner of land, . . . . . 472  
 notice, how served and returned, . . . . . 472  
 to be recorded in registry of deeds, . . . . . 472  
 may be given by guardian or agent, . . . . . 472  
 how given, when party to be notified is unknown, . . . . . 472

**EASEMENT — continued.**  
 notice to prevent the acquisition of easement is such a disturbance of right as to give an action of tort to try the right, . . . . . 776, 777  
 if plaintiff prevails in such case, he may have full costs, although the damages are nominal, . . . . . 777

**EASTERN POINT.**  
 land on, for lighthouse, ceded to United States, 44

**EASTHAM.**  
 land in, for lighthouse, ceded to United States, . . . . . 45

**EAST ROCK.**  
 of Cat Island, ceded to United States, . . . . . 44

**EDGARTOWN.**

land at entrance of harbor of, ceded to United States, for lighthouses, . . . . . 44

**EDUCATION.**

duty of legislature and magistrates to foster, 28, 29  
 funds held by towns for purposes of, trustees to report annually to selectmen, &c., concerning, . . . . . 206

**BOARD OF EDUCATION.**

how constituted, . . . . . 210  
 term of office of members of, . . . . . 210  
 vacancies in, how filled, . . . . . 210  
 may take and hold grants, &c., in trust, for educational purposes, . . . . . 210  
 to pay over to state treasurer forthwith all money received for such purposes, . . 210  
 duty and responsibility of treasurer, . . . 210  
 to prescribe form of school registers, and of blanks for inquiries and returns, . . . 210  
 may appoint agents to visit schools, confer with teachers, lecture, &c., . . . . . 211  
 to arrange for forming, &c., teachers' institutes, 211  
 annual report of, with abstract of school returns, to be laid before legislature, 52, 210  
 when may be put in type, . . . . . 53  
 number and distribution of, &c., . . . . 53, 227  
 incidental expenses of, to be paid by state, . . 211  
 to arrange sections and classes for state scholarships, . . . . . 214  
 duties of, in selection, &c., of candidates for scholarships, . . . . . 214  
**Secretary** of, to be appointed by board, . . . 210  
 to be state librarian, . . . . . 54  
 to make abstract of school returns, &c., . . 210  
 general duties of, . . . . . 210  
 to give notice of, and attend meetings of teachers and school committees, . 210, 211  
 to send to town clerks blanks for returns, school registers, &c., . . . . . 211, 226  
 to notify school committees, &c., forthwith, when reports or returns not made according to law, . . . . . 227  
 to return same if found informal, &c., . . . 227  
 salary of, . . . . . 211  
 travelling and office expenses, to be paid by state, . . . . . 211  
**Clerk** of, to be assistant state librarian, . . 54, 211  
 salary of, . . . . . 54  
**Teachers' institutes**, may be formed by, . . 211  
 length of session, and expenses of same, how paid, . . . . . 211  
**County associations**, to receive fifty dollars a year from state, if they hold semi-annual meetings not less than two days each, . . . . . 212

**EDUCATIONAL ASSOCIATIONS.**

seven or more persons to be body corporate for educational purposes, . . . . . 207  
 purpose and location to be specified in articles, 207  
 to have usual corporate powers, . . . . . 207  
 may hold real and personal property not exceeding one hundred thousand dollars, 207  
 estate not exempted from taxation where used for other purposes, &c., . . . . . 207

**EGG ISLAND SHOAL.**

ceded to United States, . . . . . 45

**EGG ROCK ISLAND.**

ceded to United States, . . . . . 45

**ELECTIONS.**

all ought to be free, . . . . . 15  
 not to be held on days when militia are required by law to do duty, . . . . . 58

**ELECTIONS — continued.**

by the people, of all officers, to be by plurality of votes, . . . . . 36, 59

**QUALIFICATION OF ELECTORS.**

constitutional provisions concerning, . 19, 32, 33, 39  
 statute provisions concerning, . . . . . 56, 57

**MANNER OF CONDUCTING, AND RETURNING VOTES.**

polls, when may be opened, . . . . . 58  
 warrant to specify time for opening polls, . 58  
 how long to be kept open, . . . . . 58  
 not to be kept open after sunset, . . . . . 58  
 to be presided at by selectmen, . . . 19, 22, 58  
 presiding officers to be provided with list of voters, . . . . . 58  
 no person allowed to vote, unless name is on list, . . . . . 58  
 selectmen, when not answerable for refusing vote, . . . . . 58  
 self-sealing envelopes to be provided by secretary of commonwealth, . . . . . 58  
 same to be furnished to towns when applied for, . . . . . 58  
 city and town clerks to keep same for use of voters, subject to order of selectmen, wardens, &c., . . . . . 58  
 votes not received, unless in envelope, or open and unfolded, . . . . . 58, 59  
 what to be rejected, . . . . . 59  
 for national, state, &c., officers, to be received, sorted, &c., by selectmen, &c., and declaration made in open meeting, number of, and names of persons voted for, to be recorded, . . . . . 59  
**In cities**, how to be conducted, . . . . . 61  
**Return of votes**, . . . . . 19, 22, 25  
 ward clerks to deliver copies of record to city clerks, who shall record the same, mayor and aldermen, and city clerk, to examine such returns, and, if faulty, require new returns, &c., . . . . . 59  
 secretary to furnish town and city clerks with blanks, &c., for, . . . . . 60  
 for state, district, and certain county officers to be made to secretary within ten days after election, . . . . . 59, 68  
 or such returns may be delivered within three days to sheriff, . . . . . 59  
 proof of, by mail, to bar complaint for delinquency, . . . . . 59, 60  
 when unsealed, secretary to notify returning officers, who shall make new return, . . . . . 60  
 to be transmitted to governor and council, with seals unbroken, . . . . . 60  
 to be examined by governor and five at least of council, and issue summons, . . . 60  
 how to be certified, . . . . . 60  
 to be laid before legislature, with certificate of governor, &c., . . . . . 60  
 for county treasurer and register of deeds to county commissioners, . . . . . 59, 61  
 blanks for, to be furnished by county commissioners, . . . . . 147  
 for county commissioners, within seven days, to clerks of courts, . . . . . 59, 60  
 blanks for, by whom to be furnished, . . . 147  
 when and by whom examined; penalty for neglect, . . . . . 60  
**Penalty** for voting at, if not qualified, . . . 61  
 for giving more than one ballot, . . . . . 61



**ELECTIONS — continued.**

for giving false answers to selectmen, &c., . . . 61  
 for attempting to influence voters by bribes or threats, . . . . . 61  
 for aiding unqualified persons to vote, . . . . . 61  
 for disorderly conduct at elections, . . . . . 61  
 on town officers for neglect of duty, . . . . . 61  
 on town clerk, &c., for failure to make returns of votes, . . . . . 61  
 for fraudulently obtaining envelope, . . . . . 58

**OF STATE OFFICERS.**

time of holding, . . . . . 36, 62  
**Governor,** . . . . . 22, 23, 34, 36, 62  
**Lieutenant-governor,** . . . . . 25, 34, 36, 62  
**Councillors,** . . . . . 36, 37, 62  
**Senators,** . . . . . 39, 62, 63  
**Representatives in general court,** . . . . . 64  
 contents of warrant for meeting, . . . . . 64  
 town, constituting a district, failing to elect, may have other ballotings on same day, . . . . . 64, 65  
 in such case, polls not to be opened after five o'clock P. M., . . . . . 65  
 proceedings in case of failure to elect in district contained in a town, city, or wards of a city, . . . . . 65  
 in composite districts, . . . . . 65  
 in towns, &c., composing part of a district, selectmen, &c., to deliver to clerk a transcript of the record of votes, . . . . . 65  
 certificates of election in single districts, by whom made, and how transmitted, &c., . . . . . 65, 66  
 and in composite districts, . . . . . 66  
 form of certificate of election, . . . . . 66  
 proceedings in case of vacancy in representative district, . . . . . 66  
 blanks for certificates, &c., to be furnished by secretary, . . . . . 66  
 clerks and selectmen, may be paid for services, if vacancy in office of clerk, clerk pro tempore may be appointed, . . . . . 66  
 penalty on town and city officers for neglect, &c., . . . . . 66  
 selectmen and clerks for giving false certificates, . . . . . 66  
**Secretary, treasurer, auditor, and attorney-general,** . . . . . 37

**OF NATIONAL OFFICERS.**

**Of representatives in congress,** . . . . . 77  
 meetings, how called, . . . . . 58, 68  
 when held, . . . . . 68  
 return of votes, . . . . . 59, 68  
 proceedings in case of no choice, . . . . . 68  
 and in case of vacancies, . . . . . 68  
 precepts to be transmitted by sheriffs to town and city officers, . . . . . 68  
 penalty on city and town officers for neglect, . . . . . 69  
**Of electors of president and vice president of United States, provisions concerning,** . . . . . 69  
 (See *Electors, &c.*)

**OF DISTRICT AND COUNTY OFFICERS.**

**Clerks of the courts,** . . . . . 70-72  
 of police courts, . . . . . 569  
 when may be had to fill vacancies, . . . . . 569  
**Commissioners of insolvency,** . . . . . 70-72  
**County commissioners,** . . . . . 70-72  
**County treasurer,** . . . . . 70-72  
**District attorneys,** . . . . . 70-72  
**Registers of probate and insolvency,** . . . . . 70-72  
 of deeds, . . . . . 70-72

**ELECTIONS — continued.**

**OF TOWN OFFICERS.**

moderator to preside at, . . . . . 160  
 qualification of voters at, . . . . . 159  
 what officers to be chosen at annual meeting, . . . 160  
 what officers to be chosen by written ballot, . . . 161  
 if person elected constable does not accept, new election to be had, . . . . . 161

**ELECTION SERMON.**

compensation of preacher of, . . . . . 48

**ELECTORS OF PRESIDENT AND VICE-PRESIDENT.**

when and how chosen, . . . . . 69  
 names of all electors to be on one ballot, . . . . 69  
 each ballot to contain one inhabitant of each congressional district designated, &c., . . . . . 69  
 votes for, how counted, examined, and returned, &c., . . . . . 59, 69  
 governor to transmit certificate of election, . . . 69  
 if majority not chosen, general court to choose, . . . . . 69  
 vacancies, how filled, . . . . . 69  
 when and where to convene to vote for president, &c., . . . . . 69  
 to vote by ballot, . . . . . 69  
 to make and certify lists of persons voted for, and transmit to president of United States senate, . . . . . 69  
 to proceed conformably to constitution and laws of United States, . . . . . 69  
 compensation of, . . . . . 69  
 duties of sheriffs, city and town officers, &c., at elections of, . . . . . 69

**ELECTRIC TELEGRAPHS.**

provisions concerning, . . . . . 372-374  
 (See *Telegraph Companies.*)

**ELDERS.**

of churches, when a corporation, together with minister or deacons, to take, &c., grants, &c., . . . . . 205

**ELIZABETH ISLANDS.**

one of them, (Sow and Pigs.) ceded to United States, . . . . . 45

**EMBEZZLEMENT.**

by officers, commissaries, or storekeepers, in actual service, . . . . . 122  
 at fires, to be deemed larceny, . . . . . 177  
 by mariners and shipmasters, how far ship owners answerable for, . . . . . 289  
 of estates of deceased persons, proceedings in case of, . . . . . 489  
 of estates of wards, proceedings in case of, . . . 546, 547  
 persons suspected of, in respect to property of insolvent debtors, how may be cited in and examined, . . . . . 597  
 of property the subject of larceny, to be deemed simple larceny, . . . . . 799  
 by persons in state treasury, . . . . . 799, 800  
 by town, city, or county officers, . . . . . 800  
 by officers or servants of any incorporated company, . . . . . 800  
 by clerks or servants of individuals or copartnerships, . . . . . 800  
 except apprentices, and those under sixteen years, . . . . . 800  
 by officers or servants of banks, . . . . . 800  
 taking by an accomplice to be deemed taking by officer, &c., . . . . . 800  
 not necessary at trial to identify the particular money, notes, bills, &c., embezzled, . . . . . 800  
 by carriers or other bailees, . . . . . 800

**EMBEZZLEMENT — continued.**

- form of indictment in certain cases of embezzlement, . . . . . 800
- particulars of embezzlement need not be specified, . . . . . 800
- what evidence may be given at trial, . . . . . 800
- what shall not be a variance, . . . . . 800, 841
- how ownership of property embezzled may be proved, . . . . . 841

**ENCAMPMENT.**

- of militia, provisions concerning, . . . . . 105, 106
- (See *Militia*.)

**ENCROACHMENTS.**

- on highways and public places, provisions respecting, . . . . . 251

**ENGINEERS.**

- of fire departments, powers and duties of, . . . 178-181
- (See *Fire Departments*.)

**ENGINEMEN.**

- to be appointed by selectmen, &c., where there is no fire department, . . . . . 177
- number of, to each engine, . . . . . 177
- axe-men to be selected from, . . . . . 177
- annual meeting of, for choice of officers, &c., . . . 177
- may make rules and regulations, and annex penalties thereto, . . . . . 177
- such rules subject to approval of selectmen, &c., . . . . . 177
- such penalties not to exceed ten dollars, to be recovered by clerk, . . . . . 177
- to meet once a month to examine engine, &c., . . . 177
- general duties of, . . . . . 177
- if negligent, may be discharged by selectmen, &c., . . . . . 178
- certain provisions concerning compensation of, to be in force in places where adopted, . . . 178
- chief engineer, &c., to certify lists to assessors, . . . . . 178
- assessors to examine and certify lists to treasurer, . . . . . 178
- treasurers to pay, . . . . . 178
- penalties for neglect, and remedies, . . . . . 178
- how exempted from military duty, . . . . . 93
- For private engines,** may be appointed by selectmen, &c., upon application of owners, . . . . . 177
- if selectmen refuse, county commissioners may appoint, . . . . . 177
- such engine-men to live near engine, &c., 177, 178
- In Boston,** exempt from serving as jurors, . . . 680
- In other places,** exempt from serving as jurors by vote of town, or council of cities, . . . . . 680

**ENGINES, FIRE.**

- different kinds of, provided in towns, how manned, . . . . . 177
- penalty for maliciously injuring, &c., . . . . . 178
- Private,** to be kept where selectmen, &c., direct, if owners do not agree, . . . . . 177
- punishment for wilfully, &c., injuring, and apparatus, within twenty-four hours of fire, . . . . . 796
- for such injury during the burning, . . . 796, 797

**ENGRAVING.**

- plates, &c., for forging or counterfeiting bank notes, how punished, . . . . . 808
- moulds for making counterfeit coin, . . . . . 810
- shop bills resembling bank bills, &c., . . . . . 811
- convicts in state prison not to be employed in, . . . . . 874

**ENTERING.**

- dwelling house in night time, without breaking,

**ENTERING — continued.**

- with intent to commit felony, no person being put in fear, how punished, . . . 797
- any building, ship, or vessel, with such intent, . . . . . 797
- (See *Breaking and Entering*.)

**ENTRY.**

- Into lands,** rights of, not defeated by descent or discontinuance, . . . . . 692
- not to be made except in cases allowed by law, and peaceably, . . . . . 707
- need not be proved in writ of entry, . . . . . 692
- for breach of condition of mortgage, and to foreclose same, . . . . . 712
- affidavit and certificate of, in such case, to be recorded, . . . . . 712, 713
- Writ of,** except on demandant's own seisin, abolished, saving certain rights, . . . . . 696
- (See *Real Actions, Forcible Entry and Detainer*.)
- limitation of right of, upon lands, . . . . . 775, 776
- what it must be, and how continued, to be effectual, . . . . . 776
- provisions concerning, . . . . . 692-696
- Of actions and appeals,** when to be made. (See *Actions, Appeals*.)
- Of exceptions.** (See *Exceptions*.)

**ENVELOPES.**

- for voting, provisions concerning, . . . . . 58, 59
- (See *Elections*.)

**EQUITY.**

- JURISDICTION OF SUPREME JUDICIAL COURT.**
- supreme court to have full equity powers, . . . 558
- to have exclusive jurisdiction of all cases where relief in equity is prayed for, . . . 558
- may issue writs necessary to secure justice and equity to courts, corporations, and individuals, . . . . . 558
- To have jurisdiction in equity in the following cases:—**
- for redemption and foreclosure of mortgages, . . . . . 538, 714, 717
- for enforcing and regulating trusts, 501-503, 558
- for appointment of trustees for separate property of, and damages awarded to, married women in certain cases, . . . . . 538
- for specific performance of written contracts, . . . . . 559, 575
- to compel redelivery of goods secreted and withheld from owner, . . . . . 559
- to recover of heirs, devisees, &c., payment of deceased's debts in certain cases, 507, 508
- for contribution between devisees, legatees, heirs, and persons liable to same debt when more than one person is liable, . . . . . 480, 508, 559
- for contribution among devisees when land of one or more is taken for dower, . . . . . 480
- in other cases where there are more than two parties having distinct rights, . . . 559
- between joint tenants, tenants, tenants in common, and their representatives, . . . 559
- between trustees, co-executors, co-administrators, and their representatives, . . . 559
- for waste and nuisance, . . . . . 559, 710, 711
- upon accounts which cannot conveniently be adjusted at law, . . . . . 559
- creditors' bills, . . . . . 559
- cases of fraud, and conveyances of real estate in nature of mortgages, . . . . . 559
- cases of accident and mistake, . . . . . 559
- bills of discovery, . . . . . 559

**EQUITY—continued.**

in case of sales of real estate for taxes, . . . 86  
of illegal appropriations of money by towns, . . . . . 165  
to compel conveyance of legal estate to grantee of equitable estates tail, . . . 466  
for redemption by debtor of land set off on execution, . . . . . 520  
in controversies between loan fund associations and members, . . . . . 335  
in cases arising out of railroad mortgages, . . . . . 366, 367  
for closing corporations, and in questions arising upon expiration, &c., of charters, . . . . . 388, 389  
when bank bills are unlawfully detained, . . . 307  
for partition of water rights, mill privileges, &c., between tenants in common, . . . 706  
by one mill proprietor against another to compel alterations of dams, . . . . . 761  
by creditors, against two or more such proprietors, . . . . . 761  
respecting the liability of officers and stockholders, &c., of corporations, 309, 327, 386  
illegal proceedings, insolvency, &c., of corporations, . . . . . 301, 312, 316, 321  
division between tenants for life, &c., of sums allowed to tenants in real actions for improvement, . . . . . 696  
the unauthorized use of trade marks and names, . . . . . 298  
the prevention of unauthorized erection of stables and bowling alleys, . . . . . 453, 463  
for discovery of amount of loss by embezzlement on board of vessels, and apportionment of same, . . . . . 289  
for compelling actions to be brought to settle titles to real estate, . . . . . 696  
to enforce performance by railroad corporations of orders of county commissioners, &c., . . . . . 355, 357, 358  
to limit period of liability of banks surrendering their charters, . . . . . 313  
for superintendence of the proceedings of courts of insolvency, . . . . . 582  
for restraining town agents from purchasing, &c., liquor contrary to law, . . . . . 441

**PROCEEDINGS IN EQUITY.**

cases in equity, how commenced, . . . . . 559  
upon bill filed, subpoena, how to issue, . . . . . 622  
subpoena, how served, . . . . . 624  
discovery, how sought, and answers, how made, 559  
bills in, to be indorsed before entry if brought by persons living out of state, . . . . . 622  
when may be required to be indorsed after entry, or indorser changed, . . . . . 657  
when bill in, for redemption of mortgage, is inserted in writ, what shall be deemed commencement of action, . . . . . 714  
defence in equity to be by demurrer, plea, or answer, . . . . . 559  
demurrer in, to be accompanied by certificate that it is not intended for delay, . . . 559  
answer to be on oath, unless waived, . . . . . 559  
cases in equity, and motions thereon, to be first heard by single judge, . . . . . 559  
rule days to be established for equity business, 560  
court to be always open for hearings, making decrees, &c., . . . . . 560  
cases in, to be entered with probate appeals on separate docket, . . . . . 560

**EQUITY—continued.**

orders and decrees in equity by single judge to bear date of day when entered, and day to be noted by clerk, . . . . . 560  
process on final decrees of single judge not to issue until thirty days from entry thereof, unless waiver of adverse party is filed, . . . . . 560  
cases pending in one county may be heard in any other, . . . . . 560  
orders and decrees in such cases to be transmitted to, and entered by clerk in, proper county, . . . . . 560  
not to be made until notice given to adverse party or his counsel, . . . . . 561  
may be argued in writing in such cases, and proceedings thereon, . . . . . 561  
court may frame issues of fact for jury in supreme or superior court, . . . . . 561  
may issue writs of seisin or execution to enforce decrees, . . . . . 561  
one justice of court to be designated to attend in Boston, and hear equity cases at all times, and he may, by rescript, make decrees in any county, . . . . . 561  
papers in cases may be taken from files by counsel for use before court, . . . . . 561  
rules to be made for conducting business and regulating practice in equity, . . . 561  
single judge may, in cases heard for final decree, report evidence and reserve questions of law for full court, . . . . . 560  
evidence to be taken as in suits at law, . . . . . 678  
in appeals, . . . . . 561  
affidavits may be used in, as heretofore, . . . 678  
**Appeal** from final decree of single judge, and proceedings thereon, . . . . . 560  
testimony to be reported, and rules shall be made therefor, . . . . . 561  
no oral testimony to be heard before full court except in special cases, . . . . . 561  
in case of such appeal, all interlocutory orders may be revised, . . . . . 560  
single judge may make orders for appointment of receivers, of injunctions, or prohibition, until appeal is heard, . . 560  
appeal from interlocutory decree may be had, and effect of, . . . . . 560  
case may be reported upon interlocutory questions for decision of full court, . 560  
when by accident appeals from final decrees are not duly entered, full court may within one year allow entry thereof, . 560  
**Costs in**, where discovery only, and not relief, are sought, . . . . . 781, 782  
where no special provision is made, . . . . . 782  
not to exceed similar charges in suits at law, . . . . . 782

**IN SUPERIOR COURT.**

respecting waste and nuisance, . . . . . 710, 711  
for redemption of mortgages, . . . . . 714  
to determine rights of the several attaching creditors in certain cases, . . . . . 629, 630

**PROBATE COURT.**

concerning trusts created by will, . . . . . 503

**EQUITY OF REDEMPTION.**

(See *Mortgages, Execution.*)

**ERROR.**

in courts of inferior jurisdiction, how prevented and corrected by supreme court, . . . 553



**ERROR—continued.**

circumstantial, not to abate writs, processes, &c., of courts, . . . . . 657

**Writ of, in civil cases, may be brought in supreme court, . . . . . 553**

to be indorsed before entry when all plaintiffs live out of state, . . . . . 622

when indorser of may be required or changed after entry, . . . . . 657

may be brought by administrator de bonis non, on judgment rendered by previous executor, &c., . . . . . 652

limitation of, . . . . . 745, 746

not to stay execution, unless bond, with sureties, be given to defendant; condition of bond, . . . . . 746

penal sum of such bond, and sufficiency of sureties, how determined, . . . . . 746

bond to be filed in clerk's office, and execution stayed or superseded, . . . . . 746

costs to be awarded to prevailing party, . . 746

what damages for delay shall be adjudged to defendant, if judgment is affirmed, judgment not to be reversed for certain defects in form, . . . . . 745

nor for not being in conformity with the allegations of the parties, . . . . . 745

nor for error in law, except after verdict, nor for mistake in the venue, . . . . . 745

assignment of errors, &c.; to be according to the common law, and usage in the state, . . . . . 746

**In criminal cases, may be brought at any time after judgment, and entered in any county, . . . . . 746**

case to be examined without delay, but examination may be adjourned, . . . . . 746

shall not stay execution of sentence, unless allowed by a judge of supreme court, with an order for stay, . . . . . 746

when stay of proceedings is ordered, judge may make orders as to custody of plaintiff in error, in letting him to bail, shall not issue in capital cases, unless allowed by a judge of supreme court, after notice to attorney-general, &c., . . 746

for errors apparent on the record, not prevented by proceedings on appeals, new trials, &c., . . . . . 844

when final judgment is reversed for error in sentence, court may render judgment, or remand the case for that purpose, . . . . . 746

if defendant is discharged, the legal costs shall be borne by state, . . . . . 746

**In civil and criminal cases, not capital, may issue, of course, from supreme court, . 745**

**ESCAPE.**

of debtor arrested or committed on execution, remedy of creditor against officer or debtor, . . . . . 641

from jail, &c, report of to be made, . . . . . 866

from prison, penalty on persons aiding, . . . 813

from officer, penalty on persons aiding, . . . 813

penalty on officer voluntarily or negligently suffering, refusing to arrest or receive, &c., . . . . . 813

of offender from county where offence was committed, officer may pursue and arrest in any county, . . . . . 831

of person sentenced for fines and costs, when sheriff to pay, . . . . . 852

**ESCAPE—continued.**

by reason of insufficiency of jail, county to pay sheriff all money recovered of him for, . . 858

from jail or house of correction, how punished, what removal, &c., of prisoners not to be deemed, . . . . . 864

from state prison, how punished in different cases, . . . . . 876

for aiding or suffering an escape, . . . . . 876

**ESCHEAT.**

claims of commonwealth to property by, how prosecuted, . . . . . 717, 718

**ESTATES BY THE CURTESY.**

who entitled to, . . . . . 471

title to, not affected by advancements, . . . 475

not affected by right of married women to hold separate property, . . . . . 538, 539

**ESTATES IN DOWER.**

provisions concerning, . . . . . 469-471

how recovered by action, . . . . . 697  
(See *Dower*.)

**ESTATES EXPECTANT.**

not to be defeated by alienation, &c., of owner of precedent estate, &c., except in cases of estates tail, . . . . . 466

may be sold, subject to contingency, . . . 472, 473

**ESTATES OF FREEHOLD.**

whether in fee simple, fee tail, or for life, may be recovered by writ of entry, . . . . . 692

persons in possession of, how may compel adverse claimants to bring action to try title, . . . . . 696

when leases are so considered, . . . . . 690, 471

**ESTATES FOR LIFE.**

conveyance of, . . . . . 466

not to be forfeited by conveyance purporting to grant greater estate, . . . . . 466

execution, how levied on, . . . . . 518

how redeemed when levy has been made on rents and profits, . . . . . 521

**ESTATES AT SUFFERANCE.**

liability of tenant to pay rent, . . . . . 471

**ESTATES TAIL.**

may be barred by deed of tenant in tail, or of tenant for life and remainder-man in tail, . . . . . 466

liable for debts of tenant in tail, . . . . . 472

in remainder only, not liable for debts, . . . 472

when taken on execution or sold by executors, &c., to be held in fee simple, . . . . . 472, 517

remainders and reversions expectant on, barred where tenant's right of entry or action is barred by limitation, . . . . . 776

**Equitable, how may be conveyed and remainders and reversions barred, &c., . . . 466**

grantee of, may obtain in equity conveyance of legal estate, . . . . . 466

**ESTATES AT WILL.**

all interests in lands to be, if created or conveyed without writing, . . . . . 466

how terminated, . . . . . 472

**ESTATES FOR YEARS.**

not to be forfeited by conveyance purporting to grant greater estate, . . . . . 466

**ESTATES OF PERSONS DECEASED.**

Descent of real estate, . . . . . 474, 475

Distribution of personal estate, . . . . . 485

Insolvent estates, . . . . . 497-500

How disposed of by will, . . . . . 476-480

letters testamentary on, . . . . . 481, 482

Administration of, how granted, &c., . . . 483

special, how granted, &c., . . . . . 484

**ESTATES OF DECEASED, &c.—continued.**

- Executors in their own wrong, . . . . . 485
- Public administrators, . . . . . 486, 488
- Of persons not inhabitants of this state, administration and settlement of such estates, . . . . . 508
- real estate to descend according to laws of this state, personal, according to laws of their own country, . . . . . 508
- proceedings in case of insolvency of, . . . 508

**GENERAL PROVISIONS.**

- subject to payment of deceased's debts, 474, 476, 485
- may be taken for deceased's debts on execution against executors, . . . . . 523
- may be redeemed as if taken during life, . . . . 523
- after redemption not to be taken for other debts, 524
- to whom real estate shall descend, . . . . . 474, 475
- to whom personal estate shall be distributed, . . . . . 485
- when to escheat to commonwealth, . . . . . 485
- inventory of, to be returned within three months by administrator, &c., . . . . . 488
- when need not be returned, . . . . . 488
- Real**, if undivided, to whom taxable, . . . . . 75
- title to which is in dispute, how taxable, . . 75
- when personal is insufficient, may be sold to pay debts, . . . . . 489
- proceeds of such sale to be deemed personal estate, . . . . . 489
- mortgage of, in certain cases, to be deemed personal assets, . . . . . 489, 490
- if redeemed by mortgagor, to be released by executor, &c., . . . . . 490
- taken on execution, to be deemed personal assets, . . . . . 490
- held by executor, &c., may be sold, . . . . . 490
- and may be sold after foreclosure upon obtaining license, . . . . . 490
- if not so sold, how distributed, . . . . . 490
- sales of land by executors and administrators for payment of debts, . . 510, 511, 512
- Personal**, where and to whom taxable, . . . . . 76
- how may be collected, . . . . . 83
- to be accounted for at appraisal, unless, &c., 494
- assets, what to be deemed, . . . . . 489, 490
- may be ordered by probate court to be sold, 494
- and if sold, executor, &c., to account for proceeds, . . . . . 494
- expenses of funeral and last sickness, how paid from, . . . . . 484, 485
- when embezzlement from is suspected, judge may cite and examine suspected persons, . . . . . 489
- Notice of appointment of executor, &c., and payment of debts and legacies.** . . . . . 491, 492
- notice to be given of taking administration, 491
- how evidence of, to be perpetuated, . . . . 491
- when omitted by accident, &c., and when evidence is not perpetuated, . . . . . 491
- limitations of actions by creditors against executors and administrators, . . . . . 491
- proceedings when right of action accrues after two years, . . . . . 491, 492
- administrators de bonis non, appointment, liability, &c., of, . . . . . 492
- provisions not to bar actions against heirs, . . 492
- debts may be paid after one year from notice of appointment by executor, if he has not notice of more demands than the assets will pay, . . . . . 492

**ESTATES OF DECEASED, &c.—continued.**

- when whole estate is thus paid out, executor, &c., not liable to other demands, . . . 492
- when property remaining after payment is insufficient to discharge new demands, it shall be distributed as in case of insolvent estates, . . . . . 493
- when estate is exhausted by charges of administration, allowance to widow, &c., executor, &c., not liable to creditors, . . 493
- when executor, &c., may demand security from legatee, &c., to refund, . . . . . 493
- legacy, &c., may be recovered by action at law without limitation, . . . . . 493
- annuity by will, when payable, . . . . . 493
- suits for, not to be brought against executor within one year after giving bond, . . 493
- apportionment of annuity in certain cases, . . 493
- liability of executors, &c., if they unnecessarily delay collection of debts, &c., . . 493, 494
- claims of executors, &c., may be submitted to arbitration, . . . . . 494
- or be decided by court or jury on appeal, . . 494
- liability of estate of deceased joint debtor, . . 494
- provisions in case of death, removal, &c., of executors, &c., . . . . . 503, 504
- Accounts and settlements, &c.,** . . . . . 494, 495
- personal estate, how accounted for, . . . . . 494
- executors, &c., to be charged with increase and allowed for decrease of appraisal, 494
- court may order sale of personal estate and outstanding claims, . . . . . 494, 495
- executors, &c., may transfer mortgages, . . 495
- not chargeable with bad debts, . . . . . 495
- chargeable with certain effects not in inventory, . . . . . 495
- and with income of real estate, if received, . . . . . 495
- to render account within one year, and further accounts when required, . . . . . 495
- accounts may be allowed on oath of one only of joint executors, &c., . . . . . 504
- how liable for not rendering accounts, . . . 495
- allowance to, for services, . . . . . 495
- accounts settled, in what cases may be opened, . . . . . 495
- costs recovered against executors, &c., how paid and allowed, . . . . . 496
- final discharge of executors, &c., and evidence thereof perpetuated, . . . . . 504
- money due, if not claimed, to be deposited, and how to be paid out afterwards, . . 504
- claims may be compromised, . . . . . 504
- and certain interests in real and personal estate released, . . . . . 504, 505
- Bonds**, provisions concerning by executors, administrators, &c., 481, 483, 486, 505, 506, 507

**LIABILITY OF HEIRS, &c., FOR DEBTS OF DECEASED.**

- estate of deceased in hands of heirs, &c., liable for certain debts, . . . . . 507
- mode of proceeding in such case, . . . . . 507
- estates of heirs, &c., liable for such debts after death of heir, &c., . . . . . 507
- if more than one is liable for debt, creditor may proceed in equity, . . . . . 507
- case of insolvency of heir, &c., . . . . . 507, 508
- action not to be dismissed for not including all who might be defendants, . . . . . 508
- new defendants may be summoned in, and amendments allowed, . . . . . 508

**ESTATES OF DECEASED, &c.—continued.**  
 heirs, &c., liable to contribution between themselves, . . . . . 508

**EVIDENCE.**  
 no person to be excluded from giving, by reason of crime or interest, . . . . . 673  
 nor by reason of non-belief in any religion, but conviction of crime, and disbelief in the existence of God, may be shown to affect credibility, . . . . . 673  
 parties may be witnesses, and their wives in certain cases, . . . . . 673, 674  
 and their depositions may be taken, . . . . . 678  
 of the truth of the matter may be given in evidence in justification by defendant in civil actions for libel and slander, . . . . . 662  
 justifying in actions of slander and libel not proof of malice, . . . . . 662  
 rules of, not changed by laws relating to pleading and practice, . . . . . 663  
 declarations and other pleadings not to be, . . . . . 661  
 offer of judgment not to be in certain cases, . . . . . 661  
 answer of defendant on one matter not to be evidence against him upon issue joined on another matter in same answer, . . . . . 662  
 of entry for breach of condition broken, and to foreclose a mortgage of real estate, how perpetuated, . . . . . 712  
 of sales under mortgages of real estate with power of sale, how perpetuated, . . . . . 716  
 of notice to foreclose mortgage of personal property, . . . . . 756  
 copy of depositions to perpetuate testimony, when admissible, . . . . . 678  
 assignment of an estate of an insolvent debtor conclusive of assignee's authority to sue, . . . . . 587  
 what may be shown in certain cases of embezzlement, . . . . . 800  
 what will not be a variance, . . . . . 800  
 what need not be shown on trial of receivers of stolen goods, &c., . . . . . 801  
 on trial for fraudulent over issue of stock, or of false entries of transfers of, books themselves to be evidence, . . . . . 802  
 in prosecutions for forgery or counterfeiting bank bills, or United States securities, testimony of president and cashier, when may be dispensed with, . . . . . 809  
 certificates under oath of secretary of the treasury admissible, . . . . . 809  
 possessing and uttering a mutilated bank bill, when evidence of mutilation, . . . . . 810  
 in case of malicious gathering up and retaining bank bills, each bill need not be proved, . . . . . 810  
 in trials for lottery cases, defendant to prove genuineness of tickets sold by him, . . . . . 824  
 by depositions, how taken, . . . . . 674-678  
**In equity,** shall be taken as in actions at law, . . . . . 678  
 but not orally before full court, . . . . . 561  
 affidavits may be used as heretofore, . . . . . 678  
 taken orally before a single judge, may be reported to full court, . . . . . 561  
 for special reasons full court may allow other evidence to be taken, . . . . . 561  
**Proof of statutes and laws,** . . . . . 678, 679  
 records and proceedings of courts of other states, how authenticated, . . . . . 678  
 printed copies, published by authority, of acts and resolves of their state, to be admitted as sufficient, . . . . . 678

**EVIDENCE—continued.**  
 of laws of other states, when to be sufficient, 678  
 unwritten law of other states and territories, how proved, . . . . . 679  
 the existence, effect, and tenor of foreign laws, how proved, . . . . . 679

**EXAMINATIONS.**  
 preliminary, of persons charged with offences, . . . . . 832, 833  
 may be adjourned for not over ten days at one time, . . . . . 832  
 of persons charged with threatening to commit offences, . . . . . 827

**EXAMINERS.**  
 board of, in each county except Suffolk and Nantucket, of whom to consist, . . . . . 149  
 to examine returns of votes for county commissioners, . . . . . 60  
 when to meet for this purpose, . . . . . 60  
 to notify person chosen, . . . . . 60  
 to file returns, after examination, in clerk's office, . . . . . 60  
 penalties for neglect of duty, . . . . . 60  
 to examine and allow accounts of commissioners, . . . . . 149  
 compensation of, . . . . . 149

**EXCEPTIONS.**  
**TAKING EXCEPTIONS, AND PROCEEDINGS BEFORE ENTRY THEREOF.**  
 may be taken, on motions for new trials, and in all cases, civil or criminal, by party aggrieved, by opinion, ruling, &c., of single judge of supreme or superior court in matters of law, . . . . . 566  
 when trial by jury is waived, and case is heard by court, . . . . . 661  
 in cases of information for intrusion, . . . . . 719  
 in trials of libel for divorce, . . . . . 533  
 to decisions on demurrers in certain cases, . . . . . 661  
 by third parties, in certain cases, on adjudication, that an amendment is for same cause of action, . . . . . 662, 663  
 to be reduced to writing in a summary mode, filed with clerk, notice given to adverse party, and presented to court within three days after verdict, and before adjournment of court, . . . . . 566  
 further time may be allowed by court, not exceeding five days, unless by consent of adverse party, . . . . . 566  
 on being examined and found correct, shall be allowed by judge, . . . . . 566  
 adverse party to have an opportunity to be heard upon allowance of, in all cases, . . . . . 566  
 to be restored to files of court within five days after being presented to judge, with his certificate allowing or disallowing same, . . . . . 566  
 unless judge finds further time, not exceeding ten days, except for certain reasons necessary, . . . . . 566, 567  
 reasons for delay in restoring of, to files, to be certified by judge, . . . . . 566, 567  
 trial of fact, not to be prevented or delayed by allowance of, . . . . . 567  
 unless adjudged frivolous, or intended for delay, no judgment to be entered, . . . . . 567  
 if adjudged frivolous, &c., sentence may be passed, or judgment and execution awarded or stayed on terms, notwithstanding allowance of, . . . . . 567





**EXECUTION**—*continued.*

not to issue against absent defendants until one year after judgment, unless bond is given, . . . . . 605, 646  
 on judgment appealed from, unless appeal is waived, . . . . . 563, 607  
**not to be taken out by demandant on writ of entry, on judgment for seisin, if there is judgment against him for balance due for improvements, until he has paid balance, . . . . . 694**  
**original not to issue unless within one year after party is entitled to sue out same, 686**  
**writ of seisin on a writ of entry may, in certain cases, issue after a year, . . . . 695**  
**alias and other successive, not to issue unless within five years after return day of preceding, . . . . . 686**  
**May be obtained on scire facias, after time for taking out executions, if judgment is unsatisfied, . . . . . 686**  
 when property sold on preceding, was not liable therefor, and damages have been recovered of officer or creditor, . . . 686  
 when, after execution and levy are returned and recorded, it is ascertained that the property levied on cannot be held thereby, . . . . . 519  
 when an execution against a corporation has been satisfied in part by service on a member, and the property or damages are recovered back from creditor or officer, . . . . . 686  
**Recording of, in registry of deeds, when and how required when issued on judgment in a writ of entry for possession of land, . . . . . 690**  
**Set-off of executions, when and how may be made, . . . . . 687**  
  
**LEVY AND SET-OFF ON REAL ESTATE.**  
 all real estate of debtors, including lands fraudulently conveyed, &c., may be levied on, . . . . . 516, 517  
 also all rights of entry into lands, and redeeming mortgaged lands, . . . . . 516  
 estates tail, which can be barred by the person entitled thereto, may be levied on, and with what effect, . . . . . 472, 517  
 levy to be considered as made when land is taken, . . . . . 519  
 estate levied on, to be appraised by three disinterested, &c., men, who shall be sworn, and described in all cases by metes and bounds or otherwise, so that it may be identified, 517  
 after land is taken, notice be given to debtor by officer, and reasonable time allowed for appointment of appraiser, . . . . 519  
 such description may be in officer's return or certificate of appraisers, . . . . . 517  
 and contained in either, may be adopted or referred to in the other, . . . . . 517  
 appraisers, how appointed, . . . . . 517, 526  
 to be sworn before a justice of the peace or the officer, . . . . . 517  
 to proceed to view land with officer, and examine it so as to form estimate of value, 517  
 certificate of appraisement, to be signed by, and indorsed on execution, . . . . . 517  
 dissent and refusal to sign by one of, not to vitiate levy, if he was sworn and acted with the others, . . . . . 517

**EXECUTION**—*continued.*

to value estate as fee simple in possession, unless indorsement on the execution describes it to be a less estate, . . . . 517  
 may appraise several parcels of land, if levied on at same time, separately or together, . . . . . 517  
 same may appraise several parcels, when taken successively, or new may be appointed for each, . . . . . 517  
**land of banks taken on, may be sold at auction, 308**  
 what notice of sale of, to be given by the officer, . . . . . 308  
 sale of, may be adjourned seven days at a time, . . . . . 308  
 mortgaged to banks may be sold on execution, 308  
 cashier, &c., in such case to furnish officer with copy of notice, &c., . . . . . 308  
 and officer, if requested, to file notice in registry of deeds, . . . . . 308  
 mortgages on real estate, held by insurance companies, may be sold on, . . . . . 322  
 directors of insurance companies neglecting to pay, &c., to be personally liable, . . . 327  
 against a corporation, stockholders whereof are liable for it, debts, how may be satisfied, . . . . . 340  
 seizure and sale of franchise of corporation, 387, 388  
 how levy to be made on share of tenant in common, &c., or on mill, &c., that is not divisible, when debtor's interest is more than sufficient to satisfy, &c., 517, 518  
 levy on undivided part of estate makes judgment debtor tenant in common with owner thereof, . . . . . 517, 518  
 passes all debtor's freehold estate, unless greater than in description, . . . . . 517  
**Estates for life, may be appraised and set off like other real estate, or rents and profits may be levied on, . . . . . 518**  
 when rents and profits are levied on, their annual value to be estimated by appraisers, . . . . . 518  
 estate set off for such time as will satisfy demand, if life estate endures so long, 518  
 method of computation in levies on rents and profits, . . . . . 518  
**Estates under lease to a third person, levy on binds lessee to pay rent wholly or in part to the creditor, . . . . . 518**  
 what seisin, &c., of premises shall be delivered to creditor, &c., by officer in different cases, . . . . . 518  
**Return of execution and certificate of doings thereon, where to be made, . . . . . 518**  
 what facts shall be set forth in the officer's return or certificate, . . . . . 519, 520  
 execution and return to be recorded in registry of deeds within three months of completion of levy, . . . . . 518  
 such record of justice's execution to be prima facie evidence of regularity, . . 518  
 expense of record to be added to charge of levy, . . . . . 518  
 levy, if not so recorded, void as against attaching creditors and purchasers without notice, . . . . . 518, 519  
 though not so recorded until after three months, valid as against attachments and conveyances made afterwards, . . 519  
 if void, creditor may waive it, if not returned and recorded, . . . . . 519

**EXECUTION — continued.**

- if returned and recorded, creditor may have alias execution on scire facias, . . . . . 519
- proceedings in such case, . . . . . 519
- how such estates may be redeemed, . . . . . 520, 521

**SET-OFF, &C., OF MORTGAGED LANDS.**

- Rights of redeeming mortgaged estate** may be set off on execution, . . . . . 521
- and appraisers shall deduct encumbrance or mortgage, when known, from estimated value, and sum so deducted shall be stated in the return, . . . . . 521
- when mortgage, &c., is not allowed for, creditor to hold premises, &c., . . . . . 521
- when such estates are set off, how may be redeemed, . . . . . 521
- if mortgage is paid creditor, how may be redeemed, . . . . . 521
- if not redeemed, creditor to hold premises, if right levied on is not redeemed within one year, creditor to hold premises, . . . . . 521
- when lands are in different counties, may be set off by an officer of either county, . . . . . 523

**SALE, &C., OF MORTGAGED LANDS.**

- Rights of redeeming mortgaged estate** may be sold at auction if creditor so elects, . . . . . 522
- what notice of sale shall be given by officer to debtor, and what notifications to be posted, &c., . . . . . 522
- sale may be adjourned, &c., and what notice to be given of adjournments, . . . . . 522
- levy to take effect from time of giving notice, return may be completed afterwards, . . . . . 522
- decree to be given to purchaser by officer, which must be recorded within three months, . . . . . 522
- mortgaged estates so sold, may be redeemed by judgment debtor within one year, . . . . . 522
- if mortgage is paid by purchaser, how redeemed by debtor, . . . . . 522
- remedies of debtor for recovering right of redemption, . . . . . 522, 523
- when lands are in different counties, may be sold by an officer of either county, . . . . . 523

**LEVY ON PERSONAL PROPERTY.**

- may be levied on personal chattels, . . . . . 687
- on coin, and the same paid to creditor, . . . . . 687
- on bank notes, and other evidences of debt circulated as money, . . . . . 687
- what personal property is exempt from, . . . . . 688
- when ownership or liability of property to be taken is doubtful, officer may require indemnity, . . . . . 688
- goods seized on, to be kept four days at least, if not redeemed, to be sold within fourteen days, . . . . . 688
- Sale, notice of, how given, . . . . . 688**
- if value of goods exceeds three hundred dollars, shall be advertised at request of either party, and may be sold within sixty days, . . . . . 688
- may be adjourned not more than seven days at a time, . . . . . 688
- adjournment of, how notified, . . . . . 688
- if bidder refuses to take and pay for any article, it may be re-sold within ten days, . . . . . 688, 689
- loss on re-sale and damages recovered of bidder, to be applied in payment of execution, . . . . . 688, 689

**EXECUTION — continued.**

- return of, by officer making sale, how made, . . . . . 689
- officer committing fraud in sale or return on, liable to five times actual damages, . . . . . 689
- money received from sale, how applied, . . . . . 689
- how, when there are different attaching creditors, or seizure on different executions, . . . . . 689
- when levied on shares in corporations, or other property not required to be removed, officer to notify officer previously attaching, levying on the same in certain cases, . . . . . 689
- if, after sale, first officer pays over balance to debtor without such notice, he will not be liable on account of second attachment or levy, . . . . . 689
- On shares in corporations, . . . . . 689, 690**
- may be levied on the shares of stockholders in any corporation in this state, . . . . . 689
- if attached in same suit, to be seized and sold like other personal property, . . . . . 689
- if not attached, officer to leave copy of execution with officer of corporation, . . . . . 689
- shares considered as seized when copy is so left, . . . . . 689
- recording officer of corporation to give officer exhibiting an execution certificate of number of debtor's shares, . . . . . 689
- after sale, officer serving execution to leave with recording officer of corporation, within fourteen days, copy of execution and return, . . . . . 689
- purchaser then entitled to certificate of shares purchased by him, . . . . . 689
- entitled also to all dividends which accrued after attachment, if any in the suit, . . . . . 690
- Levy on terms for years, levied on terms of one hundred or more, if fifty years thereof are unexpired, in like manner as on real estate, . . . . . 690**
- other terms for years to be levied on in like manner as personal estate, except debtor to have fourteen days' notice of sale, . . . . . 690
- ARREST OF THE BODY ON.**
- when may be served by arrest of body, . . . . . 634
- affidavit for, before what magistrate to be made, and what to contain, . . . . . 634
- for costs, debtor may be arrested without affidavit, . . . . . 634
- when attorneys at law may be arrested on execution recovered for money collected, . . . . . 634
- arrest not to be made after sunset, without special authority from magistrate, . . . . . 635
- how may be made when debtor has given special bond to jailer to surrender himself in thirty days, . . . . . 640
- debtor, how discharged from, . . . . . 640
- SPECIAL PROVISIONS.**
- if levy is on land, the record title to which is in name of other than debtor, &c., action for possession to be brought within one year, . . . . . 523
- fees and charges of levy to be added to debt, . . . . . 523
- proceedings by heirs, executors, &c., of debtors and creditors, . . . . . 523
- right of redeeming land set off on one execution, may be taken and sold on another, . . . . . 523
- land of deceased persons may be taken on, . . . . . 523
- and may be redeemed as if taken during life time, . . . . . 523, 524



**EXECUTION — continued.**

after redemption, not to be taken for other debts of deceased, . . . . . 524  
 land may be taken on, in favor of executor, . . . 524  
 dower in lands taken on, . . . . . 524  
 lands taken on, in favor of state, to be sold at auction, . . . . . 524  
     redemption of such lands, . . . . . 524  
 homesteads, to the value of eight hundred dollars, exempt from levy on, &c., . . . 524  
 mode of levy when property in which homestead exists exceeds eight hundred dollars in value, . . . . . 526  
 money collected on, if not paid over, officer liable to five times lawful interest, . . . 691  
**Service of**, when in the alternative, may be directed by the creditor, . . . . . 687  
     to be on real or personal estate, as creditor directs, . . . . . 687  
     may be finished by second officer if first dies or becomes unable, . . . . . 690  
     certificate of proceedings, how to be made in such case, . . . . . 690  
     may be finished by officer who begins, although removed from office, . . . . . 690  
     began before, may be completed after return day, . . . . . 690  
     not affected by death of either party, after property is seized, . . . . . 690  
     may be made on corporate property on execution, against corporation, . . . . . 687  
**Suspension of levy on**, how made by reason of prior attachment, . . . . . 690  
     if in such case prior attachment is dissolved, or part of estate is set off or sold on, how long property to be held by seizure on subsequent levy, . . . . . 690  
**Death of party or officer** after commencement of levy, effect of, . . . . . 690  
**Supersedeas of**, in cases of review, . . . . . 746  
**EXECUTIVE DEPARTMENT OF THE GOVERNMENT.**  
 not to exercise legislative or judicial powers, . . 17  
**EXECUTIVE COUNCIL**, (*see Council*), 23, 25, 36  
**EXECUTORS.**  
 to have letters testamentary when will is allowed, 481  
 to give bond, . . . . . 481  
 bond to be approved by judge of probate court, . 505  
     condition of bond, . . . . . 481  
     condition when he is residuary legatee, . . 481  
     in such case, need not return inventory, . . 481  
     such bond not to discharge lien of creditors on real estate, except, &c., . . . 481  
 when exempted from giving bond for proceeds of sale of real estate, . . . . . 505  
 when exempted from giving sureties on bond, 481, 482  
 when new bond may be required of, . . . . . 505  
 refusing to accept trust, &c., letters may be granted to other executors, &c., . . . 482  
 administration during minority of, . . . . . 482  
 in certain cases, administration, with will annexed, to be committed to widow, &c., 482  
     bond in such cases, . . . . . 482  
 of an executor, not to administer estate of first testator, . . . . . 482  
 to return inventory within three months, . . . 488  
 need not return inventory, if they have given bond to pay debts, &c., . . . . . 488  
 may foreclose mortgage, . . . . . 489, 490  
 to hold premises in trust until redeemed, . . . 490  
 may sell real estate held in mortgage, or after foreclosure by obtaining license, . . . 490

**EXECUTORS — continued.**

to give notice of appointment, . . . . . 491  
 limitation of actions against, by creditors, . . . 491  
     when assets are received after two years, . . 491  
     when action fails from defect in form, insufficient service, &c., new one may be commenced, . . . . . 491  
 proceedings when right of action accrues after two years, . . . . . 491, 492  
 not liable to actions within a year, except, &c., 492  
     when not liable for deficiency of assets, . . . 492  
     may be discharged on proof of payment of whole estate, before notice of other demands, . . . . . 492  
         and not required to represent estate insolvent, 492  
     if he pays away part, and remainder of estate is insufficient to pay subsequent demands, to be liable only for part that remains, . . . . . 492, 493  
     if there are two or more such demands, he may represent estate insolvent, . . . . . 493  
 not liable to creditors when estate is exhausted by paying preferred debts, . . . . . 493  
     when may demand security of legatee, &c., to refund, . . . . . 493  
 suits against, for annuity, not to be brought within one year after giving bond, . . 493  
 liability of, in case of unnecessary delay to collect debts, &c., . . . . . 493, 494  
 claims of, &c., may be submitted to arbitration, or decided by court or jury on appeal, . . 494  
     to account for personal estate at appraisal, . . 494  
     to be charged with increase, and allowed for decrease, of appraisal, . . . . . 494  
     upon petition of, court may order sale of personal property and outstanding claims, . 494, 495  
     may transfer mortgages, . . . . . 495  
     not chargeable with bad debts, . . . . . 495  
     chargeable with certain effects not in inventory, with income of real estate, if received, . . 495  
     to render account within one year, and further accounts when required by the court, . 495  
     how liable for not rendering accounts, . . . . 495  
     allowances to, for services, . . . . . 495  
     costs recovered against, how paid and allowed, 496  
     duties and liabilities of, when estate is insolvent, . . . . . 496-499  
         may be sued after eighteen months, if question of insolvency of estate is not settled at that time, . . . . . 499  
         penalty on, for neglect to settle accounts within six months of commissioners' return, . . . . . 499  
 powers and duties of, as to redeeming lands of testator taken, &c., on execution, 523, 524  
 of trustee not required to accept trust, . . . . 501  
 sales of land by, for payment of debts, . . . 510-512  
 provisions common to sales of land by guardians, executors, and administrators, . . 514, 515  
 registers of probate and insolvency not to be in their county, . . . . . 602  
 suits between co-executors and their representatives may be brought in equity in supreme court, . . . . . 559  
 to pay in full judgment recovered for goods attached against the deceased as an officer, . . . . . 648.  
 may voluntarily take upon themselves the prosecution or defence of actions commenced by or against the deceased, . . . . . 648, 649, 651, 652  
     or may be cited in, . . . . . 648, 652

**EXECUTORS — continued.**

if they do not appear in such cases, judgment how entered, . . . . . 648

may apply to county commissioners in cases where the deceased had a right of application and did not apply before his death, . . . . . 650

in actions against, for tort committed by deceased, actual damages only to be recovered, . . . . . 651

of a trustee, carrier, or depositary, who recovers judgment for goods, or the value of goods belonging to others, not to take the same as assets of the estate, but to deliver them to the owner, . . . . . 651

not to account for goods returned upon a judgment of return in replevin, . . . . . 651

writ and execution against, on account of debts due by the deceased, not to run against their bodies nor their own estate, . . . 651

personally liable for costs in actions commenced or prosecuted by themselves, . . . . . 651

execution in such case to be awarded against their bodies and estate personally, . . 651

when judgment is for debt and cost, two executions to issue, one for costs against executor personally, and the other for debt against estate of deceased, . . . 651

costs paid by, may be allowed in their accounts, scire facias may be sued out against, on suggestion of waste, when execution recovered against, for debt of deceased, has been returned unsatisfied, . . . . . 651

may in such case be issued by justices of the peace, . . . . . 605

by or against on judgments recovered for penalty of bond, covenant or agreement, against deceased, when there are subsequent breaches, . . . . . 686

liable in such action for whole debt, . . . 651

death of, not to abate suit commenced, but same may be prosecuted by administrator de bonis non, . . . . . 648-652

dying after judgment by or against him, scire facias may be sued out by or against administrator de bonis non, and a new execution issued, . . . . . 652

execution in such case, how to issue, . . . 652

writ of error may be brought by administrator de bonis non on such judgments, . . . . . 652

in actions by and against executors, how demands by and against the deceased may be set off, . . . . . 670

may be prosecuted in actions for waste committed by deceased, whether actions are commenced before or after his death, . . . . . 709

may tender sums due on mortgages, of which their deceased owned right of redemption, and bring or prosecute suits for redemption, . . . . . 715

shall acknowledge satisfaction, or give release when an execution for possession on a mortgage has been levied, and subsequently paid, . . . . . 715

**EXECUTORS — continued.**

liable to be summoned as trustees on account of debts, legacies, and effects in their hands, . . . . . 723

how, in cases where deceased was summoned as trustee while living, . . . 725, 726

to scire facias on judgment in trustee process, in certain cases, . . . . . 726

**In their own wrong,** when to be regarded as, and liability of, . . . . . 485

how far liable to rightful executor, . . . . 485

not allowed to retain or deduct effects, except, &c., . . . . . 485

**DEATH, REMOVAL, &C., OF EXECUTOR.**

upon death of, administrator de bonis non to be granted, . . . . . 503

may be removed by probate court for cause, and if sole, new one appointed, . . . . . 503, 504

acts of, before removal, to be valid, . . . . 504

marriage of executrix extinguishes her authority to act, . . . . . 504

if there is no other executor, &c., court to appoint, . . . . . 504

may resign by leave of court, . . . . . 504

**ACCOUNTS, DISCHARGES, COMPROMISES, AND RELEASES.**

joint accounts of, may be allowed on oath of one, . . . . . 504

final discharge of, when to be given and recorded, and effect of, . . . . . 504

how to dispose of money not claimed within six months after decree of payment, . . . 504

may be authorized by court to adjust claims by compromise, . . . . . 504

and to release certain interests in estates represented by them, . . . . . 505

provisions concerning suits on bonds, . . . 505-507

**EXECUTORY DEVISE.**

when estate may be sold subject to contingency of, . . . . . 472, 473

**EXHIBITIONS.**

provisions concerning, . . . . . 463

(See *Theatrical Exhibitions.*)

**EXPECTANCY.**

estates in, not to be defeated by alienation, &c., of owner of precedent estate, &c., except in cases of estates tail, . . . . . 466

may be sold, subject to contingency, . . . 472, 473

**EXPLOSIVE SUBSTANCES.**

regulations concerning sale, &c., of, . . . . 460, 461

**EX POST FACTO LAW.**

not to be passed, . . . . . 516

**EXPRESS REPEAL.**

of enumerated acts, by General Statutes, . . . . 881

**EXTINGUISHMENT.**

of fires, provisions concerning, . . . . . 178-181

towns and cities may use water from aqueducts for, . . . . . 375, 376

penalty for wilfully obstructing, . . . . . 796, 797

**EXTORTION.**

of money by threats, attempts at, how punished, . . . . . 793

by taking illegal fees, how punished, . . . . 814

F.

**FACTOR.**  
 in possession of merchandise, to be deemed owner thereof, for purpose of making sale, . . . . . 294  
 contracts or pledges by, concerning merchandise, &c., in his possession, to be binding, . . . . . 294  
 lien of, for expenses and charges, not affected by these provisions, . . . . . 295  
 penalty on, for fraudulently pledging or disposing of property intrusted to him, &c., . . . . . 803

**FAIRHAVEN.**  
 land in, ceded to United States, . . . . . 45  
 harbor, penalty for boarding vessels in, without leave, except, by pilots, &c., . . . 290  
 what to be deemed limits of, for certain purposes, . . . . . 290  
 penalty for taking certain fish in, by persons living out of state, . . . . . 431

**FALL RIVER.**  
 harbor of, penalty for boarding vessels in, without leave, except by pilot, . . . . . 290  
 what to be deemed limits of, for certain purposes, . . . . . 290

**FALMOUTH.**  
 lands in, ceded to United States, . . . . . 44, 45

**FALSE IMPRISONMENT.**  
 actions for damages for, to be brought within two years, . . . . . 777

**FALSE PRETENCES, TOKENS, &c.**  
 jurisdiction of offences of obtaining property by, given to justices of the peace, &c., . 570  
 obtaining property by designedly false intent, how punished, . . . . . 802  
 signature to certain written instruments, . 802  
 representations as to purchaser's means or ability to pay, must be in writing, &c., . . . 802

**FALSELY ASSUMING.**  
 to be a justice, sheriff, &c., how punished, . . 814

**FALSELY PERSONATING ANOTHER.**  
 and thereby obtaining property, to be deemed simple larceny, . . . . . 802

**FARMERS' CLUBS.**  
 properly organized, &c., to receive state publications from secretary of board of agriculture, . . . . . 378  
 securing such benefits, to make annual returns to secretary of board, . . . . . 379

**FARMING UTENSILS.**  
 exempted from taxation, . . . . . 74

**FAST DAY.**  
 legislature not to sit for ordinary business, and public offices to be closed, . . . . . 49  
 courts not to be opened, except, &c., . . . . 617, 618  
 bills of exchange, &c., maturing on, when payable, 293

**FATHER.**  
 retains the common law right to assign his minor child's services, . . . . . 551  
 to support his poor children and grandchildren, . . . . . 392, 545, 546  
 may appoint, by will, a guardian for his minor children, . . . . . 543  
 of bastard child, liability of, &c., . . . . . 405  
 when to inherit children's property, . . . . 474  
 if competent, shall have custody and tuition

**FATHER—continued.**  
 of his minor children under guardianship of others, . . . . . 543  
 rights of, how affected by adoption of children, . . . . . 547, 548

**FEATHERS.**  
 not to be sold by pedlers, &c., . . . . . 282

**FEBRUARY, TWENTY-SECOND.**  
 legislature not to sit for ordinary business, and public offices to be closed, . . . . . 49  
 courts not to be opened, except, &c., . . . . 617, 618  
 bills of exchange, &c., maturing on, when payable, . . . . . 293

**FEES.**  
 of officers and jurors in jury trials before justices of the peace, &c., . . . . . 606, 607  
 of magistrates and jailers in cases of poor debtors arrested or committed on mesne process and execution, . . . . 641  
 for approving bail bonds, . . . . . 642  
 of court and messenger in cases of insolvent debtors, . . . . . 600  
 how paid, accounted for, &c., . . . . . 600  
 in cases, before police courts, how made up, taxed, certified, paid, and accounted for, . . . 572-574  
 for copies to be indorsed thereon, . . . . 572  
 of sheriffs, witnesses, &c., taxed and allowed before justices of peace and remaining in their hands three years, to be accounted for, and paid to county treasurer, . 610  
 not to be received by judges and registers of probate and insolvency, . . . . . 604  
 extorting illegal, how punished, . . . . . 814  
 specific account of fees received to be given when required, . . . . . 788  
 penalty for refusal or neglect so to do, . . 788  
 of officer serving process to be indorsed on writ, &c., . . . . . 788  
 otherwise shall not be allowed, . . . . . 788

**Of appraisers, . . . . . 786, 787**  
**Clerks of the courts, . . . . . 563, 612, 784, 785**  
 how to be accounted for, . . . . . 614  
 for recording attachments, . . . . . 626, 627

**Commissioners, . . . . . 786, 787**  
**Constables, . . . . . 786**  
 when not entitled to witness fees in criminal cases, . . . . . 786

**Coroners, . . . . . 786**  
 when not entitled to witness fees in criminal cases, . . . . . 786

**Jailers in the county of Suffolk, . . . . . 786**  
**Jurors, . . . . . 786**  
**Justices of the peace, . . . . . 783, 784, 787**  
 when two or more are required to attend, what each entitled to, . . . . . 784  
 district attorney may disallow in criminal cases, when, &c., . . . . . 788  
 and police courts for discharging poor convicts, . . . . . 879  
 appellants in criminal cases not required to advance, . . . . . 843  
 when not allowed for issuing warrants in criminal cases, . . . . . 570, 608

**Ministers, for marriages, . . . . . 787**  
**Notaries public, . . . . . 787**  
**Registers of deeds, . . . . . 787**



**FEEs**—*continued.*

Secretary of the commonwealth, . . . . . 787

Sheriffs and their deputies, . . . . . 785

when not entitled to fees as witness in criminal cases, . . . . . 786

Town clerks, . . . . . 787

for recording mortgages of personal property, . . . . . 767

Witnesses, . . . . . 786

to certify in writing amount of travel and attendance, . . . . . 786

in contested elections, committee must certify there was reasonable cause for attendance, . . . . . 787

in criminal cases, when to be apportioned, . . . . . 788

when not to be allowed, . . . . . 788

provisions as to witnesses' certificates, . . . . . 788

officers not to be interested therein, . . . . . 788

Of recording officers, in cases not expressly provided for, . . . . . 788

word "page" defined, . . . . . 788

printed or written list of fees to be posted up in public office, . . . . . 788

**FELONY.**

no person to be declared guilty of, by legislature, . . . . . 16

assaults with intent to commit, how punished, 793, 794

what crime shall be deemed, . . . . . 825

indictments for, not to be invalid by omission of certain words, . . . . . 825

accessories before the fact to, punishable as principals, . . . . . 825, 826

when, how, and where to be tried, . . . . . 826

accessories after the fact to, who shall be deemed, and how punished, . . . . . 826

when, where, and how to be tried, . . . . . 826

attempts to commit, how punishable, . . . . . 826

no person indicted for, shall be tried unless personally present, . . . . . 841

when persons indicted for, are convicted of part of charge and acquitted of residue, how to be sentenced, . . . . . 842

**FEMALE.**

discharged from custody of guardian upon marriage, . . . . . 546

marriage of, extinguishes her authority as executrix, administratrix, and guardian, . . . . . 504, 546

unmarried, or minor, whose father is deceased, property of, exempted from taxation, . . . . . 74

not to be arrested on civil process except for tort, . . . . . 634

**FEMALE CONVICT.**

not to be sent to state prison, . . . . . 845, 846

sentence of, with nursing infant, . . . . . 845

may be transferred to workhouse, if in state of pregnancy, . . . . . 859

county to pay two dollars a week for her support, . . . . . 859

if mother of a child under eighteen months of age, when may have custody of it, . . . . . 861

not to be kept in same room with male prisoners, . . . . . 862

**FEME COVERT.** (*See Married Women.*)

**FENCE.**

across highways &c., how may be removed, &c., . . . . . 251

when not to be removed, . . . . . 246

when adjudged nuisance, and taken down, costs, how paid, . . . . . 251

when to be deemed boundaries of highways, . . . . . 251

what to be legal and sufficient, . . . . . 182

Partition, to be maintained equally, by adjoining occupants of land, . . . . . 182

**FENCE**—*continued.*

proceedings, when party neglects to repair, &c., . . . . . 182, 183

when repaired by one not the owner, expense, how recovered, . . . . . 183

controversies concerning, how determined, . . . . . 183

assignment of shares in, made by fence viewers, to be recorded, . . . . . 183

to be binding upon occupants and their successors, . . . . . 183

agreement respecting, when so recorded, to bind owners and heir forever, unless, &c., . . . . . 184

if party neglects to maintain part assigned to him, aggrieved party may maintain and recover double damages, . . . . . 183

compensation may be allowed for building, &c., more than just share of, . . . . . 183

to be maintained throughout the year, unless, &c., . . . . . 183

when lands are bounded by water, . . . . . 183

when lands have been occupied in common, . . . . . 183, 184

owner exempted from maintaining, by laying lands in common, . . . . . 184

not to be removed on laying lands in common if, &c., . . . . . 184

how to be paid for, when unenclosed land is fenced, . . . . . 184

**Water fences**, how to be made, &c., . . . . . 184

of general fields, . . . . . 382

penalty for willfully injuring, &c., . . . . . 805, 806

**FENCE VIEWERS.**

two or more to be chosen at town meeting, . . . . . 160

to be sworn, . . . . . 161

to survey and direct repair, &c., of partition fences, . . . . . 182, 183

to give notice to delinquents if fences are deficient, . . . . . 182, 183

may assign shares in partition fences, and direct time for making repairs, . . . . . 183

assignment to be recorded in town clerk's office, . . . . . 183

may order compensation for repairing, &c., more than just share of fence, . . . . . 183

may determine where fences shall be placed when lands are bounded by water, . . . . . 183

may divide or assign fences where land has been unenclosed, &c., . . . . . 183, 184

may determine what one occupant shall pay another for fence in certain cases, . . . . . 184

when to be taken from different towns to decide concerning fences, . . . . . 184

penalty on, for neglect of duty, . . . . . 184

fees of, and how recovered, . . . . . 184

**FERRY.**

not to be kept, and pay taken, without license from county commissioners, . . . . . 252

license for, may be revoked by commissioners, . . . . . 252

tolls at, to be established by commissioners, . . . . . 252

certain ferries exempted from these conditions, . . . . . 252

penalty for keeping, without authority, . . . . . 253

may be established by commissioners where they judge necessary, . . . . . 253

when towns to maintain such ferry, . . . . . 253

when two towns to maintain, . . . . . 253

penalty on towns for neglect in such cases, . . . . . 253

**FERRYMEN.**

on a post road, exempted from military duty, . . . . . 92

to be licensed by county commissioners, . . . . . 252

to give bond, . . . . . 252

to keep safe boats, &c., . . . . . 252

**FERRYMEN — continued.**

- to give ready attendance on passengers on all occasions, . . . . . 253
- penalty on, for want of such boats and attendance, . . . . . 253
- liability on bond for injuries caused by negligence, . . . . . 253
- action on bond, how brought, . . . . . 253
- when exempt from serving as jurors, . . . . . 680

**FICTITIOUS NAMES.**

- may be inserted in writs against defendants unknown, . . . . . 622

**FIDDLERS, COMMON.**

- how punished, . . . . . 820, 821

**FIDUCIARY DEBTS.**

- not barred by discharge in insolvency, . . . . . 592

**FIELD DRIVERS.**

- to be chosen at annual town meeting, . . . . . 160
- to be sworn, . . . . . 161
- to take up, &c., and impound cattle, sheep, &c., going at large contrary to law, . . . . . 185
- may retake, within seven days, beasts that escape or are rescued, . . . . . 186
- entitled to recover fees by action, if cattle go at large on Lord's day, . . . . . 185
- fees of, for distraining beasts, . . . . . 185

**FIGHTING.**

- birds or animals, penalty for exhibition of, . . . . . 464
- penalty for being present at such exhibition, . . . . . 464

**FINAL JUDGMENT.**

- what intended, when attachment, &c., is affected thereby, . . . . . 555, 563, 567, 625

**FINANCE.**

- public officers and boards to make and submit estimates to speaker of house of expenditures required in their departments, . . . . . 139
- officers disbursing money to make annual report to auditor, . . . . . 139
- money to be paid from treasury only upon warrant of governor, under appropriation of legislature, except, &c., . . . . . 24, 139
- principal and interest of public debt to be paid when due, . . . . . 139
- no warrant to be drawn for payment of any account unless certified by auditor, except, &c., . . . . . 139
- balances of appropriations may be paid in succeeding year, but not afterwards, . . . . . 139
- payments to be withheld from persons having unadjusted accounts with state, . . . . . 139
- to be made from ordinary revenue, unless otherwise provided, . . . . . 139
- cash on hand at beginning of year to be carried to account of ordinary revenue of that year, . . . . . 139
- notes for money borrowed in anticipation of revenue, how signed, countersigned, &c., . . . . . 139, 140
- interest on temporary loans to be paid semi-annually, . . . . . 140
- accounts of expenditures, &c., incurred by order of either branch of legislature, to be approved by presiding officer, and audited by auditor, &c., . . . . . 140
- such orders not to exceed one hundred dollars, without a specific appropriation previously made, . . . . . 140
- "incidental expenses" in appropriation bills, to include postage, printing, and stationery, . . . . . 140
- less appropriation to supersede former larger appropriation for same object, . . . . . 140

**FINANCE — continued.**

- public officers, duties of, in making purchases and incurring liabilities for state, . . . . . 140
- state not liable for acts of, beyond amount appropriated, . . . . . 140
- may continue expenditures during January, until will of legislature is expressed, . . . . . 140
- to incur no new expense, unless sufficient appropriation has been made therefor, . . . . . 140
- permanent improvements not to be made upon public buildings without appropriation, &c., . . . . . 140
- bills against state exceeding fifty dollars, except for salaries, &c., to be sworn to, . . . . . 140
- original bills of articles purchased, &c., for state, to be delivered to auditor, . . . . . 140, 141
- committee of legislature not to incur liability after close of session, without appropriation, . . . . . 141
- appropriations for witness fees may be applied to taking depositions, . . . . . 141
- compensation of committees of legislature, commissioners, &c., to be fixed by governor and council, . . . . . 141
- travelling expenses of commissioners, &c., not to exceed three and a half cents a mile, . . . . . 141
- bills of charges to contain items, . . . . . 141
- secretary, treasurer, auditor, &c., to report to legislature, annually, expenses of office, &c., . . . . . 141
- appropriations for state prison, how drawn, &c., . . . . . 870
- salaries to be paid quarterly, and to be in full for all services, . . . . . 140
- to be paid only for time of actual service, . . . . . 140
- when diminished, to be paid at that rate, notwithstanding larger appropriations, . . . . . 140
- but one to be received by same person at same time, . . . . . 140
- of justices of supreme judicial court and governor to be paid without appropriation therefor, . . . . . 139

**FINES.**

- excessive, not to be imposed, . . . . . 9, 16
- half of, for keeping, &c., obscene books, to go to prosecutor, . . . . . 819
- how received and accounted for in cases before police courts, . . . . . 572
- in cases before justices of the peace, . . . . . 610
- on common carriers of passengers for loss of life of passenger by gross negligence, how recovered and to whom paid, . . . . . 794
- to be paid into state treasury, where no other provision is made, . . . . . 851
- to be prosecuted and recovered by indictment, . . . . . 851
- when not exceeding one hundred dollars, by complaint before a police court, . . . . . 851
- when not over fifty dollars, by complaint before a justice of the peace, . . . . . 851
- may be recovered in an action of tort, . . . . . 851
- justices of the peace to make return to secretary of state of fines recovered before them, . . . . . 851
- fines and forfeitures to be certified by clerk, and paid to sheriff, . . . . . 852
- sheriff to pay them to county treasurer within one month, . . . . . 852
- liability of sheriff neglecting to pay, . . . . . 852
- payment to jailer, &c., to be deemed legal, . . . . . 852
- sheriff suffering an escape of person under sentence, to pay fines as if he had received them, . . . . . 852
- discharge of poor convicts for non-payment of, . . . . . 878, 879

**FIREARMS.**

provisions concerning proof of, . . . . . 260  
*(See Arms.)*

**FIRE DEPARTMENTS.**

may be established in any town by selectmen. . . . . 178  
 how organized, . . . . . 178  
 members of, when exempt from military duty, . . . 93  
 when exempt from serving as jurors, . . . . . 680  
 engineers, how appointed and vacancies filled, . . 178  
 tenure of office, . . . . . 178  
 organization of, . . . . . 179  
 to have powers of firewards, . . . . . 179  
 to appoint enginemen, . . . . . 179  
 number of such enginemen to each engine, . . 179  
 enginemen to have same privileges, &c., as when appointed by selectmen, . . . . . 179  
 to approve of organization, &c., of enginemen, . . . . . 179  
 to have care of engines, &c., . . . . . 179  
 may make alterations and repairs on engines, . . . . . 179  
 may make rules, &c., as to carrying fire, &c., in the streets, . . . . . 179  
 general powers of, as to preventing fires, . . 179  
 future acts establishing, not to take effect until accepted by town, . . . . . 179

**Fire districts** may be established in villages, &c., containing one thousand inhabitants, if town refuse to establish, . . . . . 180

proceedings for organizing district, and establishing fire department, . . . . . 180

meetings of fire district, how called and conducted, . . . . . 180  
 engineer and assistants to be chosen by district, and sworn, . . . . . 180

engineers may make rules, &c., as to carrying fire, &c., in the streets, . . . . . 180  
 may appoint and remove enginemen, &c., . . . 181  
 to have powers of firewards in district, . . . 181  
 liability of district for acts done by, . . . . 181  
 enginemen to have same privileges as in towns, . . . . . 181

compensation of, . . . . . 181  
 districts may raise money for purchase of engines, &c., . . . . . 181

to choose prudent committee, to have charge of money, &c., . . . . . 181

assessment and collection of money voted by, . . . . . 181

by-laws, &c., adopted by, to be approved by superior court, . . . . . 181

penalties, how recovered, . . . . . 181

no inhabitant disqualified to act as magistrate in suit for penalty, . . . . . 181

may annex or exclude particular persons or estates, . . . . . 181

**FIRE CLUBS.**

when not to be established without permission of selectmen, &c., . . . . . 181, 182

penalty for joining club existing without permission, . . . . . 182

**FIRE-PROOF OFFICES.**

to be provided by counties, . . . . . 144, 198  
 county records, &c., to be kept therein, . . . 198

**FIRE-PROOF SAFES.**

to be provided by cities and towns, . . . . . 198  
 records to be kept therein, . . . . . 198

**FIRES.**

duties of firewards, &c., at, . . . . . 176  
 towns may use water of aqueduct corporations for extinguishment of, . . . . . 375, 376

**FIRES—continued.**

embezzling or concealing property at, deemed larceny, . . . . . 177

stealing property removed in consequence of, how punished, . . . . . 797

wilfully obstructing the extinguishment of, how punished, . . . . . 796, 797

giving false alarms of, how punished, . . . . 816

**FIREWARDS.**

may be chosen by towns at annual meeting, . . 176

in cities by city councils, . . . . . 176

to have immediate notice of election, . . . . . 176

penalty for not giving notice of acceptance or refusal within three days, . . . . . 176

to repair to fire and carry badge of office, . . . 176

may order buildings to be pulled down at fire, . 176

if no firewards present, selectmen, &c., may make same order, . . . . . 176

owners when indemnified in such cases, . . . 176

may require assistance at fires, . . . . . 176

may suppress tumults and disorders, . . . . . 176

may direct operations of enginemen and others, 176

penalty for refusing to obey orders of, . . . . 177

**FIREWORKS.**

penalty for selling, &c., without license, . . . . 460

**FISH.**

**Inspector-general of**, how appointed and term of office, . . . . . 258

to be sworn, . . . . . 258

to give bond, . . . . . 261

to make return of quantity, &c., of fish inspected by himself and deputies, . . . 263, 264

may appoint deputies, who shall give bond and be sworn, . . . . . 258, 261

to be responsible for his deputies, . . . . . 261

together with deputies to inspect all fish, &c., . . . . . 261

penalty on, for neglect of duty, . . . . . 263

may seize, &c., fish sold without inspection, . . . . . 264

penalty on, for branding, &c., without inspection, . . . . . 264

proportion of deputies fees, to be paid to, . . 263

**Pickled**, how prepared, packed, and branded, . 261

sorts and denominations of, and how branded, . . . . . 261, 262

different qualities of mackerel, salmon, and shad, . . . . . 261, 262

casks to be filled with same kind of, . . . . 262

penalty for intermixing, &c., contents of inspected casks, . . . . . 262

casks of, how branded with inspector's name, &c., . . . . . 262

of foreign catch, subject to duty, to be branded "foreign," . . . . . 262

if inspected where packed, need not be re-inspected, . . . . . 262

small fish, how packed, branded, &c., . . . . 262

casks used for packing, quality and size of, . . 262, 263

to be strictly examined by inspectors, . . . . 263

fees for inspecting, . . . . . 263

**Alwives, &c.**, how prepared and packed, . . 263

how sorted and numbered, . . . . . 263

boxes for, quality and capacity of, . . . . . 263

how branded, . . . . . 263

fees for inspecting, packing, and branding, . 263

not to be exported unless inspected and branded, under penalty, . . . . . 264

may be exported, if inspected in another state, . . . . . 264

inferior quality not to be substituted for, after inspection, under penalty, . . . . . 264



**FISH—continued.**

- Alewives, when sold, &c., without inspection, shall be forfeited, . . . . . 264
- Clam bait, weight of barrel of, . . . . . 264
- expense of weighing, by whom paid, . . . 264
- penalty on master of vessel for lading un-inspected fish, . . . . . 264
- for selling tainted fish for food, . . . . . 264
- weight of quintal, . . . . . 264
- regulations concerning the taking of certain kinds of, . . . . . 431, 432
- penalty for destroying with Indian cockle, &c., . . . 431
- unlawfully taking pickerel and trout, . . . 431
- prosecutions therefor limited, . . . . . 431

**FISHERMEN.**

- boats, fishing tackle, and nets of, to value of one hundred dollars, exempt from levy on execution and from attachment, . . 624, 688

**FISHING TACKLE.**

- what, exempt from attachment and levy on execution, . . . . . 624, 688

**FIXTURES.**

- what, exempt from attachment and levy on execution, . . . . . 624, 688

**FLAGMEN.**

- when to be stationed at railroad crossings, . . . 361

**FLASHBOARDS.**

- wilfully injuring, how punished, . . . . . 804

**FLOATING LOGS, MASTS, &c.**

- provisions respecting, . . . . . 424

**FLOWING LANDS.**

- complaints for, to be brought in superior court, 562
- damages, how recovered for, . . . . . 753-759
- (See *Mills*.)

**FLUMES.**

- wilfully injuring, how punished, . . . . . 804

**FOLLOWING SECTION.**

- how construed, when used in these statutes, . . 51

**FOOD.**

- fraudulently adulterating substances intended for, . . . . . 822
- articles adulterated to be forfeited and destroyed, . . . . . 822

**FORCIBLE ENTRY AND DETAINER.**

- entry into lands to be made only where allowed by law, and to be peaceable, . . . . . 707
- when forcibly made, or forcible possession of estate is held unlawfully by force, owner may have process for restitution, . . . . . 707
- so when a person holds after the termination of a lease, . . . . . 707
- so when a lease is terminated by notice to quit for non-payment of rent, unless tenant tenders the rent due, &c., four days before the return day of the writ, . . . 707
- so when lessee or tenant uses the premises for certain nuisances and illegal purposes, . . . . . 454
- restitution not to be made if defendant, or those under whom he claims, has been in possession three years, unless his estate is ended, . . . . . 707
- person entitled to possession in above cases may sue out a writ from police court or justice of the peace, . . . . . 707
- writ in such case, form of, and what shall be returned therein, . . . . . 707
- service of, how made, . . . . . 707
- may be made by constable, . . . . . 164
- if it appears by default or on trial that plaintiff is entitled to possession,

**FORCIBLE ENTRY, &c.—continued.**

- judgment to be rendered therefor and for debt and costs, . . . . . 707
- if plaintiff becomes nonsuit, or fails to prove his right, defendant to have judgment and execution for costs, . . 707
- if plaintiff claims rent, and defendant appeals, he shall recognize to enter action, to pay all rent then due, &c., . . 708
- on final judgment for plaintiff, he may recover by scire facias, or contract, all sums for rents, damages, and costs, 708
- if title to real estate is in question, how case may be removed to superior court, . . . . . 606
- if defendant remove case to superior court on frivolous suggestion of title, liable for double rent in certain cases, . . . 708
- judgment in, no bar to future action to recover premises, or damages for trespass, but amount recovered for rent may be set off, . . . . . 708

**FORECLOSURE OF MORTGAGES.**

- of real estate, provisions concerning, . . . 712, 713
- of personal property, provisions concerning, . 767

**FOREIGN.**

- the word, applied to insurance companies not incorporated by legislature of Massachusetts, . . . . . 332
- Ships and vessels, not affected by state laws respecting liens, . . . . . 769
- Corporations, how liable to action, &c., . . . 386
- FOREIGN LAWS.**
- existence, tenor, and effect of, may be proved by parol evidence, . . . . . 679
- if written, courts may require copy of, as evidence, . . . . . 679

**FOREMEN.**

- of enginemen, how chosen, &c., . . . . . 177
- of trial jurors, . . . . . 682
- of grand jurors, . . . . . 837, 838

**FORFEITED GOODS.**

- may be seized by persons entitled to recover them, when no special provision is made, . . . . . 772
- person seizing, to apply immediately (unless a claimant applies) to a justice for appointment of appraisers, . . . . . 774
- appraisers to be appointed by such justice; to be sworn, and return an inventory and appraisement, . . . . . 774
- if appraisers, appointed on application of person seizing, certify that the goods are perishable, &c., any justice may order sale thereof, . . . . . 774
- such appraisement to be conclusive as to jurisdiction of the court, before which suit is to be brought, unless different appraisement is made by claimant, . . . 774
- if claimant applies, before libel is filed, for appraisers, their appraisal to be conclusive, &c., . . . . . 774
- person seizing, to file a libel within fourteen days, stating the cause of seizure, and praying for a decree of forfeiture, . . . . . 772
- libel of, may be general; form of, . . . . . 772
- to be filed in clerk's office of superior court, when value of goods is more than twenty dollars, . . . . . 772
- before a justice of police court, if goods are of less value, . . . . . 772

**FORFEITED GOODS—continued.**

- how notice of libel shall be given when filed in clerk's office, . . . . . 772, 773
- when filed before a justice of police court, . . 773
- if no claimant appears, court shall hear and determine the cause, &c., . . . . . 773
- if claimant appears, he may plead any proper matter of defence, . . . . . 773
- proceedings to be according to course of the civil law, except that questions of fact shall be tried by a jury, . . . . . 773
- depositions may be used, as in trials of actions at common law, . . . . . 773
- if libellant maintain his suit, court shall order sale of the goods and legal disposition of the proceeds, . . . . . 773
- discontinue or fail to maintain his suit, claimant to have restitution, . . . . . 772
- costs, charges of keeping, &c., processes, &c., to be within the power and control of the court, . . . . . 773
- court may order sale of the goods, for sufficient cause, during pendency of suit, . . . 774
- appeal from superior court, or from a justice, &c., may be taken by either party, . . 773
- claimant shall have damages and costs, if jury find that the seizure was groundless, &c., . . . . . 773
- entitled to a delivery of the goods, on giving bond to restore, pay appraised value, if, &c., and perform final decree, . 773, 774
- value of the goods in such case to be determined by three sworn appraisers; how appraisers appointed, . . . . . 774

**FORFEITURE.**

- of estates, when limitation to rights of entry or action commence to run, . . . . . 775

**FORFEITURES.**

- actions for, to be brought in counties where offences are committed, . . . . . 621
- on trial of indictments, or penal suits for, jurors not disqualified on account of paying taxes in county, town, &c., . 683
- on penal statutes, suit for, to be brought in one year, if forfeiture is given to private persons, . . . . . 779
- in two years, if given in whole or in part to the commonwealth, . . . . . 779
- for burning coal pits on certain woodlands in portions of Bristol and Plymouth counties, how recovered, . . . . . 807
- for burning brush wood so as to set fire to such woodland, . . . . . 807
- incurred under acts hereby repealed, not affected by the repeal except where mitigated by new provisions, . . . . . 880
- accruing to any person, may be paid to him, if penalty of recognizance is forfeited or paid, . . . . . 843
- by constable, or juror, in regard to coroners' inquests, . . . . . 848
- by jailers, &c., for failing to keep prison book, . 866
- overseers, &c., of jails, &c., for failing to make official returns, . . . . . 868

(See *Fines*.)**FORGERY.**

- of records, wills, deeds, contracts, receipts, &c., how punished, . . . . . 807
- for uttering such forged records, &c., as true, of notes, &c., issued by the treasurer of the state, . . . . . 808
- of bank bills, or notes, . . . . . 808

**FORGERY—continued.**

- having ten or more forged notes, &c., in possession, with intent to pass, . . . . . 808
- uttering forged notes as true, . . . . . 808
- common utterer of forged bills, who deemed, and how punished, . . . . . 808
- effect of second conviction, and three convictions at same term, . . . . . 808
- bringing into state, or having in possession forged bill, &c., with intent to pass, . 808
- engraving plates, &c., or making paper, &c., for forging bills, &c., . . . . . 808
- having such plates, &c., and paper, &c., in possession, . . . . . 808, 809
- in prosecutions for forgery, &c., of bank bills, when testimony of president and cashier may be dispensed with, . . . 809
- how bills may be shown to be forged, . . . 809
- in prosecutions for forging, &c., United States securities, how securities may be shown to be forged, . . . . . 809
- affixing fictitious signatures of officers of corporations, &c., deemed forgery, though such persons never existed, . . . . . 809
- intent to defraud, how may be alleged and proved, . . . . . 809
- what shall not be a variance, . . . . . 809
- fraudulently connecting parts of bank notes, . 810
- Sheriff, to seize forged bank bills and plates, tools, &c., and the court shall order them to be destroyed, . . . . . 811
- Recompense, to prosecutors of forgers and forgery, . . . . . 811

**FORGING.**

- private labels, stamps, and trade marks, how punished, . . . . . 802
- selling goods knowingly with such marks, and not disclosing to purchaser, . . . 802

**FORM.**

- defect of, not to abate writs and processes in courts of justice, . . . . . 657
- of declarations, answers, &c., in civil cases, 663-669
- of complaints, &c., under laws relating to sale, &c., of intoxicating liquor, . . . 449-453

**FORMEDON.**

- writs of, abolished, saving certain rights, . . . 696

**FORMER ACQUITTAL.**

- upon facts and merits to bar subsequent prosecution, . . . . . 790
- but not when acquittal was for variance, . . 790
- or for exception to form, &c., of indictment, 790
- out of the state in case of a duel, effect of, . . . 792

**FORNICATION.**

- how punished, . . . . . 818

**FORTUNE-TELLING.**

- fraudulently obtaining property by, how punished, . . . . . 802
- jurisdiction given to justices of the peace and police courts, . . . . . 570, 609

**FOURTH OF JULY.**

- legislature not to sit for ordinary business, and public offices to be closed, . . . . . 49
- courts not to be opened, except, &c., . . . . 617, 618
- bills of exchange maturing on, when payable, . 23

**FRANCHISE OF CORPORATION.**

- unwarranted exercise of, by corporations and individuals, how restrained, . . . . . 744
- attachment of, how made, &c., . . . . . 387
- seizure and sale of, on execution, . . . . . 387, 388

**FRAUD.**

- gross, at common law, how punished, . . . . . 802
- by cheating at cards, how punished, . . . . . 802

**FRAUD—continued.**

suits in cases of, may be brought in supreme judicial court in equity, . . . . . 559

of officers, in sale of goods on execution, or in return thereof, remedy for, . . . . . 689

when real estate held by, is attached, officer to make special return, &c., . . . . . 626

persons suspected of, respecting estate of insolvent debtors, wards, and deceased persons, how examined, . . . 489, 546, 547, 597

**FRAUDS AND PERJURIES.**

provisions for prevention of, . . . . . 527, 528

certain contracts to be in writing, . . . . . 527

consideration need not be in writing, . . . . . 527

new promise by debtor discharged in insolvency to be in writing, . . . . . 527

contracts for sale or transfer of certain stocks void, unless vendor is owner, &c., . . . 528

**FRAUDULENT ATTACHMENTS.**

how contested and dissolved, . . . . . 631

**FRAUDULENT ASSIGNMENTS.**

how contested in trustee process, . . . . . 722

**FRAUDULENT CONVEYANCES.**

of personal property render holder liable to trustee process, . . . . . 723

by debtor, when sufficient cause for proceeding against him in insolvency, . . . 596, 599

and preferences by insolvent debtors, effect of, respecting discharges, and how may be avoided by assignees, . . . . . 593, 594

of real estate, how attached and taken on execution, . . . . . 516, 517, 626

how may be treated by executor, &c., of grantors, . . . . . 511

**FRAUDULENT DEBTORS.**

how punished, . . . . . 638, 639

**FRAUDULENT CONCEALMENT.**

of cause of action by person liable thereto, saves operation of statute of limitations, . . . . . 778

of mortgaged personal property, how punished, 803

of wills, proceedings respecting, . . . . . 477, 708

**FRAUDULENT ISSUES, &c.**

of stock, how punished, . . . . . 801, 802

**FREEHOLD.**

when leases are considered as, . . . . . 471

estates of, how recovered by writ of entry, . . 602

persons in possession of, &c., may have process to compel persons having adverse claims to bring action to try title, or be estopped, &c., . . . . . 696

**FREIGHTERS.**

of merchandise, remedy of, against ship owners, . . . . . 289

**FRIENDS.** (*See Quakers.*)

**FRUIT.**

to be sold by dry measure, under penalty, . . . 264

punishment for unlawfully taking, &c., . . . 806

jurisdiction of offence given to justices of the peace, . . . . . 609

**FUEL.**

what exempt from levy on execution and attachment, . . . . . 624, 688

**FUGITIVES FROM JUSTICE,**

provisions respecting, . . . . . 7, 8

governor may, on demand, deliver to executive of any other state, &c., persons charged therein with treason, felony, or other crime, . . . . . 853

may appoint agents to demand them from the executive of other states, . . . . . 853

if demand is complied with, expense to be audited and paid, . . . . . 854

demand or application to be accompanied with what, . . . . . 853, 854

proceedings on such demands from other states, 854

persons arrested not to be delivered to agent of other state without opportunity to apply for habeas corpus, . . . . . 854

penalty for surrendering, without such opportunity, . . . . . 854

notice of such application must be given to prosecuting officer, . . . . . 854

persons liable to be demanded by other states may be arrested, . . . . . 854

and required to recognize, or be committed, . . . . . 854

if charged with capital crime, to be detained in jail, . . . . . 854, 855

how proceeded with, or discharged, . . . . . 855

complainant liable for expense of all actual costs and charges, and support of prisoner, . . . . . 855

if charge for support is not paid, jailer may discharge, . . . . . 855

**FUGITIVES FROM SERVICE.**

how to be surrendered, . . . . . 7, 8

persons arrested as, may have habeas corpus, . 736

proceedings in such cases, . . . . . 736, 737

falsely accusing person of crime, that he may be held to answer as, how punished, . . 793

if done by public officer, to disqualify for office, . . . . . 793, 694

**FUNERALS.**

wilful disturbance of, how punished, . . . . . 820

**FURNACES.**

for melting iron, or making glass, erection and use of, may be licensed and regulated in certain places by selectmen, &c., . . 458

owner aggrieved may have jury, as in case of highways, . . . . . 459

court may restrain use of, while appeal is pending, . . . . . 459

verdict of jury, and costs in such cases, . . . 459

created and used contrary to law to be deemed common nuisances, . . . . . 459

and may be removed by selectmen, &c., . . . 459

**FURNITURE,**

what exempt from taxation, . . . . . 74

what exempt from attachment and execution, 624, 688

**G.**

**GAMING.**

persons losing money by, may recover it back, if such person does not prosecute within three months, &c., any other person may recover treble amount lost, . . . . . 435

**GAMING—continued.**

owner, &c., of gaming house liable for money lost, . . . . . 435

penalty for winning by, five dollars or more at one time, . . . . . 435, 436



**GAMING—continued.**

- notes, conveyances, &c., for money lost by, void, except as to bona fide holders, . . . . . 436
- when such conveyances adjudged void, to whose benefit lands to inure, . . . . . 436
- penalty on innholders, &c., for keeping, &c., implements for, . . . . . 435
- for permitting use of implements for, on the Lord's day, . . . . . 435
- penalty for gaming in such places, and in places licensed for bowling alleys, . . . . . 436
- penalty for keeping house for, . . . . . 436
- common gaming houses may be entered, and parties arrested, &c., . . . . . 436, 437
- penalty for being found playing therein, . . . . . 437
- for gaming at musters, cattle shows, &c., . . . . . 437
- booths used for, within one mile of muster fields, &c., how removed, . . . . . 454
- houses resorted to for, to be deemed common nuisances, . . . . . 454
- penalty for keeping such, . . . . . 454
- use of, by tenant, for such purpose, to avoid lease, . . . . . 454
- penalty on landlord for letting for such purpose, . . . . . 454
- fraudulently obtaining property by, how punished, . . . . . 802
- by way of lottery, how punished, . . . . . 823
- Apparatus and implements, search warrant may issue for, . . . . . 830**

**GANWAY ROCK.**

- buoy on, ceded to United States, . . . . . 41

**GARDENS.**

- wilful and malicious injury to, how punished, . . . . . 806
- how, when committed on Lord's day, . . . . . 806

**GASLIGHT COMPANY.**

- ten or more persons may become a corporation for manufacturing, &c., gas, . . . . . 343
- not to be organized in town where gas company exists, except by inhabitants of place, . . . . . 343
- nor unless existing corporation has realized an annual dividend of seven per cent. five years, . . . . . 343
- such corporations may dig up streets, &c., with consent of selectmen, &c., . . . . . 343
- to put such streets in repair, and upon failure, to be deemed guilty of a nuisance, . . . . . 343
- acts of, to be under regulation of selectmen, &c., . . . . . 343
- other companies may hold stock in, . . . . . 343
- these provisions may be amended or repealed by legislature, . . . . . 343

**GATES.**

- at railroad crossings, when to be erected, . . . . . 361
- may be altered by county commissioners, . . . . . 362
- penalty on agents stationed to open and close, for neglect of duty, . . . . . 361
- when location of, may be altered, . . . . . 362
- on town or private ways, how removed, . . . . . 251
- punishment for throwing down, opening, &c., . . . . . 804, 805
- of mills, wilful injury to, how punished, . . . . . 804

**GAY HEAD.**

- land for lighthouse at, ceded to United States, . . . . . 44
- Indians, appropriations, &c., for schools for, . . . . . 213

**GENERAL COURT.**

- legislative department to be so styled, . . . . . 17
- may constitute courts, . . . . . 18
- may make laws not repugnant to the constitution, . . . . . 18
- may provide for the appointment of officers, and prescribe their duties, . . . . . 18
- may impose taxes, . . . . . 18

**GENERAL COURT—continued.**

- not to adjourn exceeding two days, . . . . . 20, 21
- may be adjourned, or prorogued, by governor and council, . . . . . 23
- when and how convened and dissolved, . . . . . 23, 33
- petitions to, affecting rights of individuals, private corporations, towns, &c., how notice to be given, &c., . . . . . 47, 48
- compensation of members and officers, . . . . . 48
- members of committees of, may administer oaths to witnesses, . . . . . 49
- journals and files of, to be in possession of clerks, . . . . . 49
- to hold no sessions for transaction of ordinary business on certain holidays, . . . . . 49
- members of, not eligible to office created during their term of service, except by vote of the people, . . . . . 49
- apportionment of senators and representatives, . . . . . 62-64
- to fill vacancies by joint ballot, if majority of presidential electors not chosen, . . . . . 69
- by committee, to examine, &c., condition of arsenal, &c., in Cambridge annually, . . . . . 104
- sergeant-at-arms of, how and when chosen, . . . . . 133
- powers and duties of, . . . . . 133, 134
- doorkeepers of, how, when, and by whom appointed, . . . . . 133
- committee of accounts of, to examine books, &c., of auditor, . . . . . 136
- no committee of, to incur liability, after close of session, without an appropriation, . . . . . 141
- compensation of committee of, to be fixed by governor and council, . . . . . 141

**GENERAL FIELDS.**

- are distinct lots enclosed in one, . . . . . 381
- meetings of proprietors of, how called and warned, . . . . . 381
- how votes are to be given, . . . . . 381
- absent proprietors may vote by proxy, &c., . . . . . 381
- clerk, assessors, collector, &c., may be chosen, . . . . . 381
- tenure of office, . . . . . 381
- clerk to be sworn, . . . . . 381
- to issue warrant for collecting assessment, . . . . . 382
- assessors of, to be sworn, and to assess money raised, . . . . . 381, 382
- field drivers of, to have powers of town field drivers, . . . . . 381
- land enclosed for benefit of proprietors of, not to be reckoned in voting, . . . . . 381
- how fences of, to be apportioned, &c., . . . . . 382
- assigned and repaired, . . . . . 382
- assignment of fences to be recorded, and where, expense of apportioning, and making fence, how borne, . . . . . 382
- proceedings when part of fence assigned is deficient, and proprietor neglects to repair, &c., . . . . . 382
- proprietor, &c., neglecting to repair, liable to double costs, &c., . . . . . 382
- fence suddenly blown down, &c., to be repaired within twenty-four hours, &c., under penalty of double costs, . . . . . 382, 383
- Proprietors, each of, may manage and cultivate his land as he thinks best, . . . . . 381**
- trespassers, if they violate rules, &c., . . . . . 381, 382
- entitled to remedy for trespasses by strangers' cattle, . . . . . 382
- not liable to maintain fence, &c., if he do not cultivate, . . . . . 382
- may enclose his own land, &c., . . . . . 383
- to run lines if requested, and keep up boundaries, . . . . . 383

**GENERAL FIELDS—continued.**

penalty if he fails so to do after seven days' notice, . . . . . 383

may choose clerk, assessors, and field drivers, . . . . . 381

may adopt rules as to pasturing, &c., . . . 381

may raise money by assessment, for common charges, . . . . . 382

when overrated, may apply to county commissioners, . . . . . 382

when may be ordered by superior court to enclose their lands, . . . . . 383

such order not to be made, unless upon application of greater part in interest, . . 383

rights and proceedings of proprietors after such order, . . . . . 383

how may discontinue their fields, . . . . 384

writs, &c., against, how served, and how long before return day, . . . . . 623

Division of, how may be made, . . . . . 383

**GENERAL ISSUE.**

abolished, except in real and mixed actions and actions before justice of the peace, &c., and answer substituted, . . . . . 656

in real actions, defendant may give in evidence what might formerly have been pleaded in bar, . . . . . 656

in writs of entry, actual entry need not be proved, . . . . . 692

non-tenure, disclaimer, several tenancy, and sole tenancy, may be given in evidence under, . . . . . 693

**Before justices of the peace,** may be pleaded orally, . . . . . 606

upon appeal, case may be tried on same plea, unless court orders other plea to be made, . . . . . 607

**GENERAL STATUTES.**

these statutes so designated, . . . . . 880

when to go into operation, . . . . . 880

repeal of acts, &c., by, not to revive former laws, not to affect acts done, . . . . . 880

nor penalties or forfeitures incurred, except when mitigated therein, . . . . . 880

nor suits commenced, except as to form of proceedings, . . . . . 880, 881

time of limitations, that has begun to run, to continue, . . . . . 881

tenure of existing offices preserved, except, &c., to be construed as a continuation of existing laws, . . . . . 881

**GEORGE'S ISLAND.**

ceded to United States, . . . . . 44

**GIRDLING TREES.**

wantonly or wilfully, how punished, . . . . 805

damages for, how recovered, . . . . . 709

**GLASS.**

punishment for wantonly breaking, in buildings, erection of furnaces for making, regulated, . . 458

**GLOSSARY.**

of foreign and technical words used in these statutes, . . . . . 909

**GLOUCESTER.**

land in, ceded to United States, . . . . . 44

Ten Pound Island, in harbor of, ceded to United States, . . . . . 44

Straitsmouth Island, in harbor of, ceded to United States, . . . . . 45

land in, for custom-house, ceded to United States, 45

**GOATS.**

found going at large contrary to law, &c., to be impounded, . . . . . 185-187

**GOLD.**

when tendered by banks, how to be weighed, . 310

(See *Coin*.)

**GOVERNMENT.**

right of the people to institute and change, . . 15

**GOVERNOR.**

to approve bills and resolves, or return to legislature with objections, . . . . . 17

and five at least of council to examine, &c., returns of votes, and issue summonses, . . . . . 20, 60

style and title of, . . . . . 62

to be chosen annually, . . . . . 23, 34, 36, 62

qualifications of, . . . . . 22, 33

oath of, . . . . . 29, 33

return of votes for, . . . . . 22, 59, 60

may convene council and legislature, . . . . 23

to be commander-in-chief, . . . . . 23, 33

pardoning power vested in, with advice of council, . . . . . 24

to draw warrants for payment of money from treasury, . . . . . 24

not to draw warrant unless account certified by auditor, . . . . . 139

judicial officers and coroners to be appointed by, officers of the militia to be commissioned by, . . 24

salary of, . . . . . 25, 128

to be paid without specific appropriation therefor, . . . . . 139

to have no fees or perquisites of office, . . . . 128

to be president of council, . . . . . 25

exempt from serving as juror, . . . . . 679

lieutenant-governor, when to act as, . . . . 25, 26

council, when to exercise powers of, . . . . . 26

to hold no other office, except, &c., . . . . . 30, 33

address and messages of, to be published with acts and resolves, . . . . . 50

address of, when may be put in type, . . . . . 53

when to issue precept for choice of representative in congress, . . . . . 68

to transmit certificates to electors of president and vice president, . . . . . 69

to convene general court by proclamation, if majority of presidential electors not chosen, . . . . . 69

to order new elections, in case of failure to elect district-attorneys, clerks of courts, &c., . . . . . 71

may administer oaths of office to public officers, . . . . . 131, 132

to appoint commissioners to qualify public officers, . . . . . 131

may appoint commissioners in other states, &c., to take depositions, acknowledgment of deeds, &c., . . . . . 132

a messenger, . . . . . 134

notes for money borrowed in anticipation of revenue, to be approved by, . . . . . 139, 140

may remove sheriffs from office, upon neglect to give bond, or to pay amount of judgment against him, . . . . . 150, 151

may offer and pay reward, not exceeding one thousand dollars, for arrest of certain offenders, . . . . . 831

power and authority of, as regards fugitives from justice, . . . . . 853, 854

as to granting pardons and commuting punishments, . . . . . 855, 856, 875

**GOVERNOR AND COUNCIL.**

may punish for contempt, . . . . . 22

when may require opinions of justices of supreme judicial court, . . . . . 27

**GOVERNOR AND COUNCIL**—*continued.*  
 conveyances of public lands and flats subject to approval of, . . . . . 55, 139  
 authority of, as to state prison, . . . . . 870

**GOVERNOR'S ISLAND.**  
 ceded to United States, . . . . . 41

**GRACE.**  
 on bills of exchange, notes, &c., . . . . . 294  
 not allowed on notes on demand, . . . . . 294

**GRAIN AND MEAL.**  
 to be sold by the bushel, . . . . . 265  
 weight of the bushel of the different kinds of, . . . . . 265  
 measurers of, to be appointed, . . . . . 265  
   may be authorized to appoint deputies, . . . . . 265  
   duties and fees of, and their deputies, . . . . . 265  
   penalty on, for using false weights, &c., . . . . . 265  
 penalty for short weight, if measurer is not employed, . . . . . 265  
 special provisions concerning measures for, . . . . . 286  
 toll for grinding not to exceed one sixteenth part thereof, . . . . . 761

**GRANDCHILDREN.**  
 by consanguinity, how to maintain their poor grandparents, . . . . . 392  
 or affinity, not punishable as accessory after the fact for felony committed by grandparents, . . . . . 826

**GRAND JURORS.** (*See Jurors.*)  
 qualifications, approval, drawing, and fees of, 786, 837  
 how often liable to serve, and penalty for neglecting to attend, . . . . . 680, 683  
 venire for twenty-three shall be issued by clerk of superior court, except in Suffolk, before commencement of first term in every year, . . . . . 837  
   in Suffolk, by clerk of superior court for criminal business, before commencement of each January or July term, . . . . . 837  
   shall be issued seven days at least, and not more than thirty, before term commences, . . . . . 837  
   in Suffolk, shall serve for six months, and in other counties through the year, . . . . . 837  
 where there are criminal terms, shall attend only at such terms, . . . . . 837  
 shall be drawn, summoned, and returned like jurors for trials, . . . . . 837  
 when drawn at same time with jurors for trials, those who are first drawn shall be grand jurors, . . . . . 837  
 when sufficient number do not attend, court may issue venires for others forthwith, . . . . . 837  
 form of oath, and mode of administering, . . . . . 837  
 those scrupulous of taking oath may make affirmation, . . . . . 837  
 after being empanelled, and receiving charge of the court, shall elect their foreman by ballot, . . . . . 837  
 court to charge specially concerning certain matters, . . . . . 838  
 choice of foreman to be notified by them to court, and record thereof to be made by clerk, . . . . . 837  
 foreman of, elected at first term, to continue such during time of service, . . . . . 837, 838  
 new foreman shall be elected if the first dies or is absent, . . . . . 838  
 foreman, or prosecuting officer, may swear witnesses who come before the jury, . . . . . 838  
   shall return a list of all witnesses sworn before the jury during the term, . . . . . 838

**GRAND JURORS**—*continued.*  
 may appoint one of their number as clerk, to preserve minutes of their proceedings, &c., . . . . . 838  
   such minutes to be delivered to prosecuting officer, if jury so direct, . . . . . 838  
 if dismissed while court remains in session, may be summoned, if necessary, to attend again at same term, . . . . . 838  
 shall cause the law for observance of Lord's day to be carried into effect, . . . . . 434  
 shall not disclose the finding of an indictment for felony, if party be not in custody nor under recognizance, . . . . . 838  
 not allowed to state, nor to testify in court, as to any votes or opinions on questions before them, . . . . . 838  
 to be reminded, by charge of court, of their obligation to secrecy, . . . . . 838  
 duty of, when they find no bill because of prisoner's insanity, . . . . . 838  
   in such case prisoner, when to be confined in hospital, or to be discharged, . . . . . 838  
 none who find indictment to be on jury for trial thereof, . . . . . 841

**GRANT.**  
 of any interest in land to be in writing, or by operation of law, . . . . . 465  
 void, when made on gaming consideration, . . . . . 436

**GRANTOR and GRANTEE.**  
 how construed, . . . . . 51  
 grantor to make known to grantee if encumbrances exist on estate conveyed, . . . . . 467  
   to be liable in damages for neglect, &c., . . . . . 467  
   and punished by fine or imprisonment, . . . . . 802

**GRASS.**  
 punishment for wilfully cutting, without authority, . . . . . 805  
 for wilfully entering lands, &c., with intent to cut, &c., . . . . . 806

**GRATUITIES.**  
 to jurors, when cause for new trial, . . . . . 683

**GRAVEL.**  
 penalty for wilfully digging up, without license, 805

**GRAVESTONES.**  
 punishment for wilfully defacing, destroying, &c., . . . . . 197, 821, 822

**GREAT BREWSTER ISLAND.**  
 land on, ceded to United States, . . . . . 45

**GREAT WOODS HOLE.**  
 land for sea-wall at, ceded to United States, . . . . . 45

**GROSS FRAUDS OR CHEATS.**  
 at common law, how punished, . . . . . 802

**GUARDIANS.**  
 to be appointed by probate court, . . . . . 543, 574  
 first appointed, to have whole charge of estate of ward, . . . . . 574  
 registers of probate and insolvency not to be, in their county, . . . . . 602  
 to give bond, and condition thereof, . . . . . 545  
 bond to be approved by judge of the probate court, . . . . . 505  
 when exempted from giving bond for proceeds of sale of real estate, . . . . . 505  
 when new bond may be required of, . . . . . 505, 546  
 sureties on bond may be discharged, &c., by court, . . . . . 505, 546  
 suits may be brought on bonds, . . . . . 505, 546  
   against sureties limited, . . . . . 546  
 general powers and duties of, . . . . . 545  
 may make partition of real estate of ward, set off dower, &c., . . . . . 545



**GUARDIANS—continued.**

may appoint appraiser of real estate on execution in which ward is interested, . . . 545

duties of, when ward's property is to be taken for his support, &c., when father is living, . . . . . 545, 546

may sell, transfer, &c., stocks of wards by lease of court, . . . . . 546

may transfer property of ward when a guardian is appointed in another state, . . . . 546

removal, resignation, and death of, . . . . 546

marriage of female guardian extinguishes her authority, . . . . . 546

of female ward, effect of, . . . . . 546

wards, how discharged from guardianship, . . 546

proceedings for recovering concealed effects, &c., . . . . . 546, 547

compensation of, . . . . . 547

property in hands of, not to be taxed for parochial purposes, . . . . . 202

may release damages to lands, &c., taken for use of railroad, . . . . . 352

of married man to join with wife in release of dower and homestead, . . . . . 525

of mill proprietor may act for ward, . . . . 760

may receive payment of mortgage due their wards, and execute release, . . . . . 715

tender on such mortgage may be made to, . . 715

when tenants in common with wards may have partition, . . . . . 705

may prosecute and defend suits commenced by or against ward before insanity, . . . 650

when liable to pay fine and costs of their wards, accounts of joint, may be allowed on oath of one, . . . . . 504

**Of minors, by whom to be nominated, &c., . . 543**

powers and duties of, . . . . . 543

may be appointed by will of father, . . . 543

such guardian to give bond, unless otherwise ordered in will, . . . . . 543

may join with widow in sale of estate of homestead, . . . . . 526

**Of insane persons and spendthrifts, how appointed, &c., . . . . . 543, 544**

such persons to be notified, and may defend, 544

expenses of defence, how allowed and paid, 544

powers and duties of, . . . . . 544

contracts by spendthrifts, in certain cases, void, . . . . . 544

**Of persons out of the state, how appointed, &c., . . . . . 544**

powers and duties, and bond, of, . . . . 544

**Of married women, when may be appointed, . . . . . 539, 540**

not to have custody of ward, except, &c., . 539

**GUARDIANS—continued.**

not to apply property to support of, without leave of court, . . . . . 539, 540

of insane married woman to join with husband in conveyance of estate of homestead, . . . . . 525

**Sales of land by, for payment of debts, . . . 512**

for maintenance and investment, . . . . . 513

by foreign guardians, . . . . . 513

provisions common to all sales by executors, administrators, and guardians, . . 513-515

**For a suit, may be appointed by courts for minors and insane persons, . . 533, 543, 650**

in proceedings for partition of land, . . 700, 704

for persons not in being, . . . . . 705

for absent heirs, . . . . . 703

for proceedings for adoption of children, . 547

**Of Indians, . . . . . 133**

**GUIDE POSTS AND BOARDS.**

to be erected and maintained by towns, . . . 249

places of, to be reported annually by selectmen, . . . . . 249

to be determined by towns, and recorded, . . 249

form of, and inscription on, . . . . . 249

penalty for injuring or defacing, . . . . . 249

for wilful, &c., removal of, . . . . . 603

on selectmen for not reporting places for, . 249

on towns for not determining places for, . . 249

in suits, &c., for not erecting, when towns estopped from denying necessity, &c., of, . . . . . 249

**GUNPOWDER, GUN-COTTON, AND OTHER EXPLOSIVE SUBSTANCES.**

regulations concerning keeping of, &c., may be made by towns, &c., . . . . . 460

search warrants may be issued to ascertain concerning such articles kept contrary to law, . . . . . 461

penalty for keeping same contrary to law, . . 461

**Camphene, towns, &c., may regulate storage and sale of, . . . . . 461**

penalties may be imposed for breach of such regulations, . . . . . 461

**Gunpowder, to be put into strong and tight casks or canisters, . . . . . 265**

casks, size of, and how to be marked, . . . 265

canisters, material and size of, and how to be marked, . . . . . 265

penalty for falsely marking casks, or changing contents, . . . . . 265

wilful, &c., injury by, to houses, &c., how punished, . . . . . 804

**GURNET HEAD.**

in Plymouth county, lighthouse on, ceded to United States, . . . . . 44

**H.**

**HABEAS CORPUS.**

writ not to be suspended, unless, &c., . . . . 5, 31

to be enjoyed in the most free and ample manner, . . . . . 31

every person imprisoned or restrained entitled to, for relief, as of right and of course, except, &c., . . . . . 734

who not entitled to, as of right, . . . . . 734

application for, to be made in writing, by com-

**HABEAS CORPUS—continued.**

plaint, and signed by the party, or by some one in his behalf, . . . . . 734

what shall be set forth in such complaint, . 734

facts stated to be sworn to by party, or by a credible witness, . . . . . 734

to be issued on such complaint, and made returnable forthwith at place designated in the writ, . . . . . 734, 735

**HABEAS CORPUS—continued.**

by whom the writ may be issued, . . . . . 734

shall be made returnable to supreme or superior court, or a judge of said courts, . . . . . 734, 735

when issued by court in session, shall be signed by clerk, otherwise by magistrate issuing it, . . . . . 735

may be served by any sheriff, or his deputy, of any county, . . . . . 735

if court to which it is returnable be adjourned, shall be returned before either of the judges thereof, . . . . . 736

if returned before a single judge, when court is in session, he may adjourn the case into the court, . . . . . 736

form of, when complaint is against a sheriff, or other like officer, to be as heretofore established, . . . . . 734

in other cases, . . . . . 735

how may designate the prisoner and the person having custody of him, . . . . . 735

when to have the sum payable for expense of bringing party from place of imprisonment certified thereon by court, &c., that grants it, . . . . . 735

officer to whom, in such case, it is directed, not bound to serve it, unless such sum be paid or tendered, . . . . . 735

within what time to be returned, . . . . . 735

what shall be stated in the return of, &c., by person making it, . . . . . 735

return, &c., to be signed by person making it, and sworn to, unless he is a sworn public officer acting officially, . . . . . 735

person making return, &c., to bring in the prisoner, if in his custody or power, unless prevented by his sickness, &c., . . . . . 735

if prisoner be sick, &c., that fact to be stated in the return, . . . . . 735, 736

court or judge, on proof of that fact, may go to the place of confinement, . . . . . 736

or may make such order as the case requires, . . . . . 736

when returned, court or judge shall, without delay, examine the cause of restraint, examination may be adjourned from time to time, . . . . . 736

notice of, when to be given, before discharge, to persons interested in process under which prisoner is detained, . . . . . 737

when to be given to the attorney-general, &c., . . . . . 737

prisoner may deny any facts stated in the return, and allege any material facts, . . . . . 736

evidence to be heard, and prisoner disposed of, according to law and justice, . . . . . 736

shall be discharged, if restraint, &c., be illegal, . . . . . 737

shall not be discharged by superior court when committed on process from supreme court, . . . . . 739

shall be bailed, when legally detained for bailable offence, or remanded, if sufficient bail be not offered, . . . . . 737

when remanded for such reason, court shall order the sum in which he shall be held to bail, . . . . . 737

confined on sentence, may, after bringing writ of error, be enlarged on giving bail, if entitled thereto, . . . . . 746

if legally imprisoned, &c., and not bailable, to whom shall be remanded, . . . . . 737

**HABEAS CORPUS—continued.**

how kept, &c., pending the examination of his case, . . . . . 737

entitled to recover a forfeiture, if copy of any process under which he is detained be withheld six hours after demand thereof and tender of fees therefor, . . . . . 738

if discharged, not to be restrained again for same cause, except, &c., . . . . . 737

when may be again arrested for same cause, persons refusing or neglecting to obey and execute, to be proceeded against as for a contempt, . . . . . 738

sheriff, against whom attachment issues for contempt, in such case, may be committed to jail in another county, . . . . . 738

who may serve process of attachment, in such case, on sheriff or his deputy, . . . . . 738

on refusal, &c., to serve, court, &c., may issue new precept to bring up prisoner, . . . . . 738

forfeiture to prisoner for refusing, &c., to receive and serve writ, . . . . . 738

for removing or concealing him, to elude writ, . . . . . 738

recovery of such penalty not to bar action for false imprisonment or false return, &c., . . . . . 738, 739

judge of supreme and superior court not hereby restricted from issuing habeas corpus and admitting to bail, . . . . . 737, 738

magistrates not hereby prevented from bringing in prisoners for trial, or witnesses in any suit, . . . . . 738

**In case of persons claimed to be held to service and labor, . . . . . 736**

any party to proceeding may demand trial by jury, . . . . . 736

person so claimed may be held to bail in not over two thousand dollars, . . . . . 736

form of issue and plea, . . . . . 736

jury may return a general verdict, and exercise the same discretion as in criminal cases, . . . . . 736

verdict of "not guilty" to be final and conclusive, . . . . . 736

jurors, how summoned, and penalty for non-attendance, . . . . . 736

when one jury disagrees, another may be summoned, . . . . . 736

if claimant appears, must state his claim in writing, . . . . . 736

neither claimant nor alleged fugitive to be witness, . . . . . 736, 737

admissions or confessions of alleged fugitive not to be evidence, . . . . . 736, 737

burden of proof on claimant, . . . . . 736, 737

amount of evidence required, . . . . . 736, 737

ex parte depositions or affidavits not admissible, . . . . . 737

no presumption in favor of claimant from proof that the alleged fugitive or his ancestors had been held as slaves, &c., . . . . . 737

**In case of persons arrested as fugitives from justice, . . . . . 854**

opportunity to apply for, to be given to person arrested, . . . . . 854

notice of application to be given to attorney-general or prosecuting officer, . . . . . 854

penalty on officer for extradition of such person without permitting application for habeas corpus, . . . . . 854

**HALF BLOOD.**  
to inherit equally with those of whole blood, . . . 474

**HALF-TIDE ROCKS.**  
and buoy on, ceded to United States, . . . . . 44

**HALF-WAY ROCK.**  
ceded to United States, . . . . . 44

**HARBORING.**  
felon, how punished, . . . . . 826  
or protecting an enemy, by soldier in actual service, . . . . . 121

**HARVARD COLLEGE.**  
powers, rights, and privileges of, confirmed, . . . 28  
gifts, grants, &c., to be held according to intent of donors, . . . . . 28  
overseers of, . . . . . 28  
alteration of government of, may be made by general court, . . . . . 28  
professors, &c., to impress upon youth principles of piety, temperance, &c., . . . 216

**HAWKERS AND PEDLERS.**  
articles which may be sold by, without license, 281  
sale of such articles by minors may be regulated by cities and towns, . . . . . 281  
penalty for violation of such regulations, . . . 281, 282  
sales of certain articles by, prohibited, . . . . . 282  
licenses of, how and by whom granted, . . . . . 282  
form and effect of, . . . . . 282  
fees for, to secretary of state, and town, or city treasurer, . . . . . 282  
when to bear date, and term of, . . . . . 282  
to be recorded, . . . . . 283  
state and county, upon what terms granted, . . . . . 282, 283  
sums paid for, to belong to state, county, &c., receiving the same, . . . . . 283  
not to protect party selling articles illegally, 283  
void, if parties violate the law, . . . . . 283  
number of, and name and residence of party, to be placed on parcels, &c., . . . . . 283  
synopsis of law to be printed on, . . . . . 283  
to be exhibited to certain officers, on demand, under penalty, . . . . . 283  
penalty for counterfeiting or forging, . . . 283  
for selling after expiration or forfeiture of, when licensed as auctioneers, not to sell except in place for which he is licensed, . . . 283  
penalty on, for acting without license, . . . 283

**HAY.**  
weighers of, to be appointed by selectmen, &c., . . . . . 161, 266  
duties and fees of, . . . . . 266  
may be removed by selectmen, &c., . . . . . 266  
pressed, how to be branded, . . . . . 266  
to be forfeited, if sold without being branded, 266  
bale or bundle, inspectors of, may be appointed, duties and fees of, . . . . . 266  
to furnish with weights, &c., . . . . . 266  
how numbered and marked, . . . . . 266  
penalty for selling without inspection, . . . 266  
inspection may be waived by agreement, . . 267  
what exempt from attachment and levy on execution, . . . . . 624, 688

**HAY SCALES.**  
superintendents of, to be appointed, . . . . 161, 266  
duties and fees of, &c., . . . . . 266  
penalty for setting up, without authority, . . . 266  
to be sealed, &c., annually, . . . . . 285

**HEALTH.** (See Board of Health.)  
measures for preservation of, . . . . . 188-194  
punishment for adulterating food, medicines, &c., and other offences against public health, . . . . . 794, 822, 823

**HEIRS.**  
who shall be, of intestate property, . . . . . 474, 485  
entitled to lands conveyed by ancestor on gaming consideration, when conveyance is adjudged void, . . . . . 436  
may administer on property deposited by public administrator in state treasury, . . . . . 487  
when and how liable for debts of ancestor, . . . 507  
actions against, for such debts, not barred by provisions for actions against executors, &c., . . . . . 492  
not liable to pay more than amount received from deceased's estate, . . . . . 507, 508  
liable to contribute among themselves in certain cases, . . . . . 479, 508  
having claim for further damages against executor, &c., after judgment on bond, may have scire facias and new execution thereon, . . . . . 507  
powers and duties of heirs of creditor when judgment debtor redeems land taken, &c., on execution, . . . . . 523  
how may be made parties to real and mixed actions, and petitions for partition commenced by their ancestors, . . . . . 649, 650  
may commence and prosecute suits for redemption of mortgages, . . . . . 715  
may bring actions of waste for waste done in time of ancestor, . . . . . 708  
may have same right to apply to county commissioners in certain cases as their ancestors had, . . . . . 650

**HEREDITARY OFFICES.**  
absurd and unnatural, . . . . . 14, 15

**HERRING.**  
regulations concerning the inspection and sale of, . . . . . 263, 264

**HERRING POND INDIANS.**  
appropriation, &c., for schools for, . . . . . 213

**HIGHWAYS.**  
word, how construed, . . . . . 51  
money may be granted by towns for laying out, &c., . . . . . 158

**LAYING OUT AND DISCONTINUANCE.**  
petitions for laying out, &c., to be made to county commissioners, . . . . . 232  
not to be proceeded on, until parties recognize for costs, in case, &c., . . . . . 232  
notice of, how given, . . . . . 232  
commissioners to view route of, . . . . . 233  
to hear parties, and adjudicate upon necessity of laying out, . . . . . 233  
to proceed to lay out, &c., as soon as may be after adjudication, . . . . . 233  
to give notice before laying out, . . . . . 233  
may make changes of, between termini, . . . 233  
may lay out, &c., highways, within six months, if no one objects, &c., . . . . . 233  
may discontinue highway, &c., at time of view, . . . . . 233  
return of proceedings at next meeting to be held to be discontinuance, . . . . . 233  
may order specific repairs upon existing ways, upon petition for laying out new highways, in certain cases, . . . . . 233  
to give notice in such case, and apportion expense as in laying out, &c., . . . . . 233  
may temporarily close highways during repairs thereon, . . . . . 233  
may locate anew existing highways, on application by town, &c., . . . . . 233



**HIGHWAYS — *continued.***

may assess expense of such locating anew, &c., on town, county, or petitioners, . . . . . 233

to prescribe manner and time for making highway when laid out or altered, &c., . . . . . 233

to transmit to clerks of towns in which highway lies a description of location, &c., . . . . . 234

such description to be recorded by town clerk within ten days, . . . . . 234

to allow reasonable time to owner of land for removing trees, &c., . . . . . 234

if such trees are not removed within time allowed, right to be deemed relinquished, . . . . . 234

to estimate damages caused by laying out, &c., . . . . . 234

not to order such damages to be paid till land is taken for construction of highway, . . . . . 234

to allow indemnity to persons claiming damages in certain cases, though no entry is made, . . . . . 234

to estimate damages caused by specific repairs, &c., . . . . . 234

to order damages to be paid at first meeting after repairs are made, . . . . . 234

if repairs are not made, &c., may allow actual damage, . . . . . 234

manner of estimating damages in case of laying out, altering, &c., . . . . . 234

if claimants have different interests, entire damages to be assessed and paid to trustee named by parties, . . . . . 234

damages, how disposed of in such case, . . . . . 234

trustee to receive damages, &c., to be appointed by probate court, in certain cases, . . . . . 234, 235

party aggrieved by laying out, &c., or by estimate of damages, may have jury, . . . . . 235

or a committee appointed under direction of commissioners, . . . . . 235

powers of jury in such cases, . . . . . 235

applications for jury to revise location, &c., when to be received and acted on by commissioners, . . . . . 235

to revise assessment of damages to be made within one year, &c., . . . . . 235

may be made jointly by several claimants, &c., . . . . . 235

of different parties pending at same time, to be determined by same jury, . . . . . 235

if one of several claimants having different interests applies for jury, others may become parties, &c., . . . . . 238

no jury to be ordered, &c., until petitioners recognize for costs, . . . . . 235

petition for jury not to abate by death of parties, . . . . . 235

executors, &c., may prosecute in such case, . . . . . 235

if executors neglect to prosecute, surviving petitioners may proceed, . . . . . 235

jury, warrant for, to be directed to sheriff, &c., . . . . . 235

how and whence summoned, . . . . . 236

penalty on person summoned to serve on, for neglect to attend, . . . . . 236

if not full, talesmen may be returned, . . . . . 236

to be sworn, . . . . . 236

commissioners may appoint person to preside at trial, . . . . . 236

**HIGHWAYS — *continued.***

if no person appointed, sheriff to preside, &c., . . . . . 236

duties of presiding officer, . . . . . 236

commissioners to take notice of petition for, in behalf of their county, &c., . . . . . 236

and may appoint agent to act before, for county, . . . . . 236

notice of time and place of meeting of, to be given by officer who summons, . . . . . 236

fees of officer for summoning, . . . . . 236

such officer to certify fees of, together with his own, . . . . . 236

to view premises, hear evidence, &c., and sign verdict, . . . . . 236, 237

to determine title to lands only, as respects damages of complainant, . . . . . 237

may extend time for removing trees on land taken for laying out, &c., . . . . . 237

verdict of, to be enclosed in sealed wrapper, with indorsement, &c., . . . . . 237

verdict to be given within three months after order for, . . . . . 237

to be returned to superior court, &c., . . . . . 237

may be set aside by court for good cause, . . . . . 237

if accepted and recorded, to be conclusive, . . . . . 237

if jury do not agree, complainant entitled to new jury until verdict, &c., . . . . . 237

complainant may waive his right to jury, and accept damages awarded by commissioners, . . . . . 237

if questions are determined by a committee, report to be made within three months after appointment, . . . . . 237

proceedings in such case same as upon return of verdict by jury, . . . . . 237

if jury or committee do not alter decision of commissioners, costs to be paid by applicants, . . . . . 237

questions of costs to be determined by court to which verdict, &c., is returned, . . . . . 237

notice to parties interested, how given in such case, . . . . . 239

party having notice, and neglecting to appear, to be barred from application for damages, . . . . . 239

jury to apportion damages in their verdict, . . . . . 239

verdict in such case to be conclusive on persons who have become parties or had notice, . . . . . 239

costs in such cases, how taxed, . . . . . 239

not to be opened, or worked, or shut up until meeting of commissioners after verdict, &c., is certified to them, . . . . . 237

commissioners may then allow further time for making, &c., . . . . . 237, 238

when finally laid out, &c., or specific repairs ordered, expenses of proceedings, &c., to be paid by county, . . . . . 238

if not laid out, &c., expenses to be paid by petitioners recognizing therefor, . . . . . 238

expenses, how paid and collected if petitioners refuse or neglect to pay, . . . . . 238

if not made by towns liable, commissioners to cause them to be made, . . . . . 238

expense of making such highways to be paid from county treasury, and delinquent towns notified, . . . . . 238

how collected of delinquent towns, . . . . . 238

incurred by town, may be paid by county by order of commissioners, . . . . . 238

commissioners to view such highway, and certify completion to county treasurer, . . . . . 238

**HIGHWAYS — continued.**

**Town ways, money may be granted for laying out, &c.,** . . . . . 158

**and private ways may be laid out by selectmen,** . . . . . 239

**may be discontinued by town at a meeting called for the purpose,** . . . . . 239

**not to be laid out, &c., until notice to owners of land, &c.,** . . . . . 239

**notice, how given,** . . . . . 239

**damages for laying out, how determined and paid,** . . . . . 239, 240

**not to be paid until land is entered upon for construction of way,** . . . . . 240

**if land is not taken, &c., indemnity may be allowed, &c.,** . . . . . 240

**if there are different interests in land taken for, damages how assessed,** 234, 240

**location of, to be accepted at legal town meeting before laying out,** . . . . . 240

**and filed in town clerk's office seven days before such meeting,** . . . . . 240

**may be laid out by county commissioners, in certain cases,** . . . . . 240

**may be made and completed by commissioners, if town neglects,** . . . . . 240

**expense of making, may be paid from county treasury in such case, and collected of town with interest, &c.,** 240, 241

**when laid out, &c., by commissioners, town not to discontinue within two years,** . . . . . 241

**may be discontinued by county commissioners if town refuses,** . . . . . 241

**when so discontinued, town not to lay out again within two years,** . . . . . 241

**when application to lay out, is made to commissioners, recognizance for costs to be required,** . . . . . 241

**commissioners to give notice before viewing, &c.,** . . . . . 241

**parties aggrieved by laying out, &c., may have jury to ascertain damages, &c.,** . 241

**order for jury, in such case, to be made by commissioners,** . . . . . 241

**powers of jury,** . . . . . 241

**costs in such cases,** . . . . . 241

**owner of land taken for, to have time for removal of trees, &c.,** . . . . . 241

**neglecting to remove within time allowed, to be deemed to relinquish right,** 241, 242

**time for removing trees, &c., may be extended by jury,** . . . . . 242

**commissioners or selectmen to transmit to town clerk location, &c., for record,** . 241

**such location to be recorded by town clerk within ten days,** . . . . . 241

**legality of, when laid out and accepted, not to be contested by town,** . . . . . 242

**liability of railroads for damages at crossings,** . 359

**application for damages to private ways, occasioned by railroad, when to be made, &c.,** . . . . . 353

**Ways in the county of Suffolk, board of aldermen in Boston to have powers of commissioners concerning,** . . . . . 242

**county commissioners of Middlesex to have like powers in Chelsea, North Chelsea, and Winthrop,** . . . . . 242

**parties may have jury, in said towns, as in other counties,** . . . . . 242

**warrant for jury, to whom directed,** . . . . . 242

**HIGHWAYS — continued.**

**verdict to be returned to superior court,** . . . 242

**applications for laying out, &c., in Boston, how made,** . . . . . 242

**parties aggrieved may have trial by jury in superior court upon application,** . . . 242

**Ways in cities, what provisions apply to laying out, &c.,** . . . . . 242

**Dedication of ways.**

**ways dedicated to public use not chargeable to city or town, unless laid out and established according to law,** . . . . . 243

**selectmen, &c., may close, or caution public against entering on, such ways, if dangerous, &c.,** . . . . . 243

**if not so closed, &c., city or town liable for damages arising from defects in,** . . . 243

**abutters upon, to grade,** . . . . . 243

**refusing to grade after notice, selectmen, &c., may grade at their expense,** . . . 243

**expense of such grading to be assessed on, and to constitute lien on real estate,** . . . . . 243

**selectmen, &c., may establish grade of such ways, and deposit plan in office of town clerk, &c.,** . . . . . 243

**persons making improvements on land abutting on such ways to conform to grade,** . . . . . 243

**grading by abutters not to be construed as a dedication to the public,** . . . . . 243

**establishment of grade by selectmen, &c., not to be construed as acceptance of the way,** . . . . . 243

**not to be dug up or obstructed without consent of selectmen, &c.,** . . . . . 243

**Ascertaining location, selectmen, &c., upon representation of ten or more freeholders, to ascertain correct location of ways, &c., and file certificate, &c.,** . 243

**Erection of monuments, &c., county commissioners, selectmen, &c., to erect permanent bounds of ways laid out by them,** . . . . . 244

**if commissioners, &c., neglect to erect such bounds, on request of owner of land, county or town to be liable to such owner,** . . . . . 244

**Ways over burying-grounds, not to be laid out or constructed through burying-grounds, except by special authority of law, or consent of town,** . . . 244

**not to be laid out through private burial-ground without consent of proprietors,** . . . . . 244

**penalty for so laying out, &c.,** . . . . . 822

**REPAIRS OF WAYS AND BRIDGES, AND DAMAGES FOR DEFECTS IN.**

**Public ways and bridges to be kept in repair at expense of town,** . . . . . 245

**when several towns liable to keep bridge in repair, county commissioners may pass orders concerning the same,** . . . . . 245

**towns to vote sums to be paid in labor, &c., for repairs of,** . . . . . 245

**towns may raise money for repairs,** . . . . . 245

**such money to be assessed and collected like other town taxes,** . . . . . 245

**persons taxed may pay tax in labor, &c.,** . . . 245

**towns may empower surveyors of highways to collect taxes,** . . . . . 246

**HIGHWAYS—continued.**

- duties and powers of surveyors of highways, 245, 246, 247
- towns may make contracts for repairs thereof, 246
- watercourses in, to be regulated by selectmen, &c., . . . . . 246
- surveyors may repair, with consent of selectmen when towns neglect to raise money, . . . . . 246
- damages occasioned by repairs of, to be determined by selectmen, &c., and paid by town, . . . . . 247
- benefit caused by repairs, &c., to be set off, . . . . . 247
- aggrieved party may apply for jury, or by agreement have committee to fix damages, . . . . . 247
- if life lost by defect in, county, &c., liable to fine of one thousand dollars; how and to whose use such fine shall be recovered, 247
- damages caused by defect existing in, for twenty-four hours, to be recovered of town corporation, &c., liable to repair, . . . . . 247
- not to be recovered by party whose carriage and load exceed six tons, . . . . . 247
- defendants in such cases may make tender to plaintiffs, . . . . . 247
- to recover costs if plaintiff does not recover more than amount tendered, . . . . . 247
- penalty on towns for neglect to repair, . . . . . 247
- finer imposed in such cases to be appropriated for repairs, . . . . . 248
- in suits for injuries, location not to be denied, if defendant has made repairs within six years, . . . . . 248
- Private ways and bridges, meetings of proprietors to choose clerk and surveyor, who shall be sworn, . . . . . 248**
- may determine manner of calling future meetings, . . . . . 248
- may determine what repairs are necessary, and apportion money for same, . . . . . 248
- penalty on, for withholding proportion, and to what use, &c., recovered, . . . . . 248
- may contract for repairs, . . . . . 248
- may raise money to fulfil such contracts, may choose assessors, . . . . . 248
- assessors to assess proprietors and deliver list and warrant to surveyor, . . . . . 248
- surveyor to have powers of surveyors of highways, . . . . . 248
- penalty for refusal to serve as, and to what use, &c., recovered, . . . . . 248
- may collect taxes, . . . . . 248
- penalty on, for neglect to pay over money thus collected, . . . . . 248
- REGULATIONS AND BY-LAWS.**
- Guide posts, to be erected, maintained, &c., . . . . . 249**
- Sidewalks, when and how made, &c., . . . . . 249, 250**
- provisions concerning removal of snow, &c., from, . . . . . 250
- By-laws, respecting pasturing cattle, and fast driving, . . . . . 250**
- BOUNDARIES AND ENCROACHMENTS.**
- when buildings, fences, &c., shall be deemed boundaries of, . . . . . 251
- adjudged nuisances, taken down, &c., costs, how paid, . . . . . 251
- fences, &c., across, when and how may be removed, . . . . . 251
- Shade trees may be planted in, . . . . . 251, 252**

**HIGHWAYS—continued.**

- penalty for injuring, . . . . . 252
- owner of beast damaging, liable, . . . . . 252
- may be set out at public expense, &c., . . . . . 252
- associations for planting, how formed, &c., 378
- HIRER.**
- of personal property selling without written consent of owner, how punished, . . . . . 803
- HOLIDAYS, PUBLIC.**
- Christmas, Fast, and Thanksgiving days, Twenty-second of February, and Fourth of July, . . . . . 49, 293, 617
- general court not to sit on, for transaction of ordinary business, . . . . . 49
- public offices to be closed, . . . . . 49
- courts not to be opened on, except, &c., . . . . . 617, 618
- notes, &c., maturing on, when payable, . . . . . 293
- HOLMES' HOLE.**
- land on west chop of, ceded to United States, . . . . . 44
- HOMESTEADS.**
- of householder having a family, to value of eight hundred dollars, exempted from attachment, &c., . . . . . 524
- how such homestead, &c., acquired, . . . . . 524, 525
- rights of, under former laws, preserved, . . . . . 525
- but none shall exceed in value eight hundred dollars, . . . . . 525
- mortgaged property subject to right of, but not as against mortgagee, . . . . . 525
- but when owner of residue above homestead and mortgage redeems mortgage, he shall not set up the same against owner of homestead, unless owner offers to redeem such residue in case of set-off on execution, . . . . . 525
- not exempt from levy for taxes, ground rent, &c., . . . . . 525
- not to defeat previous liens, . . . . . 525
- may be conveyed, and how, . . . . . 525, 540
- partition of property subject to, . . . . . 525
- may be set off to owner in case of his insolvency, . . . . . 525, 526
- appraisers to be appointed in such case, . . . . . 526
- to be sworn, . . . . . 526
- duties of, . . . . . 526
- execution may be levied on property in which homestead exists if value of whole property exceeds eight hundred dollars, . . . . . 526
- appraisers to be appointed and their duties, . . . . . 526
- to continue after death of householder for benefit of widow and minor children, . . . . . 526
- rights in, of widow and children, may be set off in same manner as dower, . . . . . 526
- how may be sold and money apportioned, &c., confirmation of conveyances under certain repealed laws, . . . . . 526
- how estate of, may be conveyed, in case of the insanity or guardianship of parties, 539, 540
- HOOPS AND STAVES.**
- cullers of, to be chosen in maritime towns, and sworn, . . . . . 267
- quality and size of different kinds of, . . . . . 267
- fees for culling, and by whom paid, . . . . . 267
- penalty for fraud in culling, . . . . . 267
- hoops of different lengths to be put in distinct bundles, . . . . . 267
- bundles of less than thirty, or packed of less than required dimensions, to be forfeited, . . . . . 267
- and may be libelled, and sold for benefit of town, . . . . . 267



**HOPS.**

not to be exported, if growth of this state, without inspection, &c., . . . . . 267  
 need not be re-inspected, if grown and inspected in another state, . . . . . 267, 268  
 quality of, and how packed, . . . . . 268  
 how inspected, sorted, and branded, . . . . . 268  
 penalty for shifting contents of bags without obliterating marks . . . . . 268  
 for altering or counterfeiting marks, . . . . . 268  
 for intermixing after inspection, . . . . . 268  
 for exporting, &c., un-inspected, . . . . . 268  
 to be forfeited, if exported, &c., without inspection, . . . . . 268  
 when shipped coastwise, for inspection within the state, provisions not to apply, 268, 269  
**Inspector-general of,** how appointed, and term of office, . . . . . 258  
 to be sworn, and may appoint deputies, 258, 267  
 to give bond, . . . . . 267  
 may require bonds of, and be responsible for deputies, . . . . . 267  
 to make return annually to secretary of amount inspected by himself, &c., . . . . . 268  
 or deputy to examine, sort, &c., all hops intended for exportation, . . . . . 268  
 penalty on, for delay or fraud in inspecting, may seize and libel hops, if shipped without inspection, . . . . . 268

**HORSE-RACING.**

for money, &c., prohibited, . . . . . 825

**HORSE RAILROADS.** (*See Railroads.*)

provisions respecting, . . . . . 370

**HORSES.** (*See Beasts.*)

what and where taxable, . . . . . 76  
 going at large contrary to law, &c., to be impounded, . . . . . 185, 186  
 penalty for unlawfully taking and driving, . . . . . 801

**HOSPITAL.**

may be established by town for reception of persons having dangerous diseases, . . . . . 192  
 to be under direction of board of health or committee of town, . . . . . 192, 193  
 not to be within one hundred rods of dwelling house in adjoining town, without consent, &c., . . . . . 193  
 physicians, &c., of, to be under direction of board of health, . . . . . 193  
 penalty on, for violating regulations, . . . . . 193  
 to be provided by board of health when dangerous disease breaks out, . . . . . 193  
**On Rainsford Island,** inspectors and other officers, appointment of, . . . . . 400  
 inspectors to establish rules and visit hospital, to make annual report, . . . . . 400  
 to make certain inventories annually, . . . . . 55  
 superintendent to give bond, . . . . . 400  
 inmates of, may be transferred by alien commissioners, . . . . . 397  
 foreign paupers arriving, sick, to remain at, sick state paupers may be sent to, by towns, by permission of alien commissioners, 400  
 expenditures at, how to be approved, &c., 400  
 superintendent may complain in bastardy cases if woman refuses to complain, . . . . . 404  
**State lunatic,** at Worcester, Taunton, and Northampton, . . . . . 400-411  
 (*See Lunatic Hospitals.*)

**HOUSE OF REPRESENTATIVES,** (*see Representatives.*) . . . . . 34-39

**HOUSE RENT.**

debts for, to be deemed claims for necessities, . . . . . 472

**HOUSES.**

when may be impressed &c., for reception of the sick, . . . . . 190  
 how cleansed, &c., by order of board of health, 189  
 (*See Buildings.*)

**HOUSES OF CORRECTION.**

to be provided in every county, except Duke's county, . . . . . 144, 858  
 at expense of county, except in Suffolk, 144, 858  
 in Suffolk, by aldermen, at expense of city of Boston, . . . . . 144, 858  
 in Nantucket, by selectmen, . . . . . 145  
 in other counties, by county commissioners, 858  
 shall have convenient yards and workshops, &c., 858  
 yards of, to be so fenced as to prevent communication and escape, . . . . . 858  
 jails to be used for, and yards thereof fenced as above, till others are provided, . . . . . 858  
 materials and tools for labor of convicts in, to be provided at expense of counties or city, . . . . . 858, 865  
 to be provided by commissioners, or in Boston by directors, . . . . . 858, 859, 865  
 expense of such materials, &c., how to be paid, . . . . . 858, 859  
 of keeping, &c., convicts in, how paid when they and their kindred, &c., are not able, &c., . . . . . 864, 865, 866  
 to be for safe keeping, correcting, employing, &c., of offenders legally committed thereto, . . . . . 858  
 of those committed by the United States, except under the fugitive slave law, . . . . . 858  
 may be used for confinement, &c., of convicts punishable, wholly or in part, by imprisonment in county jail, . . . . . 844, 845  
 proceedings of justices and courts, before committing vagabonds, &c., to, . . . . . 820, 821  
 rules and orders for restraint and government of prisoners in, how established, 858, 859  
 master and overseers of, to be appointed and removed by commissioners or city council, . . . . . 858, 860

**OVERSEERS OF.**

to be two or three in number, . . . . . 858  
 appointed annually by commissioners, except in Suffolk, . . . . . 858  
 how removed and vacancies filled, . . . . . 858  
 pay not to exceed one hundred dollars per annum, . . . . . 858  
 to be determined by commissioners, . . . . . 858  
 in Suffolk, directors of public institutions to be, . . . . . 858, 859  
 city council to fix compensation of, . . . . . 858  
 general powers and duties of, . . . . . 859  
 to see that rules are observed, . . . . . 859  
 may contract for work to be done in the house, . . . . . 859  
 for letting to hire the prisoners in the day-time, . . . . . 859  
 may discharge certain prisoners supposed to be reformed, . . . . . 859  
 may discharge certain prisoners after six months from the time of sentence, 859, 860  
 may bind out as apprentices such persons during their sentence, . . . . . 859  
 rights and duties of master, apprentice, &c., 859  
 not affected by age of party bound, . . . . . 859  
 if contract of service, &c., is ended, prisoner to serve out rest of sentence, if any, . . . . . 859, 860

**HOUSES OF CORRECTION — continued.**

- authority of overseers to receive children of certain female convicts, . . . . . 861
- to oversee sentences of solitary imprisonment and hard labor, . . . . . 862
- may punish refractory prisoners, . . . . . 862
- to consider jailer's record of prisoners' conduct when recommending to executive clemency, . . . . . 864
- to audit accounts for support of convicts twice in each year and oftener, . . . . . 865

**INSPECTORS OF.**

- in Suffolk, judge of probate court and justices of police court to be, . . . . . 866
- in other counties, the county commissioners, . . . . . 866
- returns to be made to, by master, . . . . . 866
- powers and duties of, . . . . . 866, 867
- to designate place of removal of prisoners, to have access to books, accounts, prisoners, &c., if pestilence breaks out in prison, . . . . . 864
- may converse with prisoners apart from officers, . . . . . 867
- to notify district-attorney of violation of any law in relation to prisons, . . . . . 867
- to make annual returns to governor, . . . . . 867
- to transmit copies of information given district-attorneys, . . . . . 867
- to state expenses incurred in providing moral and religious instruction, . . . . . 867
- form of returns of, . . . . . 868

**MASTER OF.**

- in Suffolk, to be appointed by city council, . . . . . 860
- in other counties by the sheriff, . . . . . 860
- how and for what cause may be removed, . . . . . 860
- to continue in office on death of sheriff, . . . . . 861
- until new sheriff is appointed, . . . . . 861
- or governor removes, or appoints new one, when appointed by governor, to give bond with surety, . . . . . 861
- to appoint subordinate officers, . . . . . 860
- exempted from military duty, . . . . . 93
- compensation of, how to be established, . . . . . 860, 865
- shall keep calendar of prisoners, . . . . . 860
- penalty for neglect, . . . . . 860
- what the calendar shall contain, . . . . . 860
- duties as to bodies of deceased prisoners, . . . . . 861
- to give female prisoner custody of her child under eighteen months, . . . . . 861
- duties as to classification and separation of prisoners, . . . . . 862
- penalty for violation of this duty, . . . . . 863
- to furnish convicts with work, and govern them, . . . . . 862, 863
- shall have inspection of convicts let out to hire, and of their treatment, . . . . . 859
- shall make returns, twice a year, to inspectors, of state, &c., of houses; contents of such returns, . . . . . 866, 867
- to exhibit books, papers, &c., to inspectors, . . . . . 867
- to keep record of conduct of convicts, . . . . . 864
- in case of pestilence, may remove prisoners to designated place, . . . . . 864
- not to contract for support of insane paupers without consent of commissioners, under penalty, . . . . . 412
- to supply fuel, clothing, and bedding to convicts, at county expense, . . . . . 865
- to obey commissioners or aldermen as to specifications to be furnished to convicts, . . . . . 865
- penalty for disobedience, . . . . . 863, 865
- duty of, when inspectors visit, . . . . . 867

**HOUSES OF CORRECTION — continued.**

- duty of, as to rogues committed, &c., . . . . . 820
- to receive and account for moneys advanced for materials, tools, &c., for convicts, . . . . . 865
- to expend moneys so advanced, under direction of commissioners, or mayor, . . . . . 865
- to keep account of earnings of convicts, and of materials furnished them, &c., . . . . . 865
- to dispose of articles made by convicts, and keep accounts of the proceeds, &c., . . . . . 865
- to pay into county treasury, as commissioners, &c., direct, the amount of sales, proceeds of labor, &c., . . . . . 865
- duties of, as to keeping houses clean, . . . . . 861
- no permanent vault to be used, . . . . . 861
- duties as to personal cleanliness, comfort, and food of prisoners, . . . . . 861, 862
- to furnish Bibles or Testaments to convicts that can read, &c., . . . . . 863
- to provide moral and religious instruction, . . . . . 863
- to receive compensation for board of convicts, and for services, . . . . . 860, 865
- not to furnish spirituous or mixed liquors to those in confinement, . . . . . 863
- penalty for so doing, . . . . . 863
- to notify cities or towns when persons are committed whom they are liable to support, . . . . . 866
- not to pay rent for dwelling-houses provided for them by counties, . . . . . 860

**CONVICTS IN.**

- how to be treated, when sentenced to solitary imprisonment and hard labor, . . . . . 862
- when refractory, or refuse to labor, . . . . . 862
- when disorderly, or wilfully injure house or furniture, &c., . . . . . 862, 863
- not to have spirituous liquor, wine, strong beer, or cider, unless by prescription of physician, . . . . . 863
- penalty on master and others for furnishing such liquors, . . . . . 863
- male and female to be kept in separate rooms, . . . . . 862
- minors to be separated from notorious offenders, those committed on charge of crime to be separated from convicts, . . . . . 862
- those sentenced for different degrees of crime to be kept separate, . . . . . 862
- not more than two to occupy same room except for work, unless houses are crowded, . . . . . 862
- penalty on master for violating these provisions, . . . . . 863
- may be visited by any clergyman they desire, . . . . . 863
- how may be removed, if exposed to dangerous sickness, or to fire, . . . . . 864
- how punishable for breaking prison and escaping, in different cases, . . . . . 864
- liable to double damages, in action for trespass, for injury to houses, furniture, &c., . . . . . 862, 863
- by whom vagabonds, &c., may be discharged on reformation, . . . . . 859
- sentence of, on second conviction after being thus discharged, . . . . . 821
- expenses of, may be recovered of convicts, . . . . . 865
- or of their kindred, . . . . . 865, 866
- with infectious diseases may be removed to hospital, &c., by order of board of health, . . . . . 191
- return of removal to be made to court ordering commitment, . . . . . 191
- such removal not an escape, . . . . . 191
- paupers discharged from, to be removed to state almshouses in certain cases, . . . . . 401, 402

**HOUSES OF CORRECTION—continued.**  
 if convict is too sick to be removed, how provided for, . . . . . 402  
 officers of, exempted from military duty, . . . . . 93

**HOUSES OF INDUSTRY.**  
 powers, &c., of keepers and directors of, in respect to certain persons committed to, 820  
 punishment for escape from, . . . . . 864

**HOUSES OF ILL-FAME.**  
 to be deemed common nuisances, . . . . . 454  
 penalty for keeping, . . . . . 454, 818  
 use of premises as by tenant, to avoid lease, . . . 454  
 penalty on landlord for letting house to be used as, . . . . . 454  
 lease of house so kept, void at option of lessor, . . . . . 818, 819  
 remedy of lessor to recover possession, . . . 819

**HOUSES OF RELIGIOUS WORSHIP,**  
 and furniture, &c., therein, exempted from taxation, . . . . . 74

**HOUSEHOLD FURNITURE, &c.**  
 what exempted from taxation, . . . . . 74  
 exempted from distress for taxes, . . . . . 82  
 from attachment and execution, . . . . . 624, 688

**HOUSEHOLDERS.** (*See Boarding Houses.*)  
 to give notice, under penalty, to board of health, &c., of dangerous diseases, . . . . . 193

**HUM SANDS.**  
 buoy on, ceded to United States, . . . . . 44

**HUMANE SOCIETY.**  
 injury, removal, &c., unlawfully of property, &c., of, how punished, . . . . . 806  
 of life boats, &c., of, . . . . . 806

**HUSBAND.** (*See Married Woman.*)  
 pilots, commissioners of wrecks, &c. to make complaint, . . . . . 806  
 certain provisions respecting husband and wife, . . . . . 539-542  
 in case of divorce, rights of, in property of wife, &c., . . . . . 535  
 may be examined on oath as to personal property of wife, . . . . . 535  
 alimony, &c., in estate of, . . . . . 535, 536  
 property, &c., of married women not subject to control of, or liable for his debts, 537, 538  
 not liable for contracts of wife made in reference to her separate property, trade, &c., . . . 538  
 married after June 3d, 1858, not liable for debts, &c., of wife, contracted before marriage, . . . . . 538  
 judgments against wife to be enforced against, in certain cases, . . . . . 542  
 when to hold wife's lands after her decease as tenant by curtesy, . . . . . 471, 475, 539  
 does not become administrator, guardian, &c., in right of his wife, . . . . . 504, 546  
 entitled to wife's personal property on her decease, . . . . . 485  
 to administer on wife's estate, . . . . . 483  
 when not punishable as accessory after the fact of felony committed by wife, . . . . . 826

**HYANNIS IN BARNSTABLE.**  
 land at, ceded to the United States, . . . . . 45

**HYPOTHECATION.**  
 of ship or vessel, record not necessary to validity of, . . . . . 767

I.

**ICE.**  
 intended for merchandise, punishment for willful, &c., injury to, . . . . . 804  
 companies for cutting, selling, &c., how formed, &c., . . . . . 341, 343

**IDIOTS.**  
 having no known settlement, may be sent to state almshouse, . . . . . 401  
 fees allowed to officers in such cases, . . . . . 401

**IDLE AND DISORDERLY PERSONS.**  
 common, how punished, . . . . . 820, 821

**IDLE AND DISSOLUTE PERSONS.**  
 going about begging, how to be arrested, secured, and punished, . . . . . 820, 821

**ILLEGITIMATE CHILDREN,** (*see Bastards, Children.*) . . . . . 404, 474, 534, 549

**ILL-FAME, HOUSES OF.**  
 deemed common nuisances, how suppressed, and penalty for keeping, . . . 454, 818, 819

**IMMIGRATION.**  
 of certain persons, provisions respecting, . . . 5

**IMPEACHMENTS.**  
 made by house of representatives, and tried by senate, . . . . . 20, 21  
 under federal constitution, . . . . . 2  
 house of representatives has sole power, . . . 2  
 senate has sole power to try, . . . . . 3  
 proceedings in trials of, . . . . . 3, 7  
 how, when the president of the United States is tried, . . . . . 3  
 judgment and sentence, . . . . . 3

**IMPEACHMENTS—continued.**  
 party convicted still liable to indictment, . . . 3  
 president cannot pardon, &c., cases of, . . . . 6

**IMPLEMENTS.**  
 what exempt from attachment and levy on execution, . . . . . 624, 688  
 of burglary, making, mending, or keeping, how punished, . . . . . 799  
 of gaming, provisions respecting keeping of, 435, 436

**IMPORTATION.**  
 of certain persons, provisions respecting, . . . 5

**IMPOUNDING.**  
 of cattle doing damage, or illegally at large, 185, 186

**IMPRESSMENT.**  
 of houses, nurses, &c., for sick, . . . . . 191

**IMPRISONMENT.** (*See Poor Debtor.*)  
 no person subject to, but by the judgment of his peers or the law of the land, . . . . . 15  
 forcible or secret, without authority, how punished, . . . . . 794  
 relief from illegal, how obtained by habeas corpus, . . . . . 734-742  
 on mesne process and execution, how made and relieved from, . . . . . 633, 641  
 of poor debtors for fraud, . . . . . 638, 639  
 of persons committed on warrants of distress in favor of the state, how relieved from, . . . . . 638  
 of insane persons, on mesne process or execution, how they may be removed or discharged, . . . . . 639, 640



**IMPROVEMENT.**

of meadows, beaches, swamps, &c., how may be made by proprietors, . . . . . 750-753

**IMPROVEMENTS ON REAL ESTATE.**

when and how allowed to tenants in real actions, on recovery of judgment by demandants, . . . . . 693

(See *Real Actions*.)

how and when to respondents in petitions and suits for partitions, . . . . . 703

made after first partition by probate court, how compensated for when second partition is ordered, . . . . . 706

how recovered in informations for intrusion and writs of entry, by parties not concluded by judgments therein, 718, 719

**IN WRITING.**

the term to include printing, engraving, &c., . . 52

**INCEST.**

how punished, . . . . . 818

**INCIDENTAL EXPENSES.**

in appropriation bills, what to include, . . . . 140

**INCOME.**

from profession, trade, &c., how taxable, . . . 74

from property subject to taxation, not to be taxed, . . . . . 74

**INCOMPATIBILITY.**

of offices, . . . . . 30, 33, 49, 149, 742

**INCORPORATION.**

acts of, notice of petitions for, how to be published, . . . . . 47

to specify amount of capital stock, . . . . 48

to be deemed public acts, . . . . . 50

**INDENTURE OF APPRENTICESHIP,**

(see *Apprentice*.) . . . . . 549, 550

**INDIANS.**

polls and estates of, exempted from taxation, . 75

guardians and treasurers of, tenure of office, . . 133

appropriations for support of schools for, . . . 213

prohibitions as to digging, &c., shell fish, not to extend to, . . . . . 423

lands held in trust for, how recovered against persons unlawfully entering or intruding upon, or holding same, . . . 719

**INDICTMENT.**

persons not held to answer to second when, &c., . . . . . 790

for larceny, or destruction of wills, &c., what need not state, . . . . . 798

at trial of, certain disclosures not to be evidence, . . . . . 798

forms of, in certain cases of embezzlement, . . 800

need not specify particulars of embezzlement, against receivers of property, knowing it to be stolen, need not aver conviction of thief, . . . . . 801

how to allege intent to defraud, . . . . . 809

in cases of malicious gathering up and retaining of bank bills, . . . . . 810

against mother for murder of infant bastard, . . 818

by grand jury necessary to hold one to answer for alleged offences, . . . . . 790

except when process by information is expressly authorized by statute, . . . . 790

and in proceedings before justices' and police courts, and before courts martial, 790

for offences, except murder, to be found and filed within six years, . . . . . 839

for capital crimes to be found in superior court, to be transmitted to supreme court at next term thereof for the county, and there entered and tried, . . . . . 839

**INDICTMENT—continued.**

in Dukes county, to be transmitted to next term of supreme judicial court for Barnstable county, and there tried, . . 839

notice of, to be forthwith given to chief justice of supreme court, . . . . . 839

process on, for arrest of defendant, if not in custody, to issue forthwith, . . . . . 839

copy of, to be immediately served on defendant, if in custody, . . . . . 839

person indicted for offence punishable with death, or imprisonment for life in the state prison, to have list of jurors delivered to him, and his witnesses summoned at the expense of state, . . . . 839

copy of, and of indorsements on, to be given, without fee, to every defendant in custody or under recognizance, if for an offence punishable in state prison, . . . . . 839

for felony, not to be disclosed by officers of court, nor grand jurors, if defendant be not in custody, nor under recognizance, . . . . . 838

for forgery, or other offence, where an intent to defraud is required to constitute the offence, indictment sufficient if it allege generally an intent to defraud, without naming any particular person, &c., intended to be defrauded, . . 809

not vitiated by certain formal defects, . . . . 842

provisions as to pleas to, . . . . . 840

for certain misdemeanors, may be stayed upon reparation to party injured, &c., . . . 839

persons held in prison, to be tried at next term after six months' time of imprisonment, . . . . . 840

or be bailed on their own recognizance, . . 840

issues of fact in, how to be tried, . . . . . 840

certain defects of form not to vitiate, . . . . 842

of railroad corporation, for loss of life, to be prosecuted within one year, . . . . . 362

on trial of, for forfeitures, jurors not to be challenged on account of paying taxes in any county, city, or town, . . . . . 683

For capital crimes, to be tried in supreme court held by four justices, . . . . . 553, 554

in counties where no law term is established, special session to be held, . . . . . 555

court, how convened in such cases, . . . . 555

special term to be held for trial of, if no stated term is held within six months, 555

notices of such term, how given, and what may be done at the same, . . . . . 555

if found in Dukes county, to be tried in Barnstable, . . . . . 555

special session therefor, how notified, . . . 555

forms of, for murder, not changed, . . . . . 791

**INDIGO.**

not to be sold by pedlers, . . . . . 282

**INDORSERS.**

On promissory notes, may be sued with maker, . . . . . 654

form of declaration against, . . . . . 664

of notes on demand, not to be charged, unless demand is made on promisor within sixty days, . . . . . 293

liability of, . . . . . 293

Of civil process, required on original writs, writs of audita querela, scire facias in certain cases, petitions for certiorari, and bills in equity, before entry, if no

**INDORSERS — continued.**

- one of plaintiffs is an inhabitant of this state, . . . . . 622
- of petitions for partition, . . . . . 699
- liability of, in such case, . . . . . 657
- may be required after entry of action or writ, if plaintiff removes from state, . . . 657, 659
- if insufficient, or he removes from state, new indorser may be required, . . . . . 657
- if not procured according to order of court, suit to be dismissed, with costs, . . . . . 657
- may be stricken off by permission of court, and a new one substituted, . . . . . 657
- liability of, in all cases, for costs from commencement of suit, . . . . . 657

**INDUSTRIAL SCHOOL FOR GIRLS.**

- government of, to be vested in seven trustees, . 413
- Trustees**, how appointed, and tenure of office, 413
  - to receive no compensation, except for expenses incurred, . . . . . 413
  - general powers and duties of, . . . . . 413
  - to appoint superintendent and other officers, 413
  - to determine salaries of officers, subject to approval of governor and council, . . 413
- may expend money given for the erection of buildings, &c., . . . . . 417
- may make, &c., by-laws, . . . . . 413, 414
- may discharge and bind out inmates, . . . 415
- may cancel indenture of apprenticeship, 415, 416
- to be guardians of girls bound out, . . . . 416
- duties of, as to instruction of girls, selection of masters, &c., . . . . . 416
- one or more to visit school at least once in two weeks, &c., . . . . . 417
- to make quarterly examinations, . . . . . 417
  - abstract of quarterly reports, &c., to be laid before governor and council annually, . . . . . 417
- to make certain inventories annually, . . . 55
- Treasurer of**, to be appointed by governor and council, . . . . . 414
  - to give bond, . . . . . 414
  - to receive, &c., legacies, donations, &c., . . 414
  - to submit detailed account, annually, to governor and council, . . . . . 417
- Superintendent of**, how appointed, . . . . 413
  - duties of, . . . . . 416, 417
  - to give bond, . . . . . 416
  - to have charge of property within precincts of school, . . . . . 416
  - to keep accounts of receipts and expenditures, and account to treasurer, . . . 416
  - books, &c., of, to be open at all times to inspection of trustees, . . . . . 416, 417
  - to keep register of girls, &c., . . . . . 417
  - to make all contracts on account of the institution in writing, &c., . . . . . 417
  - may sue and be sued on such contracts, . . 417
  - suit by, or against, not to abate by reason of vacancy in office, . . . . . 417
  - annual report of, to be laid before governor and council, . . . . . 417
- Commitments to**, by whom and how made, &c., . . . . . 414
  - girls between seven and sixteen years of age, for what causes, may be committed to, 414
  - summons to be issued to parents, &c., of, and how served, . . . . . 414, 415
  - second commitment may be made without summons to parents, &c., . . . . . 415
  - examination, trial, &c., . . . . . 414
  - form of warrant of commitment, . . . . . 414

**INDUSTRIAL SCHOOL, &c. — continued.**

- variance from such form, when not material, 414
- courts may transfer girls held for criminal offences, to judges, &c., authorized to commit, . . . . . 415
- fees allowed to judges and officers, . . . . 415
- girls ordered to be committed to, may appeal, 415
- to be kept in school until bound out, &c., . 415
- may be discharged or bound out by trustees, . . . . . 415
- indenture of apprenticeship of, not to be assigned, . . . . . 415
  - except in case of death of master, with consent of girl, approved by trustees, . . 416
  - but may be cancelled by trustees, in certain cases, . . . . . 415, 416
- may be discharged from apprenticeship by judges, &c., on complaint of trustees, for cruelty, &c., of master, . . . . . 416
- trustees to be guardians of, when bound out, . . . . . 416
- provisions for instruction of, &c., . . . . 416
- register of, how to be kept, . . . . . 417

**INFORMATION OF INTRUSION.**

- how prosecuted by attorney-general or district-attorney against parties unlawfully entering or intruding upon, or holding lands of, the commonwealth, . . . . . 717, 718
- to be filed in supreme court in any county, . . 717
- shall describe the lands and set forth title of commonwealth, . . . . . 717, 718
- summons, how issued, served, and where returnable, . . . . . 717, 718
- when title of state is founded on forfeiture for breach of condition in conveyance by state or by the colony of Massachusetts Bay, suit therefor not to be commenced unless by order of legislature, 718
- in other cases, attorney-general or district-attorney may commence suit, when he has reason to believe title of the state can be established, . . . . . 718
- public notice to be given in case of supposed escheat, and of persons interested whose names are unknown, . . . . . 718
- any person claiming an interest, although not named as a party, nor served with process, may appear and answer in suit, . . . . . 718
- costs, how allowed, . . . . . 718
- if commonwealth prevails, defendant to be allowed for improvements, and to be charged with rents and profits, as in writs of entry, . . . . . 718
- commonwealth to be deemed seised upon judgment rendered without writ of possession, . . . . . 718
- judgment conclusive against defendants who appear and those who were summoned in this state, . . . . . 718
- persons not concluded by the judgment may bring writ of entry to recover the land of commonwealth, . . . . . 718
- if commonwealth is seised, action to be brought against tenant, or occupant, and additional service made on attorney-general, or district-attorney, . . . . . 718, 719
- if commonwealth has granted the estate, action to be brought against tenant of freehold, . . . . . 719
- if demandant is entitled to the premises, he

**INFORMATION OF INTRUSION—continued.**

- may have judgment and execution in common form, . . . . . 718
- if he recovers judgment, he shall be entitled to rents and profits, and chargeable with improvements, . . . . . 719
- costs, how awarded and paid, . . . . . 719
- For Indian lands,** when any person unlawfully enters into, intrudes upon, or holds lands, the title to which is in the state, trustees, guardians, treasurers, or agents for Indians, how proceeded against, . . . . . 719
- information to be filed in superior court in county where lands lie, by attorney-general or district-attorney, . . . . 719
- to be filed by district-attorney, when he has reason to believe land can be recovered, . . . . . 719
- proceedings to be as in cases of information above mentioned, but if judgment is for commonwealth, execution may issue, . . . . . 719
- title upon such judgment, when trustees, guardians, treasurers, or agents are interested, to vest in them, and in other cases, in the state, in trust, . . . . 719
- in nature of quo warranto, by whom, and where, may be filed proceedings thereon, . . . . . 744
- persons held to answer under, . . . . . 790

**INHABITANTS.**

- who deemed to be, . . . . . 19, 51
- census of, when and how to be taken, 38, 39, 167, 168

**INHERITANCE, &c.**

- by right of representation, how construed, . . 475

**INJUNCTION.**

- to stay waste, may be issued by supreme court, or a single judge, in term time or vacation, after commencement of suit concerning waste, . . . . . 710
- may in like manner be issued by any court in which proceedings are pending, when person whose estate is attached, or against whom a real action is brought on a mortgage, or for recovery of land, commits or threatens waste, . . 710
- court may require applicant to give bond, . . . 710
- if disregarded, court may commit defendant, or may issue other processes, . . . . . 710
- may be dissolved by judge in term time or vacation, . . . . . 710
- may be issued by supreme or superior court, to prevent or stay waste, when action concerning a nuisance is pending, . . 711
- how issued and dissolved in such cases, . . . 711
- supreme judicial court may issue, after granting writ of audita querela, . . . . . 743
- or pending an application for a certiorari, . . 743
- after leave to file an information in the nature of a quo warranto, . . . . . 744

**INNHOLDERS AND COMMON VICTUALLERS.**

- may be licensed by county commissioners, upon certificate of approval by selectmen, 455, 456
- penalty for acting as, without license, . . . . 455
- license to specify street, &c., where employment may be exercised, . . . . . 455
- not to protect, if employment is exercised elsewhere, . . . . . 455
- when to expire, . . . . . 456
- list of, licensed preceding year, to be sent to selectmen by clerk of commissioners, 456

**INNHOLDERS, &c.—continued.**

- applications for licenses, how to be made, &c., . 456
- to entertain travellers, &c., under penalty of revocation of license, &c., . . . . . 456
- not to entertain other than travellers on Lord's day, &c., under penalty, . . . . . 434
- not to allow implements of gaming to be used on premises, under penalties, . . . . . 436
- how liable for loss of property of guests, . . . 456
- liable only for reasonable care, in case of loss by fire, &c., . . . . . 455
- may show negligence of guests, or their non-compliance with reasonable regulations brought to their notice, . . . . 456
- to put up signs, with name and employment thereon, under penalty, . . . . . 457
- further penalties to be imposed in case of subsequent convictions, &c., of certain offences, . . . . . 457
- not to give credit to students, under penalties, . 457

**INQUEST ON DEAD BODIES.**

- to be taken by coroners, on view of, where death is supposed to have been caused by violence, . . . . . 848
- and in all cases of death from railroad accident, . . . . . 848
- railroad corporation to notify coroner, . . . 362
- coroner, on notice of such death, to issue warrant for summoning six jurors, if authorized in writing, . . . . . 848
- form of warrant directed to constable, . . . . 848
- warrant to be served and returned by constable, under penalty, . . . . . 848
- jurors to attend, when summoned, under penalty, . . . . . 848
- penalties on constable and jurors, to be recovered by coroner, to use of county, . . 848
- if six jurors do not appear, talesmen to be returned, . . . . . 848
- no person shall serve on such jury oftener than once in twelve months, . . . . . 848
- coroner may issue subpoenas for witnesses, . . 849
- to administer oath to jurors and witnesses; form of oath, . . . . . 848, 849
- testimony of witnesses to be reduced to writing, and subscribed by them, . . . . . 849
- inquisition to be secret, if coroner and majority of jury order, . . . . . 849
- compensation of clerk, surgeon, chemist, &c., 849, 850
- jurors to make inspection of dead body, . . . . 849
- after hearing evidence, &c., to make and deliver to coroner their inquisition, . . 849
- form of jurors' inquisition, . . . . . 849
- if jurors find that murder, &c., has been committed, witnesses shall be bound over to next court, &c., . . . . . 849
- coroner may commit witnesses who refuse to recognize, . . . . . 849
- to return to court the inquisition, and other papers, . . . . . 849
- may issue process to bring persons charged by the jury before a magistrate for examination, . . . . . 849
- to cause bodies to be buried, whether an inquest be taken or not; at whose expense, . . . . . 850
- expense of, and of burial, by whom paid, in different cases, . . . . . 850
- of bringing to land dead bodies found in the water, . . . . . 850
- of bringing the dead body of a stranger, . . 850
- how audited and paid, . . . . . 850



**INQUEST, &c.—continued.**  
 justice of peace to act as coroner when there is no coroner in a town, &c., . . . . . 850

**INSANE PERSON.**  
 words, what to include, . . . . . 51  
 by whom and how committed to state lunatic hospitals, . . . . . 407-409  
 persons applying for commitment of, to give notice to selectmen, &c., . . . . . 407  
 to file statement; contents thereof, . . . . . 408  
 may have jury of six to determine whether they are furiously mad, . . . . . 408  
 jury, how selected, empanelled, &c., . . . . . 408  
 deficiency in number of, how supplied, . . . . . 408  
 verdict of, to be final, . . . . . 408  
 fees of, . . . . . 408  
 judge to preside at trial, . . . . . 408  
 expense of trial, how allowed and paid, . . . . . 408  
 fees of judges for committing and discharging, . . . . . 408  
 of officers, for committing, &c., to be same as for commitment to prison, . . . . . 408  
 court may make further allowance, . . . . . 408  
 having no known settlement, may be sent to state lunatic hospital, . . . . . 409  
 expenses of support in hospital, by whom paid, and how recovered, . . . . . 409  
 fees of magistrates, &c., in such cases, . . . . . 409  
 presence of, may be required or dispensed with by judge, at hearing, . . . . . 409  
 when town pauper, at what rates to be admitted to state hospitals, . . . . . 409  
 expenses of support in hospital, and of removal, by whom paid, and how recovered, . . . . . 409  
 how discharged and removed from hospital, . . . . . 410  
 may be removed from hospitals to jails, &c., . . . . . 410  
 removed from state hospitals to jails, &c., to be under charge of county commissioners, . . . . . 410  
 where to be confined, . . . . . 411  
 remedies of counties, &c., for support of, when so removed, . . . . . 410  
 rates of pay allowed by commonwealth, in such cases, for lunatic having no known settlement, . . . . . 410  
 confined in jails, &c., may be removed to state hospital by order of governor, . . . . . 412  
 by order of trustees of state hospital, how discharged or removed, . . . . . 412  
 incurable, when may be removed from hospital, question whether incurable, may be tried by jury of six, . . . . . 410  
 may be recommitted, if not comfortably supported or is dangerous, . . . . . 411  
 not to be discharged from hospital without suitable clothing, . . . . . 411  
 (See Lunatic Hospitals.)  
**County receptacles** for, to be provided by county commissioners, . . . . . 411  
 special provisions concerning, for Essex county, . . . . . 411  
 persons removed from state hospitals to jails, to be confined in, . . . . . 411  
 insane person not furiously mad, having settlement within state, may be committed to, . . . . . 411  
 how and by whom committed, in such case, . . . . . 411, 412  
 presence of lunatic may be required or dispensed with, at hearing, . . . . . 412  
 party entitled to a jury, . . . . . 412  
 who liable for support of such persons in, . . . . . 412

**INSANE PERSON—continued.**  
 how may be discharged or removed from, . . . . . 412  
 keeper of, not to contract for support of insane paupers without consent of commissioners, . . . . . 412  
 penalty for violation of this provision, . . . . . 412  
 fees of magistrates, &c., in cases of commitment or discharge from, . . . . . 412

**In prison**, charged with crime, duty of grand jury concerning, . . . . . 838  
 acquitted or not indicted by reason of insanity, to be removed to hospital, 838, 841, 842  
 when and how to be removed from state prison, . . . . . 878  
 from other prisons, . . . . . 878  
 on mesne process, &c., how discharged, 639, 640  
 under sentence of death, warrant for execution may be delayed or respited, . . . . . 847

**Guardian of**, how appointed, . . . . . 543, 544  
 powers and duties of, . . . . . 544  
 may prosecute and defend suits against, commenced before insanity, . . . . . 650  
 how previous contracts in writing for conveyance of real estate may be enforced by or against guardian, . . . . . 575

**INSOLVENCY, COURTS OF.**  
**COURTS, JURISDICTION, OFFICERS, &c.**  
 courts established in each county to be courts of record, . . . . . 581  
 have jurisdiction of insolvency in their respective counties, . . . . . 581  
 of cases of partnership in county where either partner resides, . . . . . 597  
 of cases transferred from commissioners and masters in chancery, . . . . . 601  
 to be held at shire towns at times appointed by judge, and at other convenient places, 581  
 and meetings may be adjourned, and all things done at adjournment to have like effect as if done at original meeting, . . . . . 581  
 may be adjourned by register in certain cases, 582  
 rules of, how made, . . . . . 582  
 order in, how kept, . . . . . 581  
 officers of, how appointed and paid, . . . . . 581, 582  
 proceedings of, to be matters of record, numbered and filed, . . . . . 581  
 copies of records and prior proceedings filed with register to be prima facie evidence, 581  
 docket to be open to public inspection, . . . . . 581, 582  
 warrants, processes, and orders of, to be under seal, how served and returnable, . . . . . 582  
 parties having business in, may designate newspapers in which to have their notices published, . . . . . 582  
 counties to furnish court rooms and fire-proof rooms for records, . . . . . 582  
 expenses of, to be paid out of state treasury, . . . . . 582

**Judges and registers** of probate and insolvency to be judges and registers of, . . . . . 581

**Judge** to receive applications and issue warrants, . . . . . 582, 583, 590, 598  
 to approve election of assignee; may add others, or order new election, . . . . . 586  
 may require bonds of assignees, . . . . . 586  
 to assign debtor's property, . . . . . 586  
 may order attachments to survive, . . . . . 586, 587  
 may approve bonds, and do other acts out of court, . . . . . 581  
 keep order in court and punish for contempt, . . . . . 581  
 administer oaths, issue commissions, take

**INSOLVENCY — continued.**

- testimony, compel attendance of witnesses, and appoint necessary officers, 581
- may make orders concerning time, place, and manner of sale of debtor's estate, . . . 587
- may order money in hands of assignee to be deposited or invested, . . . . . 587
- may order messenger to sell perishable property, . . . . . 583
- perishable property, to which the title is in dispute, to be sold, . . . . . 588
- may remove assignees, and permit them to resign, . . . . . 588
- may commit assignees for disobeying orders, 589
- may, by warrant, require jailer to bring debtor, if in prison, into court for examination, . . . . . 589
- may examine, or appoint some one to examine, debtor out of court, . . . . . 589
- may commit debtor, if he refuses to obey order of court, . . . . . 590
- may order meetings to be called, 583, 590, 591, 595
- may order meetings, omitted to be called within the time prescribed by law, to be subsequently called with like effect, 590
- may order register to notify meetings in certain cases when assignee neglects, . . . 590
- shall appoint second and third meetings, . . 590
- may cite and examine persons suspected of concealing, embezzling, or conveying away property, . . . . . 597
- to make returns to secretary of commonwealth, . . . . . 600
- (See *Judges of Probate and Insolvency.*)
- Register**, to keep docket, make computations of dividends, furnish certain copies to assignees, and administer oaths, . . . 581
- may adjourn court or meeting when judge is absent, or there is no judge, . . . . . 582
- may certify copies of records of cases in court, and of prior proceedings filed in his office, . . . . . 581
- fees of, for copies, . . . . . 582
- to make and certify list of claims proved, . . 585
- shall receive the deposit by debtor, and all fees of court, and account with state treasurer quarterly, . . . . . 600
- not to be assignee in his county, . . . . . 602
- (See *Registers of Probate and Insolvency.*)
- Supreme judicial court** to have general superintendence of, . . . . . 582
- may hear and determine cases from, as a court of equity, in term time or vacation, . . . . . 582
- may make rules for, at law term, . . . . . 582

**INSOLVENCY PROCEEDINGS.**

- Accounts** to be rendered by assignee when certain amounts are collected, or on order of judge, . . . . . 588
- at third meeting, . . . . . 591
- again within eighteen months, . . . . . 595
- Adjournment** of courts and meeting, . . 581, 582
- Allowance** to debtor, for attendance, support of, and percentage on estate, in certain cases, . . . . . 594
- in case of partners and partnerships, . . . . 597
- of all surplus, if any, after debts are paid, . . 594
- if not paid to debtor while living, may be paid to his representatives, . . . . . 594
- Appeal**, how taken to superior court, notified, entered, and proceeded in by creditor

**INSOLVENCY — continued.**

- or assignee, in case of allowance or disallowance of claim, . . . . . 585
- how, in case of allowance and disallowance of discharge, . . . . . 592
- may be waived, . . . . . 592
- Application** by debtor, . . . . . 582, 598
- by creditors, . . . . . 596
- Assignee**, to be chosen at first meeting; choice how made, . . . . . 585
- choice of, subject to approval of judge, who may appoint additional assignees, or order new election, . . . . . 586
- if not chosen by creditors, judge may appoint, . . . . . 586
- how chosen or appointed in case of vacancy, 588
- in case of partnerships, to be chosen by joint creditors, . . . . . 597
- person having received preference not to be, nor to vote for, assignee, . . . . . 589
- bond may be required of, shall be filed; how sued, . . . . . 586
- failing to give bond, to be removed, . . . . 586
- may be removed by creditors with consent of judge, . . . . . 588
- by judge in certain cases, . . . . . 588
- may resign, . . . . . 588
- effect of death, resignation, or removal of, to execute necessary papers to co-assignee or successor, upon resigning or being removed, . . . . . 589
- refusing to execute papers, or disobeying order of judge, may be committed, . . . 589
- to give notice of appointment, and have assignment recorded, . . . . . 586
- of meetings and dividends to creditors, 587, 588
- to demand and receive from messenger and other persons all debtor's estate, . . . . . 587
- may cause persons suspected of concealing property to be cited to answer questions, . . . . . 597
- may commence and prosecute suits, which shall not abate by death or removal of, and new assignee may prosecute same, . . . . . 587
- may recover property or value thereon, in case of fraudulent preferences, . . . 593, 594
- avoid payments and sales made by debtor in contemplation of insolvency, . . . . . 594
- authority to sue proved conclusively by assignment, . . . . . 587
- powers and duties of, respecting attachments ordered to survive, . . . . . 586, 587
- not to allow to creditors certain set-off, obtained within six months, . . . . . 587
- may, with consent of judge, settle claims by compromise or arbitration, . . . . . 588
- sell perishable property, the title to which is in dispute, and hold proceeds to await determination of title, . . . . . 588
- sell real and personal estate in his discretion, or according to any order of the court, . . . . . 587
- how may sell franchises of corporations authorized to take toll, . . . . . 598, 599
- may, with consent of judge, sell outstanding claims, . . . . . 595
- claims sold by, may be sued in name of purchaser, who alone shall be responsible for costs, . . . . . 595
- to keep regular accounts, to which creditors shall have free access, . . . . . 587

**INSOLVENCY — continued.**

to keep separate accounts of joint and separate estates of partners, . . . . . 597

money collected by, to be kept separate, or deposited in bank, and judge may order deposit or investment thereof, . . 587

may appeal to superior court from allowance of claims, and proceedings thereon, . . . . . 585

from debtor's discharge and proceedings thereon, . . . . . 592

to render accounts when certain amounts are collected, or on order of judge, . . 588

at third meeting, . . . . . 594

again within eighteen months, . . . . . 595

compensation of, . . . . . 588

**Assignment** of all debtor's estate to be made by judge to assignee, . . . . . 586

of the estates and franchises of corporations, 598

to be recorded in registry of deeds, . . . 586

effect of, and what property passes by, . . 586

conclusive evidence of assignee's authority to sue, . . . . . 587

**Attachments** dissolved by assignment, . . 586

how ordered to survive, and prosecuted by assignee for benefit of all creditors, 586, 587

attachments, dissolved by, and how ordered to survive, and proceedings thereon, . . . . . 586, 587

when sufficient cause for instituting proceedings against a debtor, . . . . . 596

when against corporations, . . . . . 599

**Commissioners of insolvency**, and masters in chancery, to finish cases commenced before them, . . . . . 601

fees therefor, . . . . . 601

cases before them may be transferred to courts of insolvency, in certain cases, 601

when closed, records and papers to be deposited in office of register of court of insolvency, . . . . . 601

**Concealment of property** by any person, he may be cited and examined under oath, 597

by debtor, punishment therefor, . . . 596, 597

**Corporations**, proceedings by, except railroads and banks, . . . . . 598

against, for not dissolving attachments, and other causes, . . . . . 599

warrant to contain order requiring messenger to state further that corporation is forbidden to make contracts, . . . 598

claims may be proved at any time before making final dividend, . . . . . 598

officers of, to furnish schedule, and do other acts, in like manner as debtor, . . . 598

sale of franchises of such as are authorized to take tolls and proceedings thereafter, . . . . . 598, 599

damages against, for land and materials taken, &c., preferred claims, . . . . 599

discharges not to be granted to officers or members, . . . . . 599

mortgages by, not invalidated by insolvency proceedings, . . . . . 599, 600

foreclosed, pending proceedings by or against, and before choice of assignee, may be redeemed by assignee within sixty days, . . . . . 599

proceedings to be generally like those in case of insolvent debtors, . . . . . 598

**Costs and fees** of court, amount of, and how paid and accounted for, . . . . . 600

**INSOLVENCY — continued.**

of messenger, how returned and paid, . . . 600

of suits, when and how preferred in distribution of estates, . . . . . 600

costs against parties may be allowed by court, and execution issued, . . . . . 600

in cases still pending before commissioners and masters in chancery, . . . . . 601

**Creditors**, how may prove their claims, 583, 584, 585

how and when proof may be by agent, . . 584, 585

how, when they have security, . . . . . 584

may take oath before justices of the peace, . 585

may appeal if claims are disallowed in whole or in part, . . . . . 585

may act by attorney, . . . . . 585

may have original papers used in proof of claims by leaving copy, . . . . . 585

may deliver up security, or on leave sell same, and prove the balance, . . . . . 584

fraudulent preferences received by, void, and property or value may be recovered by assignee, . . . . . 593, 594

may set off claims, if not procured within six months, . . . . . 584, 587

may assent to discharge, although allowance of their claims is appealed from, . 592

**Debts and claims** may be proved at any meeting, . . . . . 583

what claims may be proved, . . . . . 583, 584

how proved when creditor has security, . . 584

mutual debts to be set off, and balance only proved or paid, . . . . . 584

except certain claims procured by creditors within six months, . . . . . 587

oath to be taken on proof of claim, form of, 584

may be taken before justice, . . . . . 585

by agent in certain cases, . . . . . 584

other proof of, may be required, and debtor and creditor examined, . . . . . 585

not to be allowed unless statements on oath are true, . . . . . 584

when creditor has received preference thereon, . . . . . 585

proof of, may be postponed until after choice of assignee, . . . . . 585

creditors may act by attorney in relation to original papers used in proof of, may be withdrawn and copy filed, . . . . . 585

when proved, list to be made and certified, . 585

what entitled to priority in distribution of estate, . . . . . 594, 595, 599

what are, and what not, affected by discharge, . . . . . 591, 592

proved after dividend is made, not to disturb same, . . . . . 595

appeal to superior court from allowance of claim may be taken by assignee, or from disallowance, by creditor, . . . 585

how claimed, notice of given, and entered, and proceedings thereon, . . . . . 585

may be waived, . . . . . 585

**Debtor**, application by, for benefit of insolvent laws, how may be made, . . . . . 582

to deposit forty dollars on making application; disposition of the money, . . . 600

if assets are not sufficient to pay the fees, debtor to pay them, . . . . . 600

court may issue execution therefor, payable to register, . . . . . 600

to furnish schedule of creditors to messenger within three days, . . . . . 583

to file schedule of property at first meeting,



**INSOLVENCY — continued.**

or within such further time as judge may allow, . . . . .	583
may amend schedule at second meeting, . . .	590
to deliver property to messenger, . . . . .	583
to do all acts and execute all papers necessary to confirm assignment, and to obey order of court, . . . . .	590
if he refuses, he may be committed, . . . . .	590
may be examined respecting claims offered for proof, . . . . .	589
liable to punishment if he spends, conceals, or disposes of property after commencement of proceedings, . . . . .	596, 597
examination of, respecting his estate, when and how to be had, . . . . .	589
when confined in jail, . . . . .	589
when sick and unable to attend, . . . . .	589
if out of state when required to do any act, may do or perform same at another time with like effect, . . . . .	590
to take an oath before judge at second meeting; form of oath, . . . . .	590
when may be allowed to take oath subsequently, . . . . .	592
if he dies after issuing warrant, proceedings not to be abated, . . . . .	583
allowance to, for attendance, support, and percentage, . . . . .	594
in case of partnership, . . . . .	597
if not paid in his lifetime, to be paid afterwards to his representatives, . . . . .	594
to have all surplus after debts are paid, . . .	594
if by accident he fails to take oath or to file assent to discharge within time allowed, he may do so within a year, . . .	592
may appeal to superior court if his discharge is refused, and proceedings thereon, . . .	592
if in prison at the time discharge is granted, how released therefrom, . . . . .	591
certain sales by, in contemplation of insolvency, void, . . . . .	594
proceedings against, by creditors, and for what causes may be had, . . . . .	596
<b>Discharge, when and how granted, . . . . .</b>	<b>591, 592</b>
not to be granted unless estate pays fifty per cent., or assent of a majority of creditors in number and value is filed within six months, . . . . .	592
nor in case of second insolvency, unless assent of three fourths in number and value of creditors is filed, . . . . .	592
not to be granted to a debtor a third time insolvent, . . . . .	592
how granted, in case of partnerships, . . .	597
when refused solely because debtor, by accident, did not seasonably take oath or obtain and file assent of creditors, may be granted within one year, upon notice to, and with assent of, three fourths in number and value of creditors, . . . . .	592
not to be granted to officers and members of insolvent corporations, . . . . .	599
creditors may assent to, although an appeal has been taken from the allowance of their claim, . . . . .	592
what conveyances, payments, acts, and neglects of debtor will prevent and avoid discharge, . . . . .	593, 594
appeal to superior court from allowance or disallowance of, may be taken by assignee or debtor, . . . . .	592

**INSOLVENCY — continued.**

how taken, notice of given, entered, and proceeded with, . . . . .	592
may be waived, . . . . .	592
form and effect of, in relation to debts, . .	591
upon debtor's subsequently acquired property, . . . . .	591
upon debtor's arrest and imprisonment, and liability thereto, . . . . .	591
does not affect debts contracted for necessities unless proved, . . . . .	592
nor release partner, joint contractor, or other person liable for same debt, . . . . .	592
when set up in defence of actions, provisions respecting costs, . . . . .	780
<b>Dividends to be declared at third meeting, . .</b>	<b>594</b>
order of priority therein, . . . . .	594, 595
in ordering dividends, part of funds may in certain cases be reserved for claims which may afterwards be proved, . . . . .	595
second, to be made within eighteen months, . .	595
further, may be made in certain cases, . . .	595
not to be disturbed by subsequent proof of additional claims, . . . . .	595
how declared in case of partnerships, . . . .	597
to be computed by register, . . . . .	581
notice of, to be given to creditors, . . . . .	587, 588
may be attached by trustee process, . . . . .	723
<b>Examination of debtor touching his estate, how had, . . . . .</b>	<b>589</b>
how, when debtor is in jail, . . . . .	589
sick and unable to attend, . . . . .	589
out of state, . . . . .	589, 590
of persons suspected of having fraudulently received, concealed, embezzled, or conveyed away property, . . . . .	597
<b>Fees and costs of court, . . . . .</b>	<b>600</b>
of messenger, . . . . .	600
how preferred on distribution of estate, . . .	600
in cases still pending before commissioners, and masters in chancery, . . . . .	601
<b>Fraudulent preferences and sales, persons receiving, not to vote for, nor be elected, assignee, . . . . .</b>	<b>588, 589</b>
not to prove claim on which preference is taken, . . . . .	585
what are such, when void, and when the property and value of, may be recovered back by assignee, . . . . .	593, 594
payment of debts contracted for necessities to extent of twenty-five dollars, not to be considered such, . . . . .	594
when will prevent and avoid discharge, . . .	593
certain payments and sales by debtor to be so treated, and may be avoided by assignee, . . . . .	595
<b>Homestead of debtor, how set off, . . . . .</b>	<b>525, 526</b>
<b>Involuntary proceedings, . . . . .</b>	<b>596</b>
for what causes creditors may apply for insolvency proceedings against debtor, . . .	596
petitioner to deposit forty dollars, and disposition thereof, . . . . .	600
warrant, how to issue in such cases, . . . .	596
proceedings may be stayed when debtor has, by accident, failed to dissolve attachment, . . . . .	596
<b>Meetings, how notified by assignee, . . . . .</b>	<b>587, 588, 595</b>
by register, when liable to be defeated by assignee's not notifying, . . . . .	590
may be adjourned by judge, . . . . .	581
register, when judge is absent, or there is no judge, . . . . .	582

**INSOLVENCY — continued.**

*First meeting, how called and notified, . . .* 583  
 may be adjourned if notice has not been given, and further notice ordered, . . . 583  
 warrant to be returned at, and schedules filed, . . . . . 583  
*Second, how appointed, and when to be held, . . . . .* 590  
 debtor to take oath, and may amend schedules at, . . . . . 590  
 how called and held, when not held within time required, . . . . . 590  
*Third, how and when to be called and held, . . . . .* 590, 591  
 discharge may be granted at, . . . . . 591  
 how called and held when not held within time required, . . . . . 590  
 accounts to be settled and dividend declared, . . . . . 594, 595  
 subsequent meetings may be had for purpose of making dividends, . . . . . 595  
**Messenger, warrant to be directed to the sheriff or one of his deputies as messenger, . . . . .** 582, 583  
 to give notice of first meeting according to orders in warrant, . . . . . 582, 583  
 to demand and receive debtor's property, . . . . . 583  
 to be furnished by debtor with a schedule of creditors within three days, . . . . . 583  
 may, by order of judge, sell perishable property, . . . . . 583  
 to return warrant and schedule of creditors at first meeting, . . . . . 583  
 fees of, and how paid, . . . . . 600  
**Partners and partnerships, proceedings by and against, how commenced, . . . . .** 597  
 may be in county where either partner resides, . . . . . 597  
 assignee to be chosen by joint creditors, . . . . . 597  
 joint and separate property of, to be kept and distributed separately, . . . . . 597  
 provisions respecting limited partnerships, . . . . . 597  
 separate allowance to be made to each partner, . . . . . 597  
 discharges, how granted to each partner, . . . . . 597  
 in other respects, proceedings to be same as against individuals, . . . . . 598  
**Returns of cases to be made to secretary of commonwealth monthly, . . . . .** 600  
**Set-off of mutual demands, when allowed, . . . . .** 584, 587  
**Security held by creditor, how disposed of, . . . . .** 584  
**Stay of and vacating proceedings, how and when proceedings may be stayed and vacated, . . . . .** 600

**INSOLVENT ESTATES OF PERSONS DECEASED.**  
 how to be applied, . . . . . 496  
 debts entitled to preference, . . . . . 496  
 upon representation of insolvency by executor, &c., commissioners to be appointed, . . . . . 649  
**Commissioners to be sworn, . . . . .** 496  
 to appoint times and places for meetings, and give notice thereof to creditors, . . . . . 496, 497  
 six months allowed to creditors to present claims to, . . . . . 497  
 to make return to probate court, . . . . . 497  
 may examine claimant on oath, . . . . . 498  
 may administer oaths to witnesses, &c., . . . . . 498  
 to keep copartnership and individual claims separate, . . . . . 498  
 provision for contingent debts, . . . . . 497

**INSOLVENT ESTATES OF PERSONS DECEASED — continued.**

appeal, when taken from decision of commissioners, where trial to be had, &c., . . . . . 497  
 to be taken, and notice given, &c., within thirty days of commissioners' return, . . . . . 497  
 trial to be had but no execution to issue, . . . . . 497  
 after appeal, claims may be submitted to arbitration, . . . . . 498  
 decision of arbitrators conclusive, when accepted by the court, . . . . . 498  
 party prevailing upon an appeal to have costs, . . . . . 498  
 omitted by accident or other cause than his own neglect, remedy for, . . . . . 498  
 petition for, not to be sustained unless presented within two years of commissioners' return, . . . . . 498  
 allowance of, not to disturb prior dividends, . . . . . 498  
 distribution among creditors after commissioners' return, . . . . . 498  
 in making dividend, joint and separate estate to be kept separate, . . . . . 498  
 if whole assets are not distributed on first decree, further distribution to be made, . . . . . 498  
 actions by creditors for preferred debts, &c., may be brought against executors, &c., after representations of insolvency, . . . . . 498, 499  
 judgment against an executor, &c., for goods attached by deceased officer, to be paid in full, . . . . . 648  
**Creditors of, may appeal from decision of commissioners and try claims at common law, . . . . .** 497  
 claims of, on such appeal, to be tried as if on action against administrator, &c., . . . . . 497  
 within what time appeal shall be claimed, and notice thereof how given, . . . . . 497  
 how such appeal shall be proceeded with in court, . . . . . 497  
 party prevailing entitled to costs, . . . . . 498  
 remedy for, when appeal is omitted seasonably, . . . . . 498  
 may waive appeal and submit claim to arbitration, . . . . . 498  
 to be paid, if claims allowed on appeal, only from assets not before distributed, . . . . . 498  
 provisions for, when debts are contingent, &c., . . . . . 498  
 after representation of insolvency, cannot maintain action against executors, &c., unless, &c., . . . . . 498, 499  
 provisions for disposition of actions of, commenced before estate is represented insolvent, . . . . . 499  
 claims of, to be barred unless presented for allowance, &c., according to these provisions, . . . . . 499  
 may sue after eighteen months if question of insolvency is not determined at that time, . . . . . 499  
 unclaimed dividends to be distributed among, after twenty years, . . . . . 499  
 administration on estates of such creditors as are entitled to receive such dividends, . . . . . 499, 500  
 if assets are sufficient, debts to be paid in full, . . . . . 499  
 if insufficient, to be paid ratably, . . . . . 499

**INSOLVENT ESTATES OF PERSONS****DECEASED — continued.**

administrator, &c., liable only for assets in his hands, . . . . . 499

if surplus remains, to be distributed among heirs, . . . . . 499

**Of foreigners, administered upon in this state,**

how distributed, . . . . . 508

assets not to pay foreign creditors till residents have received just part of debts, 508

residue, after paying citizens of this state, how disposed of, . . . . . 508

**INSPECTORS-GENERAL.**

of butter and lard, fish, hops, leather, and pot and pearl ashes, how appointed and term of office, . . . . . 258

to be sworn, &c., . . . . . 258

may appoint deputies, . . . . . 258

**INSPECTORS OF PRISONS.**

how constituted, and powers and duties of, 866, 867

**INSPECTORS OF STATE PRISON.**

appointment, duties, &c., of, . . . . . 870, 875

**INSTITUTIONS FOR SAVINGS.**

provisions respecting, . . . . . 316-319

(See *Banks and Savings Banks.*)

**INSURANCE COMPANIES.****I. INSURANCE COMMISSIONERS.**

**Commissioners**, appointment of, to hold office for three years, &c., . . . . . 320

to visit and examine insurance company on request of five or more stockholders or creditors, . . . . . 320

may examine books and agents of foreign companies, . . . . . 320

to examine capital of insurance companies, 323

penalty on agent for neglecting to answer, 321

to calculate value of outstanding life policies, 321

may summon directors, officers, and agents, 321

penalty on directors, &c., for refusing to appear and testify, . . . . . 321

if of opinion that a company is insolvent, may apply to supreme judicial court for injunction, . . . . . 321

to furnish forms of returns to companies, and to agents of foreign companies, . 321

to report violations of law to the secretary, 321

to keep a full record of their proceedings, . 321

to make annual reports to the legislature, . 321

salary of, . . . . . 321

to submit annually to the legislature a report, in print, of conduct and condition of the several loan fund associations, 335

and in case of violation of law, to present the facts to the attorney general, &c., . . 335

**II. GENERAL PROVISIONS.**

incorporated in this state, general powers of, . . 321

first meeting of, how called, . . . . . 322

to give notice to secretary of state of acceptance of charter within one year from its date, 322

matters to be acted upon to be stated in call of meeting, . . . . . 322

may adopt by-laws not repugnant to law, . . . 322

power of, to make by-laws as to venue and limitation of actions, restricted, . . . . . 322

secretary and treasurer of, to give bond, . . . . 322

to have their office in the city or town specified in charter, . . . . . 322

agencies in other places, signs, cards, &c., exhibited by, to specify city or town of company, . . . . . 322

**INSURANCE COMPANIES — continued.**

liable to be taxed, . . . . . 322

directors, when required to furnish legislature or commissioners with statement of affairs, . . . . . 322

such statement to be signed by the president and secretary, and sworn to, . . . . . 322

funds of, how to be invested, . . . . . 322

investing officer of mutual marine, mutual fire, or mutual life insurance, not to borrow its funds, or be liable for money borrowed of company, . . . . . 322

not to buy or sell goods, except those insured by company, &c., . . . . . 322

to conduct business in corporate name only, . . 322

not to issue policies for a term exceeding seven years, . . . . . 322

in this state, to make annual statement to commissioners, . . . . . 323

annual statement to be sworn to by the president and secretary, . . . . . 323

penalty for neglecting, or making false, returns, 323

forms of returns, . . . . . 332-334

**III. COMPANIES HAVING SPECIFIC CAPITAL.**

**Directors**, how chosen, . . . . . 323

to be not less than five, and residents of this state, . . . . . 323

term of office, . . . . . 323

not less than four to constitute a quorum, . 323

vacancies in office may be filled by, or by a meeting of the stockholders called for the purpose, . . . . . 323

may call special meetings of stockholders, . 323

president, secretary, and other officers to be chosen by, . . . . . 323

president to be chosen from board of, . . . 323

**President** and other officers, how chosen, . . . 323

to be chosen from board of directors, . . . 323

and secretary to be sworn annually, . . . . 323

to preside at all meetings, . . . . . 323

pro tempore, may be chosen, . . . . . 323

to sign policies, . . . . . 324

in absence of, two directors may sign policies, . . . . . 324

**Secretary**, how chosen, . . . . . 323

to keep a record of votes, a list of the stockholders, &c., . . . . . 323

to keep a record of all transfers of shares, . . 323

to sign policies, . . . . . 324

in absence of, secretary pro tempore may sign, . . . . . 324

special meetings of stockholders, how called, . . . . . 323

capital stock, unless otherwise specially provided, to be paid in cash, &c., . . . . 323

certificates of full shares or policies not to be issued until capital is paid in, . . . . . 323

policies not to be issued until authorized by commissioners, . . . . . 323

capital to be examined by commissioners, . . 323

directors to make oath in relation to money paid in, . . . . . 323

stock, how to be invested, . . . . . 323, 324

restrictions as to loan of, . . . . . 324

not to own more than one fourth of the capital of any one bank, . . . . . 324

not more than one tenth of capital to be loaned on stocks and bonds of one railroad, . . . . . 324

nor more than one fifth on all railroad property, . . . . . 324



**INSURANCE COMPANIES** -- *continued.*

- not more than one half to be loaned on mortgages of real estate, . . . . . 324
- not more than one tenth on a single mortgage, . . . . . 324
- penalty on directors for unlawful investment of, . . . . . 324
- companies heretofore chartered not compelled to change investment of, . . . 324
- may insure vessels, freight, &c., against perils of the sea, . . . . . 324
- dwelling-houses and other buildings, and personal property against loss by fire, 324
- not to take on one risk more than one tenth of amount of capital, &c., . . . . . 324
- liability of directors for so doing, . . . . 324
- policies, how signed, . . . . . 324
- risks to be reduced on reduction of capital, 324
- liability of president and directors for taking risk when losses equal the capital, . . . 324
- of stockholders for unpaid instalments when losses lessen the capital, . . . . 324
- dividends, how made up, . . . . . 324
- annual statement, when and how to be made by directors, . . . . . 324
- form of return, . . . . . 332, 333

**IV. MUTUAL MARINE AND MUTUAL FIRE AND MARINE COMPANIES.**

- agreement to be signed by members, . . . . . 324
- who to be members, . . . . . 325
- subscriptions to be made, and approved by commissioners, before policies are issued, . . . . . 325
- how held, used, invested, and cancelled, . 325
- not to hold on single risk more than one tenth of net funds, . . . . . 324
- if risk exceeds one tenth, on open policies, reinsurance to be obtained, . . . . . 325
- liability of president and directors for over-insurance, . . . . . 325
- mutual marine companies in operation one year to make annual statement, &c., . 325
- and dividend may be declared on premiums, &c., and certificates issued, . . . . 324-326
- forms of returns, . . . . . 333
- Certificates**, how transferable, &c., . . . . 326
- six per cent. interest may be paid on, . . 326
- how to be redeemed, . . . . . 326
- debt due from persons entitled to, may be deducted therefrom, . . . . . 326
- persons entitled to, not answerable except for premium notes, . . . . . 326
- Directors**, how chosen, . . . . . 324, 326
- to be not less than seven, and citizens of this state, . . . . . 324, 326
- to be chosen by members, . . . . . 324, 326
- members may vote for, by proxy, . . . 334, 526
- to choose president, secretary, and treasurer, . . . . . 324, 326
- not less than five to constitute a quorum, 324, 326
- may fill vacancies in any office until new election, . . . . . 324, 326
- when may call special meetings, . . . . 324, 326
- liability of, for over-insurance, . . . . . 325
- to require president to make monthly statement of assets and liabilities, . . . . 325
- such statement to be recorded, . . . . . 325
- to call special meetings on written application of the owners of one fifth of capital stock, . . . . . 323
- or of twenty stockholders, setting forth the purposes of the meeting, . . . . . 323

**INSURANCE COMPANIES** -- *continued.*

- to make oath that money has been paid in by stockholders towards payment of shares, . . . . . 323
  - in absence of president, two to sign policies, 324
  - liability of, for taking risk contrary to law, 324
  - to make annual statement of dividends, . . 325
  - President**, how chosen, . . . . . 324, 326
  - to be sworn annually, . . . . . 324, 326
  - Secretary**, how chosen, . . . . . 324, 326
  - to be sworn annually, . . . . . 324, 326
  - to keep records of meetings of corporation and directors, and their votes, . . . . 326
  - to record all policies and transfers, . . . . 326
  - record of, to be open at all times for inspection, . . . . . 326
  - Treasurer**, how chosen, . . . . . 324, 326
  - to be sworn, &c., . . . . . 326
  - oath of officers to be recorded in books of company, . . . . . 326
- MUTUAL AND STOCK AND MUTUAL FIRE COMPANIES.**
- to elect annually not less than seven directors, citizens of this state, . . . . . 326
  - after the first election, directors to be members of the company, . . . . . 326
  - persons insured to be members, . . . . . 326
  - members not to be allowed more than five votes in person, . . . . . 326
  - may vote by proxies, dated and executed within six months, and recorded within three days of meeting, . . . . 326
  - no person allowed, by proxy or otherwise, to cast more than twenty votes, . . . . . 326
  - no paid officer to vote as proxy for absent members, . . . . . 326
  - Members**, at expiration of policy, to have share in profits, . . . . . 327
  - subject to assessment for losses and expenses, . . . . . 327
  - extent of liability of, . . . . . 327
  - persons liable to assessment, to be considered members, . . . . . 328
  - not to be assessed, after two years from expiration, &c., of policy, . . . . . 328
  - entitled to proportion of profits of class insured in, . . . . . 328
  - may inspect statement of condition, of company made when assessment is voted, . . . . . 328
  - Special meetings**, directors to call, on request of twenty members, . . . . . 326
  - may be called by directors when they think proper, . . . . . 327
  - to be called by directors, on application, &c., 327
  - Assessments**, when and how to be made, . . 327
  - directors liable for neglect to make, . . . 327
  - liability of members to, . . . . . 327
  - to be made upon class to which policy belongs, . . . . . 328
  - record of vote for making, to be kept, . . 328
  - when ordered, statement of amount to be raised, and losses, &c., to be made, . . 328
  - statement for each class of property to be made, . . . . . 328
  - members may inspect and take a copy of such statement, . . . . . 328
  - persons liable to, to be considered members, 328
  - not to be collected, until statement and record are made, . . . . . 328
  - President**, how chosen, . . . . . 326
  - to be sworn annually, . . . . . 326
  - Treasurer**, how chosen, . . . . . 326

**INSURANCE COMPANIES—continued.**

to be sworn, &c., . . . . . 326  
 neglecting to collect assessment, liability of, 327  
 may repay himself out of money of the company, . . . . . 327  
**Secretary**, how chosen; &c., . . . . . 326  
 to be sworn, &c., . . . . . 326  
 to record all policies and transfers, . . . . 326  
 record to be open at all times for inspection, . . . . . 326  
 to keep a true list of stockholders, &c., . . 327  
 oath of officers to be recorded in books of company, . . . . . 326  
 creditor, remedy of against directors, . . . . 327  
 expenses not applicable to either class of property insured, how to be assessed, . . 328  
**Directors**, how chosen, . . . . . 326, 327  
 to be not less than seven, and citizens of this state, . . . . . 326  
 after first meeting, to be members of the company, . . . . . 326  
 to choose president, secretary, and treasurer, . . . . . 326  
 not less than five to constitute a quorum, . 326  
 majority present to decide questions, . . . 326  
 may fill vacancies in any office until new election, . . . . . 326  
 may call special meetings in certain cases, 326, 327  
 of a corporation, becoming members, may authorize one or more of its stockholders to represent the same, &c., . . . . 327  
 to make assessments, . . . . . 327  
 when claims exceed the funds, to assess in proportion to premium and deposit, . . 327  
 liable for neglect to pay, or assess within thirty days after rendition of judgment against company, . . . . . 327  
 one director, paying execution, to have remedy against the rest, . . . . . 327  
 may divide property into not exceeding four classes, . . . . . 328  
 not to insure, on one risk, a greater amount than they intend to retain, nor with view of reinsuring, . . . . . 328  
 not to issue policies on any other than mutual plan, excepting stock and mutual companies, . . . . . 328  
 stock and mutual companies to have guarantee capital, . . . . . 328  
 guarantee capital, how to be invested, . . 323, 324  
 business to be kept separate, . . . . . 329  
 returns to commissioners, how to be made, 329, 332, 333  
 forms of returns, . . . . . 333, 334  
 not to insure on one risk exceeding one tenth of capital, &c., . . . . . 329  
 mutual companies, where may insure, . . . . 329  
 certain, not to issue policies before two hundred and fifty thousand dollars is subscribed to be insured, . . . . . 329  
 policies and deposit notes to be of the same date, . . . . . 329  
 notes not to exceed double the amount of cash premium, . . . . . 329  
 trust property may be insured by, . . . . . 329  
 trustee not liable in his individual capacity, 329

**LIFE INSURANCE COMPANIES.**

not to go into operation until guarantee capital of one hundred thousand dollars is paid in and invested, . . . . . 329

**INSURANCE COMPANIES—continued.**

directors, first board of, how chosen, . . . 329  
 subsequent boards, how chosen, . . . . . 329  
 stockholders to be entitled to annual dividends not exceeding seven per cent, . . 329  
 one quarter of estimated surplus fund, &c., to be appropriated for redemption of guarantee stock, . . . . . 329  
 residue of surplus fund to be divided once in five years, among the assured, except, &c., . . . . . 329  
 to pay a certain share of profits to Massachusetts Hospital Life Insurance Co., . 330  
 policies for benefit of certain persons, to whom to inure, . . . . . 330  
 if premiums are paid with intent to defraud creditors, an amount equal thereto to inure to the benefit of creditors, . . . 330  
 securities required by laws of other states may be deposited with state treasurer, 330  
 company depositing such securities to receive income, &c., . . . . . 330  
 to pay into state treasury one cent on each one thousand dollars insured, . . . . . 330  
 not to issue policies on fire or marine risks, 330  
 form of return, . . . . . 334

**FOREIGN COMPANIES.**

**Foreign** applies to all companies not incorporated in this commonwealth, . . . . . 332  
 stock companies not to insure in this state, unless capital stock amounts to one hundred thousand dollars, &c., . . . . . 330  
 nor unless restricted from taking on one risk amount exceeding one tenth of its unimpaired capital, . . . . . 330

**Mutual companies** not to insure in this state, without one hundred thousand dollars cash, &c., and one hundred thousand dollars deposit notes, . . . 330  
 to satisfy commissioners of amount of funds, &c., . . . . . 330

**General agent** to be appointed in this state, on whom process may be served, . . 331  
 copy of appointment to be filed in office of commissioners, . . . . . 331  
 agency to be continued while any liability exists in this state, . . . . . 331  
 service of process upon, to be deemed service upon principal, . . . . . 331  
 general and other agent to give bond, . . . 331  
 before making insurance, to deposit copy of charter and statement, &c., with the commissioners, . . . . . 331  
 to make annual statement to commissioners, and publish the same, . . . . . 331

**Agent** to exhibit name of state on sign, and print name, &c., on policies, &c., . . . 332  
 not to act until he has complied with requirements of law, . . . . . 332  
 penalty on, for acting as, contrary to law, . 332  
 penalty on, for insuring, contrary to law, . 332  
 taxes, penalties, &c., in certain cases, . . . 331  
 contracts of insurance made by, without complying with the requisitions of law, to be valid, but agents liable to penalty, 331, 332  
 neglecting to appoint a general agent, not to recover premiums or assessments, . . . 331  
 chartered out of United States, to make returns to commissioners as companies in this state, . . . . . 332  
 penalty on agent of such companies, . . . . . 332

**INSURED.**

- casting away vessel with intent to injure insurer, how punished . . . . . 804, 805
- fitting out vessels with intent, &c., . . . . . 805
- making false invoices to defraud, . . . . . 805
- making or procuring false protest to defraud, . . . . . 805

**INTELLIGENCE OFFICES.**

- license to keep, may be granted by selectmen, &c., . . . . . 457
- fee for license, . . . . . 457
- penalty for keeping, &c., without license, . . . . . 457

**INTEREST.**

- Of money,** to be at rate of six per cent. a year, 292
  - when more than six per cent. is taken contract not void, but threefold unlawful interest forfeited, . . . . . 292
  - and defendant to recover full costs in action on such contract, . . . . . 292
  - if more than six per cent. is paid, threefold unlawful interest may be recovered back, . . . . . 292
  - action for such recovery to be brought within two years, . . . . . 292
  - to be allowed on awards, reports, verdicts, and judgments, . . . . . 685
  - to be collected on warrants and executions for payment of money, . . . . . 685
  - may be allowed by banks for money deposited by assignees of insolvent debtors, . . . . . 307, 587
- In suits, &c.,** not to disqualify persons from being witnesses in person or by deposition, . . . . . 673
- judges, appraisers, &c., from acting, when their towns are interested, . . . . . 618
- jurors, by reason of being inhabitants of Boston, . . . . . 618
- nor in indictments, &c., for recovery of forfeitures by reason of paying taxes in town interested, . . . . . 683

**INTERLOCUTORY ORDERS.**

- In civil cases,** may be made in term time or vacation in any county, allowing amendments before trial, supplemental answers, &c., . . . . . 660
- court to make rules respecting times and places of motions for, &c., . . . . . 660
- In equity cases,** made by a single judge, may be appealed from, . . . . . 560
- such appeal to transfer question only, not the case, . . . . . 560
- although not appealed from, open to revision on hearing of appeal from final decree, 560
- affecting merits of controversy, may be reported for consideration of full court, 560

**INTERROGATORIES.**

- to adverse party in a civil suit may be filed for discovery of facts and documents, . . . . . 659
- by plaintiff after entry of action, . . . . . 659
- by defendant after answer or plea, . . . . . 659
- to have annexed thereto affidavit of party or his attorney, . . . . . 659
- filing of, not to delay trial except by order of court, . . . . . 661
- may, by leave of court, be filed during trial to be answered forthwith, . . . . . 660, 661
- may be put to any officer of a corporation which is a party to the suit, . . . . . 659
- Answers** to be made in ten days, unless the time is extended by court, . . . . . 659
- to be in writing, signed and sworn to, . . . . . 659

**INTERROGATORIES — continued.**

- to be full, and to reply to each interrogatory separately, but may contain matter relevant to issue, . . . . . 659
- need not disclose matters which may tend to criminate the party answering, . . . . . 659
- need not disclose title to property not material to the issue, . . . . . 659
- nor the names of his witnesses, . . . . . 659
- irrelevant matter in, to be expunged, . . . . . 659
- imperfect, court may order to be made more full, . . . . . 659
- costs in such cases, . . . . . 659, 660
- if a party refuse to award, expunge, or answer fully, he may, by order of court, be nonsuited or defaulted, . . . . . 660
- may state that part of book, voucher, or writing called for is irrelevant, and the same may be sealed up, and not inspected except by order of court, . . . . . 659
- may be read as evidence by party interrogating, . . . . . 662
- party interrogated may require those upon same subject matter to be read, if any, cannot avail himself of his answers nor of the fact that he has been examined, if no part of answers be read, . . . . . 662
- Before justices of the peace and police court,** how and when to be filed and answered, . . . . . 663
- In trustee process,** . . . . . 722, 729
- INTOXICATING LIQUOR.** (*See Liquor.*)
- INTRUSION.** (*See Information of Intrusion.*)
- remedy against parties unlawfully entering, or intruding upon, or holding lands of commonwealth, . . . . . 717-719
- or lands held by trustees and others for Indians, . . . . . 719
- INVENTORIES.**
- Of estates of persons deceased,** to be returned by administrator, &c., within three months, . . . . . 488
- when need not be returned by executor, who is residuary legatee, . . . . . 488
- property comprised in, by whom to be appraised, . . . . . 488, 488
- what articles to be omitted from, . . . . . 489
- Of estate of wards,** to be taken, returned, &c., by guardian, as required by administrators, . . . . . 545
- Of trust estates,** when required, &c., . . . . . 500, 501
- INVOICES.**
- making false, to defraud insured, . . . . . 805
- IPSWICH.**
- land on beach in, ceded to United States for lighthouse, . . . . . 45
- ISSUE.**
- how construed, . . . . . 51
- In suits at law,** when to be deemed joined, . . . . . 657
- of fact, when judgment on, against defendant in plea of abatement, final, . . . . . 658
- of law, how raised by demurrer, . . . . . 655
- how, by replications, &c., . . . . . 656, 657
- joined in superior court not to be waived in supreme court upon appeal, &c., . . . . . 563
- In criminal cases,** how to be tried, . . . . . 840
- (*See General Issue, Pleading.*)
- ISSUING.**
- or signing with intent to issue certificates of stock, &c., beyond amount authorized, how punished, . . . . . 801



J.

**JAILER.**

to be appointed by sheriff, . . . . . 860  
 to continue in office, and retain charge of jails and prisoners, after sheriff's death, . . . . . 861  
 after sheriff's death, may be removed, and another appointed, by governor, to remain in office till a sheriff is appointed, . . . . . 861  
 when appointed by governor, shall give bond, . . . . . 861  
 exempted from military duty, . . . . . 93  
 not to pay rent for occupation of dwelling-house provided for him by the county, . . . . . 860  
 shall not make contracts for supporting lunatics in county building, without approbation of commissioners, . . . . . 412  
 shall not furnish strong liquors to prisoners, . . . . . 863  
 on what conditions shall receive and hold principal surrendered by bail, . . . . . 643, 644, 645  
 not required to detain prisoners on civil process who claim support as paupers, unless pay for their support be advanced or secured, . . . . . 638  
 when may discharge debtors, &c., if pay, &c., be not advanced, &c., . . . . . 638  
 duty of, as to bodies of those who die in prison, shall discharge prisoners when their commitment is superseded by order of magistrate, . . . . . 834  
 to keep calendar of prisoners, . . . . . 860  
 penalty for not keeping, . . . . . 860  
 to present list of prisoners to superior court, at criminal term, for inspection, . . . . . 858  
 punishment of, for wilful refusal to receive prisoner lawfully committed, . . . . . 813  
 for voluntarily suffering prisoner to escape, . . . . . 813  
 for negligently suffering prisoner to escape, . . . . . 813  
 may discharge persons committed as fugitives from justice, if charges for support are not paid, . . . . . 855  
 complainant to pay such charges, . . . . . 855  
 fees of, in the county of Suffolk, . . . . . 786  
 duties of, respecting poor debtor in prison or on bail, when judgment recovered against him and he gives bond, &c., . . . . . 640  
 fees of, in such cases, . . . . . 641, 642

**JAILS.**

to be provided in every county, at county expense, except in Suffolk, . . . . . 144  
 in Suffolk, at expense of city of Boston, . . . . . 144  
 to be erected and repaired by county commissioners, except in Suffolk and Nantucket, . . . . . 145  
 in Nantucket, by selectmen, . . . . . 148  
 in Suffolk, by aldermen, . . . . . 148  
 to be under charge of sheriffs, and kept by them or their deputy jailer, . . . . . 857, 860  
 officers of, exempted from military duty, . . . . . 93  
 when to be used as, and how yards of, fitted for houses of correction, . . . . . 858  
 shall be used for detention, &c., of what persons, of persons charged with offences and committed for trial, . . . . . 857  
 committed as witnesses, . . . . . 857  
 committed for any cause authorized by law, . . . . . 857  
 committed, &c., under authority of the United States, except, &c., . . . . . 741, 857

**JAILS — continued.**

under sentence, . . . . . 857  
 prisoners in, may be furnished with employment, . . . . . 858  
 but shall not be required to labor, . . . . . 858  
 with infectious diseases, may be removed to hospital, &c., by order of board of health, . . . . . 191  
 report of removal to be made to court ordering commitment, . . . . . 191  
 such removal not an escape, . . . . . 191  
 paupers discharged from, to be removed to state almshouses, in certain cases, . . . . . 401, 402  
 if convict is too sick to be removed, how provided for, . . . . . 402  
 regulations of, as to prisoners sentenced to solitary imprisonment and hard labor, . . . . . 862  
 when more than one in same county, sheriff may remove prisoners from one to another; for what purposes, . . . . . 857  
 particular provisions for keeping in clean and healthful condition, . . . . . 861, 862  
 how to be visited and examined by inspectors of, . . . . . 866  
 wilful injury to, or to furniture, &c., by prisoners, how punished, and what damages recoverable for, . . . . . 862, 863  
 if prisoner escape by reason of insufficiency of, county must reimburse the sheriff, . . . . . 858  
 (See Houses of Correction.)

**JEWELRY.**

not to be sold by pedlers, . . . . . 282

**JOINT CONTRACTORS.**

a new promise, &c., by one, not to affect the others, . . . . . 779  
 in actions against, when some are liable and others not, how judgment is to be entered, . . . . . 779  
 when one dies, his estate to be liable as if the contract was joint and several, . . . . . 494  
 judgment recovered against one or more in certain cases, not to prevent action against other, &c., . . . . . 647

**JOINT DEFENDANTS.**

two or more making same defence may answer jointly, . . . . . 656  
 how may be made parties upon amendment, after action brought, . . . . . 657, 658  
 judgment to be entered against such as are defaulted or found liable, although not jointly liable, . . . . . 658  
 costs in such cases, . . . . . 683  
 when part of, are out of state, or not served with process, how action to proceed and judgment entered, . . . . . 646, 647

**JOINT STOCK COMPANIES.**

bonds, &c., of, negotiable, . . . . . 293  
 (See Corporations.)

**JOINT TENANTS.**

how constituted by conveyance or devise, . . . . . 466, 467  
 lands of, how taken in execution and with what effect, . . . . . 517, 518  
 suits between, may be brought in supreme court in equity, and receivers appointed, . . . . . 559  
 may divide lands by writ or petition for partition, . . . . . 638

**JOINT TENANTS**—*continued.*

liability of, for committing waste without notice to other co-tenants, . . . . . 709  
 for committing waste during pendency of proceedings for partition, . . . . . 709  
 may sue separately, or all or any two may join in a writ of entry to recover lands, . . . . . 692  
 actions against, when part are out of state, how conducted and judgment rendered, . . . . . 647

**JOINTURE.**

in order to bar dower, to consist of freehold estate for wife's life, . . . . . 470  
 and to take effect immediately on death of husband, . . . . . 470  
 wife's assent to, how to be expressed, . . . . . 470  
 when may be waived and dower claimed, . . . . . 470  
 upon eviction from lands so held, widow may be endowed anew, . . . . . 470

**JOURNALS.**

of senate and house of representatives, indexes and duplicate journals to be made by clerks, . . . . . 48  
 files, papers, &c., to be in custody of the respective clerks, . . . . . 49  
 certified copies to be evidence, . . . . . 49

**JUDGES.**

of courts of record, exempted from military duty, . . . . . 93  
 of the supreme judicial court, to hold office during good behavior, and have salaries established by standing laws, . . . . . 17, 25  
 not to exercise legislative and executive powers, . . . . . 17  
 to be appointed by governor with advice of council, . . . . . 24  
 tenure of office of, . . . . . 27  
 may be removed by governor and council, upon address of legislature, . . . . . 27  
 not to be counsel or attorney, in cases previously determined by them, . . . . . 615, 616  
 judges and commissioners of the United States not to hold judicial office in this state, except justice of the peace, . . . . . 742  
 not disqualified from acting by reason of being an inhabitant of any city or town interested, . . . . . 618  
 what, exempt from serving as jurors, . . . . . 679  
*(See Supreme Judicial Court, Superior Court, Probate Courts, Courts of Insolvency, Police Courts, Judges of Probate and Insolvency.)*

**JUDGES OF PROBATE AND INSOLVENCY.**

one in each county, how appointed, and tenure of office, . . . . . 24, 27, 601  
 to take oaths prescribed by constitution, . . . . . 29, 33, 601  
 additional oaths to be filed in probate office, . . . . . 601  
 may interchange services or perform each other's duties, . . . . . 602  
 when a judge is absent, interested, or unable to perform his duties, or there is a vacancy, register to procure attendance of some other judge, . . . . . 602  
 record, how to be made, and business, how to be done in such case, . . . . . 602  
 not to be retained or employed as counsel in certain cases, . . . . . 602  
 not to hold certain other offices, . . . . . 30, 33  
 exempted from military duty, . . . . . 93  
 from serving as jurors, . . . . . 679  
 to be judges of the probate courts, . . . . . 574

**JUDGES OF PROBATE, &c.**—*continued.*

to be judges of courts of insolvency, . . . . . 581  
 may, when justice of the peace, with another justice, take depositions to perpetuate testimony, . . . . . 676  
**Salaries of,** . . . . . 603  
 not to receive fees or compensation for attending courts in other counties, nor for any other official service, except in cases expressly provided for, . . . . . 604  
*(See Probate Courts, Insolvency.)*

**JUDGMENT.**

**IN CIVIL ACTIONS.**

to be entered as of last day of term, unless otherwise expressly ordered by court, . . . . . 685  
 may, by order of court, be entered in four days after default, . . . . . 685  
 day of entry to be noted by clerk, when made before end of term, . . . . . 685  
 in actions continued nisi in supreme court, and determined before next term, may be entered as of the last term, . . . . . 557  
 clerk to note on docket time of receiving order for such entry, . . . . . 557  
 when so entered for plaintiff, security by bail or otherwise to be held from that time, . . . . . 557  
 may, in any case, in discretion of court, be entered as of any day of former term, . . . . . 567  
 may be entered as of term when verdict was rendered, when a motion for new trial is overruled, . . . . . 685  
 how entered in actions in which defendant files demands in set-off, . . . . . 671  
 against such of several defendants as are defaulted, or found liable in action of contract, . . . . . 685  
 for costs in such cases when part are found liable and part are defaulted, . . . . . 685  
 in actions for breach of bonds, contracts, and agreements with penalties, . . . . . 685, 686  
 on forfeited recognizances in criminal cases, . . . . . 835  
 against absent defendant, . . . . . 605, 646  
 such as are served with process when there are several defendants, . . . . . 647  
 executors and administrators who prosecute or defend, . . . . . 648, 651, 652  
 estate of deceased, when executors or administrators do not appear, . . . . . 648  
 not to be rendered after exceptions are taken unless they are adjudged frivolous, . . . . . 567  
 may be awarded on default, by court, or on motion of either party amount may be assessed by jury, . . . . . 685  
 on damages assessed by jury or clerk in certain cases, . . . . . 685  
 to include interest on awards, verdicts, &c., . . . . . 685  
 for payment of money to bear interest, . . . . . 685  
 when rendered in a local action, in a wrong venue, how executed, . . . . . 686  
 arrest of, not to be for any cause existing before verdict, unless it affects jurisdiction of court, . . . . . 662  
 defects of form in record may be amended after judgment, . . . . . 658  
 unsatisfied, after time for taking out execution, creditor may have scire facias, or action of contract thereon, . . . . . 686  
 after discharge, in certain cases, of poor debtor committed thereon, to remain in force, . . . . . 637, 638  
 obtained by default, if an action is brought thereon within six years, defendant

**JUDGMENT—continued.**

- may set up same defence as upon review, . . . . . 662
- in writs of entry, how entered for seisin, or for rents and profits, or improvements, when awarded, . . . . . 694
- for redemption, and foreclosure, of mortgages, . . . . . 712, 717
- in trustee process, . . . . . 724, 725
- in favor of state, on information for intrusion, to operate to give seisin without writ of seisin, . . . . . 718
- when to be considered as rendered in cases where there is an appeal from taxation of costs, . . . . . 782
- of courts of record, suits on, limited to twenty years, . . . . . 779
- presumed to be paid after lapse of twenty years, . . . . . 779

**IN CRIMINAL CASES.**

- where no punishment is provided, court to award sentence according to use and practice, . . . . . 844
- how entered, &c., against corporations, . . . . 847
- other provisions respecting sentence and executing judgment, . . . . . 844-847

**JUGGLERS.**

- how to be arrested and punished, . . . . . 820, 821

**JULY FOURTH.**

- legislature not to sit, and public offices not to be opened on, . . . . . 49
- courts not to be opened on, except for certain purposes, . . . . . 617, 618
- bills of exchange maturing on, when payable, . . 293

**JUNK.**

- provisions respecting dealing in, . . . . . 457, 458

**JURISDICTION.**

- of the commonwealth, extends to all places within its boundaries, . . . . . 43
- subject to right of concurrent jurisdiction of United States, in certain places, . . 43, 44, 45
- of counties separated by water, when concurrent, . . . . . 43
- of court not to be affected by defects of form in process, unless availed of before answer to merits, . . . . . 662
- not affected by laws relating to pleading and practice, . . . . . 662
- of offences committed within one hundred rods of boundary line of counties may be in either, . . . . . 838
- of offences on the sea, within one league of the shore, in the adjacent county, . . . . 838
- where mortal injury is inflicted in one county, and death ensues therefrom in another, . . . 838
- where mortal injury is done on the high seas, or on land, within or without the state, and death ensues therefrom in any county, offence to be prosecuted where death happens, . . . . . 838, 839
- in capital cases and proceedings, . . . . . 839
- of Middlesex and Suffolk counties, common over part of Charles River, . . . . . 144, 145

**JURORS.**

**GENERAL PROVISIONS.**

- who liable to be drawn and who exempted, . 679, 680
- not required to serve oftener than once in three years, . . . . . 680
- except in Dukes and Nantucket, where they may be required to serve once in two years, . . . . . 680

**JURORS—continued.**

- and except in cases before justices of the peace, and police courts, . . . . . 680
- not exempted from serving in any other court by reason of having served before a justice of the peace or police court, . . . 680
- returned for superior court for criminal business in Suffolk, to serve three terms, . . . . 681
- in cases before justices of the peace and police courts, when may be required, . . . . . 606
- not required to serve before justices of the peace and police courts more than fourteen days at one time, nor more than twenty-four days in the year, . . . 680
- may be returned from bystanders, or the county at large by order of court, when panel is reduced, . . . . . 682
- such jurors shall be returned by sheriff, and shall be such persons as are liable to be drawn as jurors, . . . . . 682
- when so returned, there must be on the jury seven jurors who were originally drawn and summoned, . . . . . 682
- shall be examined on oath by court, on motion of either party to suit, as to their relation to the parties, interest or opinion formed in the case, . . . . . 683
- objection to, may be supported by other evidence, . . . . . 683
- not standing indifferent, to be set aside, and others substituted, . . . . . 683
- not disqualified by reason of interest as inhabitants of Boston, . . . . . 618
- on account of liability to pay taxes in any county, city, or town, in actions, &c., for forfeitures, . . . . . 683
- objections to, not to be made after trial, if known before, . . . . . 683
- irregularity in writ of venire, or in drawing, summoning, or empanelling jurors, not to affect verdicts, in certain cases, . . . 683
- gratuities to, or treats of, during term of court, by party to a suit, cause for new trial, . . . . . 683
- Penalty** on persons drawn and summoned as jurors, but failing to attend, . . . . . 683
- on officers and other persons neglecting their duty in relation to jurors, . . . . 683
- how imposed, in case of jurors required to serve on any other occasion than before the courts or justices of the peace, . . . . . 683, 684
- on city or town officers, for fraud in relation to jury box, or in drawing or returning jurors, . . . . . 684
- for corrupting jurors, . . . . . 813
- on jurors, for accepting bribes, . . . . . 813

**LIST AND BOX.**

- list of, in towns, to be prepared by selectmen once every year, . . . . . 680
- to include not less than one for every one hundred inhabitants, nor more than one for every sixty, except in Dukes county, . . . . . 680
- in Dukes county, it may include one for every thirty inhabitants, . . . . . 680
- to be posted in public places at least ten days, and then laid before town, . . . . 680
- town may alter, by adding or taking out names, . . . . . 680
- names of jurors to be written on separate



**JURORS** — *continued.*

ballots, and placed in a box, to be kept by town clerk, . . . . . 680  
 names of persons convicted of scandalous crimes, or guilty of gross immorality, to be withdrawn from box, . . . . . 680  
 upon every renewal, the indorsements of the drafts of all persons returned within three years, to be transferred to the new ballots, . . . . . 681  
 penalty on city and town officers for fraud in relation to, . . . . . 684  
**In cities,** list to be prepared and posted by mayor and aldermen, and submitted to common council, . . . . . 682  
 common council may revise list in like manner as towns, . . . . . 682

**VENIRES.**

venires for jurors to be issued by clerks of the courts, before each term, except certain terms of superior court, for criminal business, in Suffolk, . . . . . 680  
 to be issued at such other times, and served and returned as the courts order, 680, 681  
 to be so issued as to require such numbers from different towns as to equalize duty of serving, . . . . . 681  
 to be delivered to sheriff, and by him transmitted to constables, who shall serve same without delay on selectmen and town clerk, . . . . . 681  
 how served in cities, . . . . . 682  
 irregularities in, not to affect verdicts in certain cases, . . . . . 683  
 may be issued by order of superior court, in term time or vacation, to procure attendance of jurors in Dukes county from any town in the county, to serve in cases in which any towns are interested, . . . . . 681

**DRAWING AND SUMMONING.**

to be selected, when required in any case, (except upon inquests, and proceedings for the commitment of insane persons,) by drawing ballots from the jury box, . . . . . 681  
 when to be drawn, town clerk and selectmen to attend at clerk's office, and how drawing shall be conducted, . . . . . 681  
 name of any person drawn, who is exempt, or unable to attend, by reason of sickness or absence, or who has served within three years, to be returned to box, . . . . . 681  
 date of the draft of persons returned to be indorsed on ballots, . . . . . 681  
 may be drawn in open town meeting, if town so votes, . . . . . 681  
 if town has so voted, selectmen to call town meeting when a venire is served upon them, . . . . . 681  
 all meetings for drawing jurors shall be not less than seven, nor more than twenty-one days before they are required to attend, . . . . . 681, 682  
 to be summoned by constable, how, . . . . . 682  
 how drawn in cities, . . . . . 682  
 how returned from the bystanders, or the county at large, when panel is reduced by challenge or otherwise, . . . . . 682

**JURORS** — *continued.*

irregularities not to affect verdicts in certain cases, . . . . . 683  
 penalty on city and town officers for fraud in relation to, . . . . . 684

**EMPAANELLING.**

clerk of court to prepare alphabetical list of jurors returned, . . . . . 682  
 first twelve on list to be sworn and empanelled as first jury, . . . . . 682  
 second twelve to be sworn and empanelled as second jury, . . . . . 682  
 supernumeraries may be placed on either jury when others are absent, . . . . . 682  
 may be transferred from one jury to the other as convenience requires, . . . . . 682  
 after being empanelled, to elect foreman by ballot, . . . . . 682  
 new foreman to be chosen in like manner, when former is absent, . . . . . 682  
 above provisions not to apply to juries in criminal cases, . . . . . 682

**IN CRIMINAL CASES.**

**Grand jurors,** how drawn, summoned, and empanelled, &c., . . . . . 837, 838  
 (*See Grand Jurors.*)  
**Trial jurors** to be called, sworn, and empanelled anew for trial of each case, . . . . . 682  
 foreman shall be appointed by court or by jury, when they retire to consider of their verdict, . . . . . 682  
 irregularities not to affect verdict, in certain cases, . . . . . 683  
 list of, to be given to persons indicted for crime punishable by death, or state prison for life, . . . . . 839  
 provisions as to challenging, . . . . . 841  
 what opinions disqualify for trying capital cases, . . . . . 841  
 form of oath of, . . . . . 841  
 what jurors may affirm, . . . . . 841  
 may decide the law and the fact, . . . . . 842  
 (*See General Provisions, above.*)

**CORONER'S INQUEST.**

duty of, while serving on inquest, . . . . . 849, 850  
 penalty, when summoned on coroner's inquest, for not attending, . . . . . 848  
 not required to serve oftener than once in twelve months, . . . . . 848

**BEFORE JUSTICES OF THE PEACE.**

how drawn, summoned, &c., . . . . . 606, 680, 681

**JURY.**

right of trial by, . . . . . 15, 16, 533  
 in criminal cases, may decide the law and the fact, . . . . . 842  
 courts shall not charge as to matters of fact, . . . . . 566  
 when, after deliberation, they return into court without agreeing, they may be instructed, and sent out again, . . . . . 683  
 shall not be so sent out more than once without their consent, unless they ask explanation of law, . . . . . 683  
 may be taken to view premises in certain cases, and on what terms, . . . . . 683  
 may, by order of court, assess damages upon default, . . . . . 685  
 to revise proceedings of county commissioners in laying out, &c., highways, when may be had, . . . . . 235

**JURY—continued.**

powers of, in such cases, . . . . . 235-237  
 warrant for, . . . . . 235, 236  
 how and whence summoned, . . . . . 236  
 penalty for not serving on, . . . . . 236  
 if not full, talesmen may be returned, . . . 236  
 to be sworn, . . . . . 236  
 to view premises, upon request, &c., hear evidence, sign verdict, &c., . . . . . 236, 237  
 verdict, when and how returned, &c., . . . 237  
 may be set aside by superior court, . . . 237  
 if accepted and recorded, to be final, . . . 237  
 to determine damages occasioned by repairing highways, . . . . . 247  
 to determine question of insanity in certain cases, . . . . . 408, 412  
 in case of buildings, &c., adjudged nuisances, &c., 453  
 in cases concerning use, &c., of steam engines, &c., . . . . . 459  
 to assess damages to land owners caused by telegraph companies, . . . . . 373  
 to try questions of fact in cases of seizing, &c., forfeited goods, . . . . . 773  
 in complaints for flowage, . . . . . 755, 756  
 in proceedings to enforce mechanics' lien, either party may have, . . . . . 763, 764  
 or court may order, . . . . . 763  
 trial by, in civil actions, may be waived, and trial had before court, . . . . . 661  
 in such case, exception may be taken, new trial granted, and review had, as in other cases, . . . . . 661  
 in cases before justices of peace, how had, . 606  
 summoning jurors in such cases, and how long required to serve, . . . . . 680, 681

**JUSTICES OF THE PEACE AND QUORUM.**

may discharge poor debtors arrested on mesne process and execution, . . . . . 635  
 may approve bail bonds, . . . . . 642

**JUSTICES OF THE PEACE.**

**GENERAL PROVISIONS.**

how appointed, . . . . . 24  
 tenure of office, . . . . . 27  
 exempt from liability to watch, . . . . . 174  
 may issue all writs and processes necessary to carry into effect powers granted, and may frame forms therefor where none such exist, . . . . . 610  
 may grant summonses to witnesses in criminal cases, on request of attorney-general or person accused, . . . . . 610  
 may administer oaths, . . . . . 610  
 punish persons interrupting their proceedings, or being in contempt of their authority, . . . . . 610  
 must keep records of their proceedings, civil and criminal, . . . . . 610  
 may adjourn their courts, . . . . . 610  
 not to commence nor be concerned in the institution of civil actions before themselves, . . . . . 610  
 not to issue process, &c., except to summon witnesses, while being commissioner of the United States courts, . . . . . 742  
 shall not be retained as counsel in any case commenced before, or determined by them, and shall not try actions commenced by them, . . . . . 610, 615, 616  
 may issue execution after commission expires, . 610  
 when commission of, expires, and is renewed,

**JUSTICES OF PEACE—continued.**

proceedings before not to be interrupted thereby, . . . . . 610  
 to account for all fines to town and county treasurers semiannually, . . . . . 610  
 to return to county treasurer once in three years all officers' fees then uncalled for, with a schedule thereof, . . . . . 610  
 to make return of criminal cases, costs, fines and forfeitures, to secretary of commonwealth annually, according to blanks furnished, and penalty for neglect, . . . . . 129, 611, 851  
 laws in relation to, not to affect police courts, . 611  
 not disqualified from acting by reason of being inhabitants of town which is interested, . . . . . 618  
 may take affidavit, and authorize arrest of debtors on mesne process and execution, . . . . . 633, 634  
 may take depositions, . . . . . 674-676  
 powers and duties of, in regard to solemnizing marriages, . . . . . 520  
 penalties on, for violation of provisions concerning solemnizing marriages, . . . 520  
 for acting directly or indirectly in cases under the acts of congress respecting fugitives from service or labor, . . . 741  
 while commissioner of United States circuit court, shall have no authority under state laws, except to summon witnesses, . . . . . 742  
 fees of, for official duties, . . . . . 783, 784, 787, 879  
 of each, when two or more are required to attend, . . . . . 784  
 may be disallowed by district-attorney, in criminal cases, when, &c., . . . . . 788  
 duty of, as to taxing costs in criminal cases, . . 851  
 when justice may retain his own fees, . . . . 851  
 refusing to obey, how punished, . . . . . 814  
 falsely assuming to be, how punished, . . . . 814  
 when to discharge duty of coroner, . . . . . 850  
 fees of, in such case, . . . . . 850  
 power and duty of, as to the discharge of poor convicts, . . . . . 878, 879

**CIVIL JURISDICTION.**

to hold courts severally in their respective counties, . . . . . 604  
 to have exclusive original, of actions of replevin for beasts distrained or impounded, . . . . . 604, 605, 730  
 of actions of forcible entry and detainer, . . . . . 605, 707  
 of actions of contract and tort, where damages do not exceed twenty dollars, . . . 605  
 to order sale of property held in pledge, . . . 769  
 may take recognizance for debt, . . . . . 771  
 to enforce mechanics' lien, if not over one hundred dollars, . . . . . 763  
 (See Liens.)  
 original and concurrent, with superior court, of action of contract and tort, where debt or damage exceeds twenty dollars and does not exceed one hundred dollars, . . . . . 605  
 of replevin of other property than beasts distrained or impounded, where value of property does not exceed one hundred dollars, . . . . . 731  
 laws relating to pleading and practice applicable to actions before, . . . . . 663

**JUSTICES OF PEACE—continued.**

in actions before, how interrogatories by parties to suits to be filed and answered, . . . . . 663

jurisdiction and proceedings in trustee process, and scire facias on judgments therein, . . . . . 729, 730

may issue writs of scire facias against executors and administrators, on suggestion of waste, . . . . . 605

against bail taken in actions before them, although judgment exceeds their general jurisdiction, . . . . . 605, 644

writs, in such cases, how served and returnable, . . . . . 605

judgment may be rendered, and execution issued, although whole sum exceeds one hundred dollars,; . . . . . 605

writs in actions commenced before, forms of, how signed and issued, and to be served and returned in same county, may run into any county for purpose of attaching property, but cost of service limited to one dollar fifty cents, . . . . . 605

how served, and notice of action given, when defendant is out of state, and proceedings in such case, . . . . . 605

not to be returnable earlier than 9 A. M., nor later than 5 P. M., and may be returnable at dwelling-house, . . . . . 605

attachment of lands not to be made on, unless damages demanded exceed twenty dollars, . . . . . 624

execution issued by, for damages exceeding twenty dollars, to be so framed as to direct a levy on lands of debtor, . . . . . 686

action before, may be heard at dwelling-houses, may be removed to superior court when title to real estate is brought in question, 606, 731

actions of replevin may be removed when penalty or damages demanded exceed one hundred dollars, . . . . . 631

party requesting removal to recognize; and if he fails so to do, justice to hear case, . . . . . 606

party recognizing, to enter action and produce papers; and if he fails so to do, adverse party may, on complaint, have judgment, . . . . . 606

when absent at time and place to which any process is returnable, any other justice may attend and continue case, not exceeding thirty days, . . . . . 605

may enter judgment and award execution for plaintiff, upon default or trial, . . . . . 605, 606

for costs for defendant, if plaintiff fails to enter action or to maintain it, . . . . . 606

trials before, may be had either on written pleas, or defendant may orally deny plaintiff's right to maintain action, and trial be had upon such denial, . . . . . 606

trials may be had before jury, if all parties file a written waiver of right of appeal; and in such case, no appeal shall be had, . . . . . 606

six jurors to be summoned in such cases; how drawn, summoned, sworn, and empanelled, and proceedings thereupon . . . . . 606, 680

when sufficient number of jurors cannot be obtained, justice to cause jurors to be returned from bystanders, . . . . . 607

how long required to serve, &c., . . . . . 680, 681

sheriff or constable to attend on such juries, 606

**JUSTICES OF PEACE—continued.**

fees of officers and expenses of room, in such cases, to be paid by county, . . . . . 607

costs for attendance before, . . . . . 783

to enter on docket day when case is disposed of for the term, . . . . . 783

**Death of justice**, while actions before remain unfinished, proceedings thereupon, . . . . . 607

any other justice may transcribe records, certify copies, and issue judgment, . . . . . 607

may summon executor or administrator to produce records, . . . . . 607

**Set-off** of mutual demands in action before, how made, . . . . . 671

**Appeal from decisions of**, may be had, to superior court, within twenty-four hours after entry of judgment, by any party aggrieved, . . . . . 607

appellant to recognize, with sureties, to prosecute appeal, . . . . . 607

enter appeal, and produce copies and papers; and failing so to do, adverse party may, on complaint, have judgment affirmed in superior court, . . . . . 607

pleadings and trial in superior court on such appeal, . . . . . 607

costs on appeal, . . . . . 780

appeal or complaint for non-entry thereof, if not seasonably entered, may, on leave of superior court within one year, be subsequently entered, . . . . . 563

effect of such subsequent entry on bail and security taken in action, . . . . . 563

**CRIMINAL JURISDICTION.**

all justices to be conservators of peace, and may issue warrants returnable before police courts or trial justices, . . . . . 570, 608, 827, 83

to receive no fees therefor, . . . . . 570, 608

may arrest offender without warrant, in certain cases, . . . . . 608, 828

not to have other jurisdiction in criminal cases, unless designated as trial justices, . . . . . 608

may issue search warrant for liquor kept for unlawful sale, &c., . . . . . 445

may issue search warrant for gunpowder, &c., unlawfully kept, &c., . . . . . 461

duty of, in suppressing riotous and unlawful assemblies, . . . . . 815

penalty for neglect of such duty, . . . . . 815

**Trial justices**, to continue such according to the tenor of their commissions, . . . . . 608

number to be appointed in the several counties, . . . . . 608

authority of, ceases on change of domicile, may discharge poor debtors arrested on mesne process or execution, . . . . . 635

approve bail bonds, . . . . . 642

to have jurisdiction of offences punishable by fine not exceeding fifty dollars, or imprisonment not exceeding six months, or both, . . . . . 608

may punish for assaults and batteries, &c., and cause rioters and disturbers of the peace, and other disorderly persons, to be arrested, . . . . . 608

persons arrested, in such cases, to be tried, required to find sureties, and bound over to superior court for trial, . . . . . 608

may also punish for breaches of town by-laws, violations of liquor law, illegally keeping billiard tables and bowling al-



**JUSTICES OF PEACE—continued.**

- alleys, violations of laws relating to public health, and against property in cemeteries, . . . . . 608, 609
- may, concurrently with superior court, have jurisdiction of certain larcenies, of buying, receiving, concealing, and aiding in concealing, stolen goods, and of obtaining property by false pretences, games, sleight of hand, and tricks, and how may punish therefor, . . . . 609
- also, of offences of wilfully cutting and otherwise injuring trees, stealing from gardens, and trespassing upon orchards, . . . . . 609, 805, 806
- also, of unlawfully taking and using

**JUSTICES OF PEACE—continued.**

- horses, carriages, boats, and other property, . . . . . 609, 801
- shall arrest and bind over persons committing felonies and other crimes, . . . 461, 609
- Appeal** to superior court may be had by any person convicted before, . . . 609, 610, 843
- appellant and witnesses to recognize, . . . 843
- duty of justice, . . . . . 843
- other provisions respecting, . . . . . 843
- JUSTICES' COURT FOR THE COUNTY OF SUFFOLK.**
- jurisdiction and records of, transferred to police court of Boston, . . . . . 573
- JUVENILE CONVICTS.** (*See Sentence.*)
- to what prison may be sentenced, . . . . . 846

**K.****KELP AND OTHER SEAWEED.**

- regulations concerning gathering, &c., of, . . . 433

**KIDNAPPING.**

- where prosecuted, and how punished, . . . . 794
- consent of person kidnapped not to be defence, unless, &c., . . . . . 794

**KINDRED.**

- what, to inherit estates, . . . . . 474

**KINDRED—continued.**

- degrees of, to be computed according to rules of civil law, . . . . . 474
- of half blood, to inherit with those of whole blood, . . . . . 474
- when liable for support of paupers, . . . . 392, 393
- KUTTA-HUNK.**
- island of, land on, ceded to United States, . . . 44

**L.****LABOR.**

- certain claims for, entitled to priority in distribution of estates of insolvent debtors, . . . . . 594, 595
- to be paid in full by stockholders in manufacturing corporations, . . . . . 383

**LAGER BEER.**

- considered an intoxicating liquor, . . . . . 442
- penalty for setting up exhibitions at which beer is sold, . . . . . 464

**LAMPS.**

- wilful, &c., extinguishment of street, how punished, . . . . . 803

**LAND OR LANDS.**

- words, how construed, . . . . . 51

**LAND AGENT.**

- appointment, salary, and bond of, . . . . . 138
- general duties of, . . . . . 138, 139
- sales by, to be approved by governor, &c., . . . 139
- to make annual report to legislature, . . . . 139
- and annual statement of expenses of his office, . 141

**LANDING PLACE.**

- common, when fences, buildings, &c., to be deemed boundaries of, . . . . . 251

**LANDLORD.**

- not to have lien on wearing apparel of seamen, &c., in certain cases, . . . . . 290
- Remedy for, against tenant whose lease has terminated,** . . . . . 707
- who uses premises for nuisances and certain illegal purposes, . . . . . 454

**LANDLORD—continued.**

- who refuses or neglects to pay rent, . . . 472, 707
- how may terminate tenancy at will, . . . . 472
- (*See Forcible Entry and Detainer.*)
- LANDMARKS.**
- penalty for removing, destroying, &c., . . . . 803
- LARCENY.**
- from the person, with violence, how punished, . 793
- breaking and entering with intent to commit, how punished, . . . . . 797
- in a building, ship, or vessel, . . . . . 797
- of property removed because of alarm of fire, . . 797
- in a building that is on fire, . . . . . 797
- from the person of another, . . . . . 797
- of personal property exceeding one hundred dollars in value, . . . . . 797
- not exceeding one hundred dollars in value, . 798
- of wills, codicils, &c., . . . . . 798
- allegations in indictment and evidence at trial, . . . . . 798
- of property not exceeding five dollars in value, 798
- on conviction of, before police court or justice of the peace, how punished, . . . 798
- person convicted of three distinct larcenies, as principal or accessory, at same term, to be deemed common and notorious thief, and how punished, . . . . . 798
- so upon second conviction of larceny, . . . 798
- of paper or blanks for bank bills, with intent to utter and pass; and thereby to defraud, how punished, . . . . . 798

**LARCENY** — *continued.*

of beasts and birds not subject of larceny at common law, . . . . . 799

property stolen to be kept and restored to owner after conviction, . . . . . 799

after conviction for, court may order meet recompense to prosecutor, . . . . . 799

so when offender has forfeited his recognizance, or escaped, . . . . . 799

what is deemed, and how punished, . . . . . 798, 799

may be accessory to, before and after the fact, . . . . . 798

jurisdiction of such cases, . . . . . 799

of whose property it may be, . . . . . 799

of those who may maintain an action of tort, but not of those having only the use or custody, . . . . . 799

of wife in possession, . . . . . 799

of property of person deceased, . . . . . 799

from person unknown, . . . . . 799

may be committed by those having the use or custody of property, . . . . . 799

but not by those against whom an action of tort would not lie for such acts, . . . . . 799

jurisdiction concerning, given to justices of the peace and police courts, . . . . . 570, 600

**LARD.** (*See Butter and Lard.*)

provisions respecting inspection and sale of, 258-260

**LAWS.**

enacting style of, . . . . . 31

construction of, . . . . . 50

words and phrases in, to be construed according to common usage, unless technical, . . . . . 51

words in singular number may be applied to plural, and vice versa, . . . . . 51

words in masculine gender may be applied to feminine, . . . . . 51

words giving joint authority to more than two, shall apply to majority, . . . . . 51

construction of various words, . . . . . 51, 52

acts of incorporation to be deemed public acts, . . . . . 50

execution of, those hindering, how punished, . . . . . 814

list of laws repealed after passage of Revised Statutes, and before passage of General Statutes, . . . . . 907, 908

Of foreign countries, how proved, . . . . . 678, 679

of other states, and the United States, how proved . . . . . 678, 679

**AND RESOLVES.**

to be bound, each year, in separate volumes, . . . . . 49

how promulgated, . . . . . 50

to be published by secretary at close of each session of legislature, . . . . . 49, 50

how distributed, . . . . . 50

when to take effect, . . . . . 50

certain general, to be published by secretary in pamphlet form, and sent to town clerks for distribution, . . . . . 50

to be published in newspaper, . . . . . 50

**LEASE.**

for more than one hundred years, while fifty are unexpired, to have incidents of freehold, . . . . . 471

for more than seven years, to be recorded, . . . . . 466

written, terminated on non-payment of rent, by fourteen days' notice to quit, . . . . . 472, 707

at will, how terminated, . . . . . 472

terminated by tenant's using premises for certain unlawful purposes, . . . . . 454

not to prevent partition of real estate, or invalidate any partition heretofore made, . . . . . 705

**LEASE** — *continued.*

when terminated by notice to quit for non-payment of rent, how lessor may be restored to possession of premises, . . . . . 707

after such notice, and four days before entry of action for possession, lessee may pay or tender rent and costs, and be restored to his rights, . . . . . 707

how lessor may be restored to possession when lessee, &c., holds unlawfully or without right, . . . . . 707

(*See Forcible Entry and Detainer.*)

estates held by, how attached, . . . . . 626

how levied on to satisfy executions for debt, . . . . . 690

**LEATHER.**

inspector-general of, how appointed and term of office, . . . . . 258

to be sworn, . . . . . 258

to give bond, . . . . . 260

may appoint deputies, who shall give bond, . . . . . 258, 260

fees of, . . . . . 260

and make returns once in six months, . . . . . 258

inspectors to furnish themselves with scales, weights, and seals, . . . . . 260

to inspect leather within place for which appointed, . . . . . 260

deputy may inspect in another place, when no inspector therein, . . . . . 260

fees of, . . . . . 260

liability of, if weight varies five per cent. from amount marked, . . . . . 260, 270

**Sole and belt,** how to be inspected, weighed, and stamped, . . . . . 260

made of hides of neat cattle, not to be sold until inspected, . . . . . 260

penalty for buying or selling, without inspection, . . . . . 260

penalty for counterfeiting, &c., inspectors' marks on a side of, . . . . . 260

**Upper, measurers of,** to be appointed by selectmen, &c., annually, . . . . . 270

to be sworn, . . . . . 270

to furnish themselves with measures and seals, . . . . . 270

duties and fees of, . . . . . 270

penalty for counterfeiting marks of measurer, manufacturers of leather, boots, &c., to have right to stamp articles manufactured by them, . . . . . 270

such stamp to be considered as warranty, . . . . . 270

articles not considered merchantable unless so stamped, . . . . . 270

penalty for fraudulently using stamp or name of another person, . . . . . 270

**LEGACIES.**

when not to lapse by death of legatee before that of testator, if issue survive, . . . . . 479

such issue to take, unless, &c., . . . . . 479

to a subscribing witness to a will, void, unless there are three other competent witnesses, . . . . . 477

may be recovered by action at law, and time of action not limited, . . . . . 493

may be attached and held by trustee process, . . . . . 723

when and how liable to contribution for payment of debts of testator, . . . . . 479

**LEGATEES.**

to contribute when estate is taken from a devisee, &c., to pay testator's debts, or for dower, &c., of widow, . . . . . 479, 480

**LEGATEES—continued.**

- how liable to contribute to posthumous or other child omitted in testator's will, . . . 479
- may recover legacies by action at common law, and time therefor not limited, . . . 493
- may be required to give bond to refund, if necessary, when they demand payment within two years after administration is taken, . . . 493
- when and how liable for debts of testator, . . . 507
- actions against, for such debts, not barred by provisions for action against executors, &c., . . . 492
- estates of, liable for such debts after their death, 507
  - not liable to pay more than amount received from testator's estate, . . . 507, 508
- liable to contribute among themselves, &c., when debts are paid by part, . . . 508
- having claim for further damages against executor, &c., after judgment on bond, may have writ of scire facias, and new execution thereon, . . . 507
- residuary, when executors, may give bond to pay debts and legacies, . . . 481

**LEGISLATIVE DEPARTMENT.**

- not to exercise executive and judicial powers, . . 17
- to consist of two branches, . . . 17
- to be styled the General Court of Massachusetts, 17
  - (See *General Court.*)

**LESSEE.**

- of personal property, selling without written consent of owner or lessor, how punished, . . . 803

**LEWD, WANTON, AND LASCIVIOUS PERSONS.**

- common, in speech or behavior, how punished, 820, 821

**LEWD AND LASCIVIOUS COHABITATION.**

- how punished, . . . 818

**LEWDNESS.**

- open and gross, how punished, . . . 818

**LEVY.**

- of warrants of distress for taxes, . . . 82
- of execution on real estate, . . . 516-521
- on personal estate, . . . 687-690
  - (See *Execution.*)

**LIBEL.**

- evidence of truth of matter may be given in evidence as justification in civil actions, for publishing, . . . 662
- justification in actions for, not proof of malice, . 662
- form of declaration for, . . . 666
- actions for damages for, to be brought in two years, . . . 777
- the truth may be shown in defence in indictments for, . . . 841
- such defence sufficient, unless malicious intention is proved, . . . 841
- For seizing forfeited goods, . . . 772
  - proceedings thereon, . . . 772-774
- For divorce, (see *Divorce.*) . . . 532-537

**LIBERTY, PERSONAL.**

- provisions respecting, . . . 740-742

**LIBERTY OF THE PRESS.**

- not to be restrained, . . . 16

**LIBRARIES.**

- of individuals, when exempted from attachment, &c., . . . 688

**LAW.**

- associations for, heretofore organized, (except in Suffolk,) to remain corporations, . . . 207

**LIBRARIES—continued.**

- may be organized in the several counties, . . 208
- when organized, to be corporation to hold, &c., law library of the county, . . . 208
- may make by-laws, subject to approval of superior court, . . . 208
- first meeting, how called and when to be holden, . . . 208
- clerk of courts to preside till clerk of association is chosen, . . . 208
- officers of, . . . 208
- duties of, to be defined by by-laws, . . . 208
- counties to pay certain sums to, . . . 208
- such sums, how to be applied, . . . 208
- treasurer of, to give bond, . . . 208
  - to make annual return to county commissioners, . . . 208
- inhabitants of county may use books of, subject to regulations, &c., . . . 208

**PUBLIC.**

- may be established by any city or town, . . . 208
- appropriations for the foundation and maintenance of, . . . 208
- donations for, by bequest, &c., may be held by towns, . . . 208

**SOCIAL.**

- seven or more proprietors of, may be a corporation, . . . 208
- corporations so organized may hold real and personal estate, in addition to books, . . 209
- first meeting, how and by whom to be called, . . 209
- officers of, to be chosen and manner of calling meetings determined, . . . 209
- clerk to be sworn, . . . 209
- treasurer to give bond, . . . 209
- shares may be assessed for preserving library, &c., . . . 209

**LIBRARY, STATE.**

- to be in the state house, . . . 54
- when to be open and by whom used, . . . 54
- to be under management of trustees, . . . 54
- trustees of, by whom appointed and term of office, . . . 54
- duties of, . . . 54
- secretary of board of education to be librarian, . 54
- may appoint an assistant, . . . 54
- compensation of assistant librarian, . . . 54
- librarian to make annual report to legislature, . 54
- trustees and librarian may employ assistance, . 54
- books, &c., belonging to state to be kept in, except, &c., . . . 54
- annual appropriation for, and by whom expended, . . . 54

**LICENSE.**

- if defendant, in criminal cases, justifies under written license, &c., he must prove it, 841
- until such proof, the presumption shall be that he is not licensed, . . . 841
- To innholders or common victuallers, may be granted by county commissioners, in towns, . . . 455
- and by mayor and aldermen, in cities, . . . 455
- to specify place where such employment is to be exercised, . . . 455
- not to protect person exercising employment in other than place specified, . . 455
- to expire on April 1, in each year, . . . 456
- list of persons to whom granted, for the preceding years, to be transmitted to selectmen of towns, . . . 456



**LICENSE**—*continued.*

applications for, how made, . . . . . 456  
 not to be granted or renewed without certificate from selectmen, . . . . . 456  
 form of such certificate, . . . . . 456  
 proceedings, if selectmen refuse certificate, when may be revoked, . . . . . 456  
 no fee to be required for, . . . . . 457

**To keepers of intelligence offices,** may be granted by mayor and aldermen and selectmen, . . . . . 457  
 penalty on person's keeping such office without, . . . . . 457  
 fee for, . . . . . 457

**To auctioneers,** may be granted by selectmen, . . . . . 280  
 other provisions respecting, . . . . . 281

**To hawkers and pedlers,** may be granted by the secretary of the commonwealth, other provisions respecting, . . . . . 282, 283

**To dealers in junk and second-hand articles,** may be granted by mayor and aldermen and selectmen, . . . . . 457, 458  
 to designate place of business, prescribe restrictions, &c., . . . . . 458  
 penalty on persons dealing in such articles without, or contrary to provisions of, . . . . . 458

**To pawnbrokers,** may be granted by mayor and aldermen and selectmen, . . . . . 458  
 to designate place of business, and prescribe restrictions, &c., . . . . . 458  
 penalty for carrying on business of, without, or violating provisions of, &c., . . . . . 458

**Of livery stables,** in maritime places, may be granted by mayor and aldermen, &c., . . . . . 458  
 penalty for keeping or using stable without, . . . . . 458

**For use of steam engines, furnaces, &c.,** in certain places, granted by mayor and aldermen, . . . . . 458, 459  
 notice of application for, how given, . . . . . 459

**For selling, &c., fireworks,** may be granted by mayor and aldermen, &c., . . . . . 460  
 penalties for violations of, . . . . . 460

**Of dogs,** term of, and fees for, . . . . . 461  
 to be issued by town clerk, . . . . . 461  
 when may be given, . . . . . 461  
 new, not required upon removal, unless, &c., . . . . . 461  
 penalty for keeping dog without, . . . . . 461  
 towns, &c., may make additional regulations concerning, and fix fees, . . . . . 463

**For theatrical exhibitions, public shows, &c.,** may be granted by selectmen, . . . . . 463  
 penalty for setting up, without license, . . . . . 463, 464  
 for getting up masked balls, . . . . . 464  
 for exhibiting fighting birds, &c., . . . . . 464

**For billiard tables, and bowling alleys,** may be granted for amusement only, by mayor and aldermen, &c., . . . . . 463  
 penalty for keeping billiard tables, &c., without, . . . . . 463

**To sell real estate,** for payment of debts, &c., by executors, . . . . . 510, 512  
 of ward, by guardian, . . . . . 545

**LIENS.**

**ON LANDS AND BUILDINGS,**  
 who may have lien for labor done and materials furnished, . . . . . 762  
 nature of the contract to give a lien, . . . . . 762  
 lien not to attach for materials furnished, unless owner of property is notified, . . . . . 762  
 not to be of force against existing mortgage duly recorded, . . . . . 762

**LIENS**—*continued.*

not to attach, when owner gives written notice that he will not be responsible, . . . . . 762  
 to be dissolved, unless statement of account is filed in city or town clerk's office, . . . . . 762  
 what the statement must contain, and when to be filed, . . . . . 762  
 what inaccuracy in the statement not to invalidate proceedings, . . . . . 762  
 shall be dissolved, unless suit be brought to enforce it, in ninety days, . . . . . 762, 763  
 may be enforced by petition to superior court for a decree for sale of premises, . . . . . 763  
 when claim does not exceed one hundred dollars, petition may be to justice of the peace or police court, . . . . . 763  
 parties may appeal therefrom, as in other civil cases, . . . . . 763  
 petition may be inserted in a writ of original summons, . . . . . 763  
 how served, returned, &c., . . . . . 763  
 any number who have labored on same building, &c., may join in petition, . . . . . 763  
 rights of each petitioner, and of the superior court, . . . . . 763  
 statements and prayer of such petition, . . . . . 763  
 either party may amend pleadings, . . . . . 763  
 such petition to be indorsed like an original writ, . . . . . 766  
 what notice, and to whom, shall be ordered by court, before acting on the petition, . . . . . 763  
 all creditors, having such lien, may appear and prove their claims, and contest the claims of each other, . . . . . 763  
 claims of all such creditors, who appear, to be determined by court with or without a jury, . . . . . 763  
 material questions of fact to be decided by a jury, if either party require it, . . . . . 764  
 before justice of peace, or police court, a jury shall be had only as in other civil cases, . . . . . 764  
 provision for allowance of claims due absolutely, but not then payable, . . . . . 764  
 of claims for part performance only, when claimant is not in fault, . . . . . 764  
 sale of premises to be ordered, if lien of any creditor, who presents his claim, is established, . . . . . 764  
 of part of premises, when may be ordered, notice of sale by officer, and debtor's right to redeem, . . . . . 764  
 court, on ordering sale, may direct officer how to distribute proceeds, if claims are all ascertained, . . . . . 764  
 may order officer to bring proceeds into court, if claims are not all ascertained when sale is ordered, . . . . . 764  
 how court may order distribution, according to circumstances, . . . . . 764  
 surplus proceeds of sale to be paid to debtor; liable, however, to attachment, &c., . . . . . 764  
 if premises are attached, when mechanic's statement is recorded, what proportion of proceeds of sale shall be reserved for attaching creditor, . . . . . 764, 765  
 to be ascertained by a jury or otherwise, . . . . . 764, 765  
 on such creditor's recovering judgment, reserved proceeds to be applied to discharge thereof, . . . . . 765  
 if premises are attached after statement is recorded, surplus proceeds of sale to be

**LIENS — continued.**

applied as in case of successive attachments, &c., . . . . . 765

where an attachment intervenes between two liens, . . . . . 765

different attaching creditors, and persons having liens, to be paid successively, according to date of their respective liens, . . . . . 765

several persons, who have liens and equal rights, to be paid ratably, if proceeds are insufficient to pay the whole, . . . . . 765

if debtor have a life estate only, or is mortgagor, &c., when lien attaches, lien to bind his interest, . . . . . 765

if debtor die, or aliene the premises, suit may be brought, or prosecuted, against his heirs or assigns, . . . . . 765

if creditor die, his administrator, &c., may sue, or prosecute suit already commenced, . . . . . 765

if creditor petition for sale prematurely, or become nonsuit, other creditors, having a lien, may proceed with the suit, . . . . . 765, 766

claim of such creditor may be allowed, on terms as to costs, if the suit be pursued by others, . . . . . 765, 766

foregoing provisions not to take away creditors' common law rights, . . . . . 766

appeal to supreme court allowed from any final judgment, &c., of superior court, . . . . . 765

costs to be subject to discretion of court, and paid from proceeds of sale, . . . . . 766

when debt is fully paid, creditor, at debtor's expense, to discharge lien in the registry, or execute a release thereof, . . . . . 766

**ON SHIPS AND VESSELS.**

who to have, for what, and by virtue of what contract, . . . . . 768

to be preferred to all liens, except mariners' wages, . . . . . 768

to continue until the debt is satisfied, . . . . . 768

to be dissolved, unless sworn statement filed, . . . . . 768

within what time to be filed, . . . . . 768

what the statement is to contain, and where to be recorded, . . . . . 768

where ship is built partly in one place and partly in another, either place to be deemed the port, . . . . . 768

what inaccuracies not to invalidate proceedings, may be enforced by petition to superior court, . . . . . 768

in what county proceedings are to be had, . . . . . 768

**Petition, form of, and how served, &c., . . . . . 768**

what to contain, and prayer of, . . . . . 768, 769

may be amended by either party, . . . . . 769

several claimants may join in one petition, . . . . . 769

rights of each petitioner and of the respondent in such case, . . . . . 769

claims in such case to be marshalled, and net proceeds of sale distributed, . . . . . 769

if all liens cannot be satisfied, those for labor to have one third greater percentage than those for materials, &c., . . . . . 768

attachment to issue against vessel at time of filing petition, . . . . . 768

how may be dissolved, . . . . . 768

such dissolution not to dissolve the lien, . . . . . 768

foreign vessels not affected hereby, . . . . . 769

**ON OTHER PERSONAL PROPERTY.**

**For work done, or money expended on, . . . . . 769**

person having lien, may petition justice of peace or police court for an order of sale of the property if money is not

**LIENS — continued.**

paid in sixty days after a written demand therefor, . . . . . 769

in what county petition to be brought, . . . . . 769

justice to issue notice; service and return, . . . . . 769

proceedings, where owner is unknown or resides out of the state, . . . . . 769

when the justice or court may order sale, . . . . . 769, 770

proceeds of sale, how disposed of, . . . . . 769, 770

surplus to be paid to owner on demand, . . . . . 770

amount due to be ascertained and recorded, . . . . . 770

either party may appeal, . . . . . 770

if respondent appeals, he shall recognize, . . . . . 770

condition of recognizance, . . . . . 770

prevailing party to recover costs, . . . . . 770

rights of persons, having lien, to dispose of property otherwise, not hereby affected, . . . . . 770

**Boarding-house keepers to have lien on baggage and effects of boarders or guests for board, . . . . . 770**

baggage of mariners excepted, . . . . . 770

how lien may be enforced, . . . . . 770

**Of attorney, on client's execution, &c., . . . . . 615**

**Attachment of property held by, how made, . . . . . 627, 628**

**ON REAL ESTATE IN OTHER CASES.**

on land, for taxes assessed thereon, . . . . . 83

of testator, for payment of his debts, not discharged by bond of executor to pay debts and legacies, . . . . . 481

damages awarded by jury against a mill owner for flowage, to be on mill and mill-dam, . . . . . 756

to what sums to extend, . . . . . 756, 757

premises may be sold on execution, . . . . . 757

of demandant, in action to recover an estate for life, for money paid tenant for improvements, . . . . . 695, 696

**Not defeated by homestead estate, . . . . . 525**

**LIEUTENANT-GOVERNOR.**

title of, . . . . . 25

to be chosen annually, . . . . . 25, 34, 36, 62

qualifications of, . . . . . 25

oath of, . . . . . 29, 33

return of votes for, . . . . . 59, 60

in absence of governor, to be president of council, . . . . . 25

to be member of council, except, &c., . . . . . 25

when to be acting governor, . . . . . 25, 26

when offices of governor and, are vacant, council to exercise powers of, . . . . . 26

to hold no other office, except, &c., . . . . . 30, 33

compensation of, . . . . . 128

may administer oaths of office to public officers, . . . . . 131, 132

exempted from serving as juror, . . . . . 679

**LIFE INSURANCE COMPANIES, (see Insurance Companies,) . . . . . 329, 330.**

**LIGHT.**

easement of, not to be acquired by use, . . . . . 472

**LIGHTERS.**

weighers of, &c., . . . . . 290, 291

(See Vessels.)

**LIGHTHOUSE ISLAND.**

lighthouse on, ceded to United States, . . . . . 44

**LIGHTHOUSES, &c.**

ceded to United States, . . . . . 44, 45

keepers of, exempted from military duty, . . . . . 93

**LIME.**

inspectors of, may be chosen, in places where lime is manufactured, . . . . . 270

**LIME**—*continued.*

inspectors to be sworn, . . . . . 270  
 to inspect lime manufactured in such place,  
 when filled at the kiln, &c. . . . . 270  
 fees of, . . . . . 270  
 casks of, how branded, . . . . . 270  
 quality of, and of casks, . . . . . 270  
**Maine**, description of casks for, . . . . . 270, 271  
 penalty for selling, in casks, contrary to  
 law, . . . . . 271  
 to be forfeited, if sold or shipped contrary  
 to these provisions, . . . . . 271  
 penalty for shifting contents of casks after  
 being branded, . . . . . 271

**LIMITATION OF PERSONAL AC-  
TIONS.**

**ONE YEAR.**

actions by creditor against executor or admin-  
 istrator after notice of assets coming to  
 executor, &c., after two years, . . . . . 491  
 against executor or administrator, for same  
 cause of action, after the determina-  
 tion of the original suit by abatement,  
 &c., . . . . . 491  
 against executor or administrator by cred-  
 itor whose right of action does not  
 accrue within two years after the no-  
 tice of their appointment, . . . . . 492  
 by creditors against heirs, next of kin, dev-  
 isees, or legatees, . . . . . 507  
 actions for penalties or forfeitures given  
 wholly or in part to the plaintiff, . . . . . 779  
 on replevin bonds, . . . . . 733  
 on bond given by debtor, whose goods are  
 attached, to pay appraised value, . . . . . 630  
 of writs of review, on judgments against  
 absent defendants in certain cases, . . . . . 646  
 for fines and costs by commonwealth  
 against guardians of poor convicts  
 discharged, . . . . . 879  
 scire facias against bail, . . . . . 643  
 action on recognizances and bonds for poor  
 debtors, . . . . . 641

**TWO YEARS.**

actions for recovery of unlawful interest paid, . . . . . 292  
 for recovery of expense of support of  
 paupers, &c., . . . . . 393  
 for assault and battery and for false impris-  
 onment, . . . . . 777  
 for libel and for slander, . . . . . 777  
 by or against executors or administrators,  
 where the deceased died before the  
 time limited, or within thirty days  
 after, . . . . . 778  
 against executors and administrators, after  
 giving notice of their appointment by  
 creditors, . . . . . 484, 491  
 against public administrator under general  
 bond, from date of letters of adminis-  
 tration, . . . . . 487  
 and after assets come to their hands, . . . . . 491  
 against new administrator after his giving  
 bond, unless, &c., . . . . . 492  
 against a master for breach of the indenture  
 of apprenticeship, . . . . . 551  
 by the commonwealth for penalties and for-  
 feitures, . . . . . 779  
 for the support of paupers and prisoners, 393, 866  
 for taking illegal fees, . . . . . 814  
 for making, &c., false certificate of wit-  
 nesses, . . . . . 814

**LIMITATION, &c.**—*continued.*

**THREE YEARS.**

applications for damages caused to lands, &c.,  
 by the acts of an aqueduct corpora-  
 tion, . . . . . 376  
 scire facias against trustee after judgment, . . . . . 725

**FOUR YEARS.**

actions against sheriffs for the default of their  
 deputies, . . . . . 777  
 against sureties on guardians' bonds, . . . . . 546

**SIX YEARS.**

actions of contract on any contract or liability  
 not under seal, . . . . . 777  
 except on judgment of court of record in  
 the United States, . . . . . 777  
 for arrears of rent, except in cases under seal,  
 of replevin, and for taking, detaining, or in-  
 juring goods and chattels, . . . . . 777  
 all actions of tort, except certain specified  
 ones, . . . . . 777  
 against the last shareholders of an aqueduct  
 corporation after its dissolution, . . . . . 375  
 writs of certiorari, . . . . . 743  
 writs of error on judgments in civil actions,  
 except, &c., . . . . . 745  
 actions on causes of action that have been  
 fraudulently concealed, . . . . . 778

**TWENTY YEARS.**

personal actions on contracts not limited by  
 foregoing provisions, &c., . . . . . 778  
 actions on bills, notes, &c., issued by banks, . . . . . 777  
 by original payee (or by executor, &c.) of  
 witnessed promissory notes, . . . . . 777

**EXCEPTIONS.**

minors, married women, persons absent from  
 the United States, insane or impris-  
 oned, may sue within the times lim-  
 ited after the disability is removed, . . . . . 778  
 time of war not included in the computation, in  
 case of certain alien plaintiffs, . . . . . 778  
 time of defendant's absence from the state  
 not to be included, . . . . . 778  
 two years to be allowed on death of either  
 party before, or within thirty days  
 after, expiration of limited time, . . . . . 778  
 one year to be allowed after failure of former  
 suit, or reversal of judgment therein,  
 for same cause, . . . . . 491, 778  
 fraudulent concealment of cause of action not to  
 prevent suit within six years after its  
 discovery, . . . . . 778  
 action by legatees not limited, . . . . . 493

**PART PAYMENT, NEW PROMISE, INDORSEMENT,  
ACKNOWLEDGMENT.**

effect of payment of principal or interest, not  
 altered, . . . . . 779  
 acknowledgment or promise, if in writing and  
 signed by party chargeable, prevents  
 the limitation operating, . . . . . 778  
 indorsement of payment on note by payee not  
 sufficient, . . . . . 779  
 promise, &c., by one of several joint debtors, to  
 affect himself only, . . . . . 779  
 or by one of several joint executors, &c., . . . . . 779

**GENERAL PROVISIONS.**

limitation of demands filed in set-off, . . . . . 671, 779



**LIMITATION, &c. — continued.**

- in actions against several joint debtors, if plaintiff is barred by limitation against some and not against others, how judgment is to be entered, . . . . . 779
- in pleas of abatement for non-joinder of defendants, if action was barred by limitation against those not joined plaintiff may have judgment, . . . . . 779
- in actions of contract to recover balance in mutual and open account, limitation to run from last proved item of account, . . . . . 777, 778
- all limitations apply to actions brought by the commonwealth or for its benefit, . . . 779
- do not apply to any action otherwise specially limited by law, . . . . . 779
- running of statute period not affected by repeal by the General Statutes, . . . . . 880, 881
- judgments and decrees of courts of record in the United States presumed to be paid in twenty years after the rendition thereof, . . . . . 779

**LIMITATION OF REAL ACTIONS, AND RIGHTS OF ENTRY.**

- to twenty years next after seisin of demandant, or those under whom he claims, except, &c., . . . . . 775
- this provision extended to suits by or on behalf of commonwealth, . . . . . 776
- except as to Province lands in Provincetown, and certain lauds in the basins of Back Bay, . . . . . 776
- heirs, &c., of tenants, or remainder-men in tail, limited like their ancestors, &c., as to estates which their ancestors, &c., might have barred, . . . . . 776
- estates tail and remainders, and reversions expectant thereon, also barred, . . . 776
- from what time twenty years shall be computed, when right, &c., first accrued to demandant's ancestor, . . . . . 775
- when demandant's right shall be deemed to have first accrued, in different cases, . . . 775
- persons disseised, . . . . . 775
- heirs and devisees of one who died seised, . . 775
- where there are intermediate estates, . . . 775
- in case of forfeiture, or breach of condition, . . 775
- in cases not otherwise specially provided for, . . 775
- five years' extension of time to successors of ministers, and other sole corporations, in certain cases, . . . . . 775
- ten years' extension, in favor of persons under disability when their right accrued, . . 775
- in favor of heirs, &c., of those who die during continuance of disability, . . 775, 776
- no extension of time allowed, after death of person under disability, by reason of disability of other persons, . . . . . 776
- extension of one year, after abatement of a suit by death of a party, or reversal or arrest of judgment on a verdict for demandant, . . . . . 777
- foregoing limitations take effect after December, 1839; with a saving for persons then under disability, . . . . . 776
- action or entry, by executors, &c., into lands fraudulently conveyed by deceased, limited to five years, . . . . . 511
- by wards, heirs, &c., for or into land sold by guardians, administrators, limited to five years, . . . . . 515

**LIMITATION, &c. — continued.**

- limitation, when to begin to run in cases of minors and persons out of state, . . 515
- action, by judgment creditor who has levied on lands fraudulently standing in the name of a person other than the debtor, &c., to be brought in one year, . . . 523
- no descent or discontinuance to take away right of entry or defeat action, . . . . . 776
- entry on land to save limitations not effectual, unless possession retained for a year, or action brought within the year, . . \* 776
- claims, &c., for dower limited to twenty years, . . . . . 469, 470
- for enforcement of mechanics' lien, to be brought within ninety days, . . . . . 763
- to foreclose mortgage after tender, and founded thereon, . . . . . 713

**LIMITATION OF CRIMINAL PROSECUTIONS.**

- indictments for murder may be found at any time, . . . . . 839
  - for other offences, within six years from the commission thereof, . . . . . 839
  - time that person is not usually and publicly resident within this state not to be reckoned as part of the six years, . . . 839
- (For other Limitations, see Titles of particular offences.)

**LIMITED PARTNERSHIPS.**

- special provisions concerning, . . . . . 260, 297
  - insolvency proceedings by and against, how conducted, . . . . . 597
- (See Partnerships.)

**LINEN.**

- manufacture of, by corporations chartered for other purposes, . . . . . 341

**LINES OF TOWNS.**

- provisions respecting perambulation of, . . . 157, 158

**LIQUORS, SPIRITUOUS AND INTOXICATING.**

- what to be so considered, . . . . . 442
- not to be furnished convicts, except prescribed, under penalty, . . . . . 863
- provisions for the regulation of manufacture and sale of, . . . . . 438-453

**1. COMMISSIONER.**

- Commissioner to sell to town agents, how appointed, and tenure of office, . . . . . 438
- to give bond, . . . . . 438
- to keep place of business in Boston, and sell to agents pure liquors, . . . . . 438
- liquors, kept for sale by, to be analyzed by state assayer, . . . . . 438
- to sell no liquors without assayer's certificate that same is pure, &c., . . . . . 438
- analysis, how made and certified, &c., . . . 438
- to sell for cash, at advance on cost not exceeding five per cent., . . . . . 438
- to keep record of all purchases, sales, &c., . . 438
- such record to be open to inspection of selectmen, &c., . . . . . 438
- to seal all packages of liquors sold by him, . . 438
- penalties on, for adulteration, selling to persons not agents, &c., . . . . . 438, 439
- for selling adulterated liquors, . . . . . 439
- on persons employed by, for same offences, . . . . . 439
- to receive no compensation from state, . . . 439
- to incur no liability in behalf of state, . . . 439
- to make annual report to secretary of commonwealth, . . . . . 439

**LIQUORS, &c. — continued.**

to appoint agents to sell liquors in Boston, . . . 439  
 successor in office to purchase stock of, . . . 439  
 value of stock of, how determined in case of  
 disagreement, . . . . . 439

**2. AUTHORITY TO MANUFACTURE AND SELL  
 FOR EXPORTATION, &c.**

**Manufacturers of, how authorized to make  
 and sell, . . . . . 439**  
 to receive certificates of authority, and to  
 give bond, . . . . . 439  
 form of such bond, . . . . . 439, 440  
 bond of, to be put in suit for breach thereof,  
 and certificate forfeited, . . . . . 440  
 to keep book, open to inspection of board  
 authorizing manufacture, &c., . . . . . 440  
 to record sales in such book, &c., . . . . . 440  
 record of names, residences, &c., of, and of  
 town agents, &c., to be kept by clerks  
 of boards authorizing, &c., . . . . . 440  
 such record to be open to public inspection, 440

**3. CITY AND TOWN AGENTS.**

**Agents for selling, to be appointed annually,  
 in every city and town by select-  
 men, &c., . . . . . 440**  
 to sell for medicinal, mechanical, &c., pur-  
 poses only, . . . . . 440  
 to receive fixed salaries, . . . . . 440  
 penalty on selectmen, &c., for not appoint-  
 ing, . . . . . 440  
 to receive certificate authorizing to purchase  
 and sell, &c., . . . . . 440  
 to give bonds, . . . . . 441  
 form of bonds, . . . . . 441  
 bond to be put in suit for breach thereof,  
 and appointment revoked, . . . . . 441  
 record of appointment of, to be kept by town  
 clerks, . . . . . 441  
 to keep account of purchases of liquors, &c.,  
 and of forfeited liquors delivered to  
 them, . . . . . 441  
 to keep record of all sales; form of such  
 record, . . . . . 441  
 to purchase only of commissioners, under  
 penalty, . . . . . 441  
 may be restrained by supreme judicial court  
 from purchasing contrary to law, . . . 441  
 to make returns of purchases annually, to  
 secretary of commonwealth, . . . 441 442  
 penalty on, for neglect to make returns, . . 442  
 for making false statements to, . . . . 442

**4. SALES, &c., SPECIALLY AUTHORIZED.**

foreign liquors, imported under laws of United  
 States, may be sold by importer in  
 the original packages, . . . . . 442  
 pure alcohol may be sold by druggists to phy-  
 sicians, &c., for medicinal purposes, . . 442  
 druggists to keep record of such sales, open to  
 inspection of selectmen, &c., . . . . . 442  
 penalty on, for illegal sales, . . . . . 442  
 chemists, &c., may keep spirituous liquors for  
 use in their art or trade, . . . . . 442  
 cider may be manufactured and sold for other  
 purposes than a beverage, . . . . . 442  
 wine, unadulterated, may be sold for sacramen-  
 tal purposes, . . . . . 442

**5. UNLAWFUL SALES, &c.; REMEDIES, PUN-  
 ISHMENTS, &c.**

manufacture and sale of intoxicating liquors  
 prohibited, unless authorized, &c., . . . 442

**LIQUORS, &c. — continued.**

owning and keeping liquors with intent to sell,  
 prohibited unless authorized, &c., . . 442  
 penalties for unlawful sales, . . . . . 442  
 on second and subsequent convictions, . . 442, 443  
 on person employed by seller, . . . . . 443  
 jurisdiction of such offences given to justices  
 of the peace, . . . . . 608, 609  
 penalty for being manufacturer or commou  
 seller, . . . . . 443  
 on second and subsequent convictions, . . . 443  
 on person employed by such manufacturer,  
 &c., . . . . . 443  
 three several sales to be evidence of common  
 seller, . . . . . 443  
 several parties charged, and several offences may  
 be included, in same complaint, . . . 443  
 several offences may be tried at same time, . . 443  
 party convicted of several offences at one term,  
 liable to same penalties as if convicted  
 at different terms, . . . . . 443  
 but aggregate term of imprisonment under  
 one complaint, &c., or at same term,  
 not to exceed one year, . . . . . 443  
 delivery of liquor to be prima facie evidence of  
 sale, except, &c., . . . . . 443  
 penalty for owning or keeping liquor with in-  
 tent to sell, . . . . . 443  
 for receiving liquor unlawfully sold, to be  
 conveyed to another person, . . . . . 443  
 on railroad corporations and their servants  
 for receiving liquor unlawfully sold  
 for transportation, &c., . . . . . 443, 444  
 for bringing into state with intent to sell,  
 &c., . . . . . 444  
 husband, wife, parent, &c., may give notice in  
 writing, to seller, not to deliver liquor  
 to certain persons, . . . . . 444  
 persons giving such notice may recover damages  
 of seller for delivery of liquor after  
 notice, . . . . . 444  
 married woman may maintain action for such  
 damages in her own name, and re-  
 cover to her separate use, . . . . . 444  
 persons unlawfully selling liquor liable for dam-  
 ages done by persons intoxicated  
 thereby, . . . . . 444  
 persons found intoxicated, in certain cases, may  
 be arrested without warrant, &c., . . . 444  
 to be taken when recovered before police  
 court, &c., on complaint for drunken-  
 ness, . . . . . 444  
 to be discharged if they disclose name of  
 party, &c., of whom they procured  
 liquor, . . . . . 444  
 complaint to be filed by officer, in such case,  
 against party unlawfully selling liquor  
 to such person, . . . . . 444  
 forms of complaint, warrant and mittimus, in  
 cases of illegal sale, &c., . . . . . 449, 450  
**Search warrants for liquor kept for unlawful  
 sale to be granted by justice of peace,  
 &c., on complaint of two persons un-  
 der oath, &c., . . . . . 444, 445**  
 not to issue for search of dwelling-houses,  
 unless, &c., . . . . . 445  
 place to be searched, &c., to be particularly  
 designated in, . . . . . 445  
 premises described in, to be searched and  
 liquors seized and held by officer un-  
 til final action, . . . . . 445  
 form of, and of complaint for, . . . . . 450, 451

**LIQUORS, &c. — continued.**

notice to issue to keeper, returnable before justice, &c., if liquors seized do not exceed twenty dollars in value, . . . 445

returnable to superior court, if liquors seized exceed twenty dollars in value, . . . 447

what to contain, how served, &c., . . . 445, 446

forms of, and of warrant for, . . . 451, 452

if not duly served, new may be issued, . . . 446

parties interested may appear and make claim, and be admitted as parties on the trial, . . . . . 446

trial to proceed whether claim is made or not, . . . . . 446

liquors, &c., appearing to be unlawfully kept, to be forfeited, . . . . . 446

if not proved to be unlawfully kept, to be restored, . . . . . 446

what, when forfeited, to be delivered to town agents for sale, &c., . . . . . 446

what, to be destroyed, . . . . . 446

form of warrant for such delivery and destruction, . . . . . 452, 453

persons whose claims are not allowed, to have right of appeal, . . . . . 447

costs in such cases, by whom paid, &c., . . . 446, 447

executions for, and commitment for non-payment, . . . . . 447

houses used for illegal sale of liquors, to be deemed nuisances, . . . . . 454

penalty for keeping, for such purpose, . . . 454

use of by tenant for such purpose, to avoid lease, . . . . . 454

penalty on landlord for letting for such purpose, . . . . . 454

booths used for sale of liquors within one mile of cattle show, &c., may be abated as nuisances, &c., . . . . . 454

persons found in the act of illegally selling, &c., may be arrested without warrant, . . . 447

illegally selling at public gatherings to be arrested, and liquor, &c., seized, . . . 447

duties of sheriff, and other public officers, in such cases, . . . . . 447

if sheriff, &c., neglect to prosecute after notice of violation, any person may prosecute, and be entitled to fines, &c., . . . 447

persons convicted of unlawfully selling, &c., to give recognizance not to commit new offence, . . . . . 448

recognizances to be put in suit within sixty days after default, . . . . . 448

may be put in suit after sixty days, . . . . . 448

suits on, not to be continued, except, &c., . . 448

prosecutions for illegal sales, &c., under this chapter, to take precedence of other cases in courts, . . . . . 448

nolle prosequi not to be entered in, nor continuances granted, except, &c., . . . . . 448

liquors unlawfully kept for sale, &c., and vessels declared common nuisances, . . . . . 448

payment for liquor illegally sold, to be without consideration, &c., . . . . . 448

actions for, not maintainable, . . . . . 448

officers, duty of certain, respecting violations of law, . . . . . 447, 448

executing warrants, to be protected, . . . . 448

penalty on, for neglect to serve warrants, &c., . . . . . 448

indemnity for damages to, in certain cases, to be claimed of commonwealth, . . . 449

forms of proceedings, . . . . . 449, 453

**LITERARY, &c., INSTITUTIONS.**

to be cherished by legislature, &c., . . . . . 28, 29

property of, exempt from taxation, . . . . . 74

**LIVERY STABLES.**

provisions concerning, . . . . . 458

keepers of, not to give credit to students, . . . 457

**LOAN AND FUND ASSOCIATIONS.**

heretofore incorporated, to remain bodies corporate, &c., . . . . . 335

to have as part of title "Loan and Fund Association," . . . . . 335

to have not less than three hundred shares, . . 335

to file copy of by-laws with secretary, . . . . 335

copies of, what certificates to be evidence, . . . 335

to make loans in accordance with their by-laws, on real estate, or such securities as savings banks may loan upon, . . . . . 335

to contract no debts other than those connected with expense of business, . . . . . 335

members, who can give satisfactory security, to be preferred in loans, . . . . . 335

no member, who has borrowed money, to vote on question affecting claim against himself, . . . . . 335

supreme judicial court to have full jurisdiction in equity in controversies between corporation, &c., . . . . . 335

membership, charge for, not to exceed two dollars on a share, . . . . . 335

no fine to exceed ten per cent. on amount for which default is made, nor five per cent., if paid within six months, . . . . . 335

all payments of principal to be deducted therefrom as often as once in two years, and interest reduced, . . . . . 335

to publish annually, &c., statement of its actual financial condition, &c., . . . . . 335

and deposit copy, &c., in office of secretary, . 335

borrower to have his bond and mortgage cancelled, &c., on payment, &c., . . . . . 335

when all shares are redeemed, &c., or when funds, &c., are sufficient to pay the value of unredeemed shares, &c., the corporation to cease, except to settle its affairs, . 335

insurance commissioners to visit and examine, &c., . . . . . 335

**LOBSTERS.**

not to be taken in certain places, by persons not living in the state, under penalty, . . . 431

nor by inhabitants of this state, in vessels of over fifteen tons, &c., . . . . . 431, 432

on shores of Provincetown, how to be taken, &c., . 432

penalty for illegal taking of, in Provincetown, how and to whose use recovered, . . . 432

for taking, at certain seasons, in Sandwich and Wareham, . . . . . 432

**LOGS.**

afloat, or cast on shore, provisions respecting, . 424

**LONG ISLAND HEAD.**

land on, for lighthouse, ceded to United States, . 44

**LONG POINT.**

land on, for lighthouse, ceded to United States, . 44

**LORD'S DAY.**

to include time from midnight to midnight, . . 435

labor, &c., on, except of necessity, &c., prohibited, under penalty, . . . . . 434

travelling on, except from necessity, prohibited, under penalty, . . . . . 434

persons keeping places of entertainment, &c., not to entertain other than travellers, . . 434

penalty for second, and for third convictions, of such offence, . . . . . 434



**LORD'S DAY**—*continued.*

penalty on persons abiding and drinking at such place on, . . . . . 434

on persons attending public amusements on evening of, or evening preceding, except, &c., . . . . . 434

for rude behavior, &c., in churches on, . . . 434

for violations of, to be prosecuted within six months after offence, . . . . . 435

innholders, &c., not to entertain, &c., persons, not travellers, on evening of, or on evening preceding, under penalty, . . . 434

penalty on innholders, &c., for permitting implements of gaming to be used on, &c., . . . 435

sheriffs, grand jurors, &c., to inquire into violations of, . . . . . 434

writs, &c., not to be served on, . . . . . 434

person serving writ, &c., on, liable in damages to party aggrieved, . . . . . 434

persons who observe Saturday as the Sabbath, may perform secular business, &c., on, . . . 435

bills of exchange, notes, &c., maturing on, when payable, . . . . . 293

persons committed to jail on, or on afternoon or evening preceding, may be bailed on, . . . . . 834

**LOST GOODS.**

or money, of three dollars' value, notice of, to be posted by finder, . . . . . 425

notice of, to be given to town clerk, . . . . . 425

to be entered by clerk in book kept for that purpose, . . . . . 425

of ten dollars' value, how to be cried, or advertised, . . . . . 425

how to be appraised, . . . . . 425

appraisers of, by whom appointed and sworn, . . . 425

owner of, how to obtain, &c., . . . . . 425

to pay charges, . . . . . 425

charges for keeping, &c., how determined, . . . 425

finder of, to retain, if no owner appears within a year, . . . . . 425

to pay half value of, to town treasury, . . . 425

liable to suit, by treasurer, for half value, . . . 426

penalty on, for neglect to give notice, &c., . . . 426

**LOTTERIES.**

punishment for setting up, or promoting, or disposing of property by, &c., . . . . . 823

for permitting the setting up, &c., of lotteries, . . . . . 823, 824

for selling or permitting sale of tickets, &c., . . . 824

for second offence, after conviction of a former, . . . . . 824

for advertising, or exhibiting representation of, or of the drawing of, . . . . . 824

for making, selling, or having with intent to sell, tickets, &c., in fictitious lottery, . . . . . 824

on indictment for selling, &c., spurious tickets, they shall be deemed spurious, unless defendant prove them to be genuine, &c., . . . . . 824

prizes drawn in, and money, &c., received by holder of tickets, forfeited to commonwealth, how recoverable, . . . . . 824, 825

**LOTTERY TICKETS, &c.**

search warrant may issue for, . . . . . 830

**LOVEL'S ISLAND.**

ceded to United States, . . . . . 44

**LOW LANDS.**

improvements on, how made, &c., . . . . . 750-753

**LUMBER.**

Surveyor-general of, how appointed, . . . . . 271

**LUMBER**—*continued.*

limits of his district, . . . . . 271

to reside in district and keep office in Boston, . . . 271

to be sworn, and give bond, . . . . . 271

term of office, . . . . . 271

not to be a dealer in lumber of the kind he is appointed to survey, &c., . . . . . 271

all applications for survey to be made to, . . . 271

to appoint deputies, for whom he shall be responsible, . . . . . 271

to keep record of lumber surveyed, and fees received by himself and deputies, . . . 272

such record to be open to inspection of city councils and selectmen, . . . . . 272

to receive ten per cent. of deputies' fees, . . . 272

to make annual returns to secretary, . . . . . 272

**Deputy-surveyors** to be citizens of places for which they are appointed, . . . . . 271

to be sworn, and give bond, . . . . . 271

not to be dealers in lumber of the kind they are appointed to survey, &c., . . . . . 271

one or more to survey ship timber, one or more to survey ornamental wood, &c., . . . 271

fees of, . . . . . 273, 274

**Surveyors of**, in places not included in surveyor-general's district, . . . . . 272

cities may establish ordinances concerning appointment of, . . . . . 272

duties of, . . . . . 272

not to survey lumber in which they have pecuniary interest, . . . . . 272

fees of, . . . . . 273, 274

penalty on, for fraud, neglect, &c., . . . . . 274

**Division of**, into sorts and numbers, . . . . . 272, 273

pine boards and planks, . . . . . 272

joists and dimension timber, . . . . . 272

spruce, hemlock, juniper, southern pine, &c., . . . 272

ash, maple, &c., boards, &c., . . . . . 272

sorts and numbers of hewn timber, . . . . . 273

oak, juniper, and spruce knees, . . . . . 273

mahogany and cedar, . . . . . 273

hewn and round ship timber, . . . . . 273

white and Norway pine, &c., . . . . . 273

**Fees** for surveying to be paid by purchaser, . . . 273

**Penalties** on persons buying and selling without survey, . . . . . 274

on persons acting as surveyors without authority, . . . . . 274

**LUNATIC**, included in the words "insane persons." (*See Insane Persons.*)

**LUNATIC HOSPITALS, STATE.**

at Worcester, Taunton, and Northampton, to be under government of five trustees, to be appointed by governor, &c., . . . . . 406

**Trustees of**, may take and hold grants, &c., . . . 406

general powers and duties of, . . . . . 407

to appoint superintendent, who shall be a physician, . . . . . 407

to appoint treasurer and other officers, . . . . . 407

to determine salaries of officers, subject to approval of governor and council, . . . 407

what visitations of hospitals to be made by, . . . 407

to make report annually to governor and council, . . . . . 407

to audit report of treasurer, and transmit it with report to governor and council, . . . 407

to make certain inventories annually, . . . . . 55

**Treasurer of**, to be appointed by trustees, and to give bond, . . . . . 407

books of, to be at all times open to inspection of trustees, . . . . . 407

**Lunatics**, how and by whom committed to, . . . 407, 408

**LUNATIC HOSPITALS—continued.**

lunatics, how discharged or removed, . . . . .	410
not to be discharged without suitable clothing, . . . . .	411
what certificates to be made by judges, and effect thereof as to lunatic's residence, . . . . .	407
proceedings and notice on complaint for commitment to, . . . . .	407, 408
town paupers, at what rates to be admitted to, . . . . .	409
inmates of, may be transferred from one hospital to another by governor, . . . . .	410
may be transferred by alien commissioners, in certain cases, . . . . .	397

**LUNATIC HOSPITALS—continued.**

but not without concurrence of trustees, . . . . .	397
may be removed by trustees to jails, when hospitals are full, . . . . .	410
selection for removal, how made, . . . . .	410
prisoners, how removed to, from prisons, . . . . .	878
incurable lunatics may be removed from, . . . . .	410
proceedings in such case, . . . . .	410
may be recommitted in certain cases, . . . . .	411
lunatics confined in jails, &c., may be removed to, by order of governor, . . . . .	412
persons acquitted, or not indicted by reason of insanity, to be removed to, . . . . .	838, 841, 842

**M.****MACHINERY.**

used for manufacturing, where taxable, . . . . .	76
wilful injury to, how punished, . . . . .	804

**MACKEREL.**

provisions respecting inspection, &c., of, . . . . .	261, 262
--	----------

**MAGAZINES, &c.**

to be in custody of adjutant-general, . . . . .	55
---	----

(See *Public Property*.)

**MAIMING.**

punishment for, . . . . .	792
for aiding and abetting, . . . . .	792
for assault, with intent to maim, . . . . .	793

**MAJOR-GENERAL.**

how appointed and commissioned, . . . . .	24, 95, 97
how notified of election, . . . . .	98
when to signify acceptance of office, . . . . .	98

(See *Militia*.)

**MALICIOUS.**

offences against property, . . . . .	803-807
gathering up of bank bills, with intent, &c., . . . . .	810

**MANDAMUS.**

writs of, may be issued by supreme court, . . . . .	553
proceedings under, . . . . .	743, 744
return thereto, answer, demurrer, . . . . .	743
no action shall lie for a false return, . . . . .	743
if party suing the writ maintains the issue on his part, his damages shall be assessed, . . . . .	743
judgment to be for costs, and that a peremptory writ of mandamus be granted, . . . . .	743
court may make rules before and after first writ, . . . . .	743
admittance of third party, proceedings in such case, . . . . .	743, 744
not to abate on death, resignation, &c., of person to whom writ was first directed, . . . . .	744
costs on petition for, . . . . .	781

**MANSLAUGHTER.**

punishment of, . . . . .	792
--------------------------	-----

**MANUFACTURING CORPORATIONS.**

established by special charters subsequent to February 23, 1830, &c., continued subject to the provisions of chapter 38 Revised Statutes, . . . . .	336
every company may make by-laws, &c., with penalties, . . . . .	336
business of, to be managed by a president, a board of directors, &c., . . . . .	336
may determine, by its by-laws, what number of stockholders shall attend, or what number of shares shall be represented at any meeting, to constitute a quorum, . . . . .	337

**MANUFACT'G CORPORATIONS—continued.**

if the quorum is not so determined, a majority to be a quorum, . . . . .	337
Capital stock to remain as fixed, &c., . . . . .	337
of every company not organized, to be fixed by the company, and at its first meeting be divided into shares, of which a record is to be made by the clerk, . . . . .	337
shares to be numbered, . . . . .	337
every stockholder to have a certificate of his shares, under the company's seal, and signed by the treasurer, . . . . .	337
may be increased, not exceeding the amount authorized by law, . . . . .	337
no note or obligation given by stockholder to be considered as payment of any part of, . . . . .	337
liabilities of members until whole amount is paid in, . . . . .	338
certificate of amount, &c., to be made and recorded in registry of deeds, . . . . .	338
certificate of additional stock to be made, &c., . . . . .	338
may be reduced by vote of company, . . . . .	338
copy of vote to be recorded in registry of deeds, under penalty on directors, . . . . .	338
stockholders liable for debts of company, if any part is withdrawn before payment, . . . . .	338
shares in, how taxed, . . . . .	76
every company may increase its capital stock, not exceeding amount authorized by law, . . . . .	337
may by vote reduce capital stock, . . . . .	338
may by a vote issue two kinds of stock, namely, general stock and special stock, . . . . .	337
special stock at no time to exceed two fifths of actual capital, and to be subject to redemption, &c., . . . . .	337
holders of, entitled to a half-yearly dividend, &c., . . . . .	337
holders of, not liable for debts of corporation beyond their stock, . . . . .	337
general stock, holders of, liable for all debts, &c., until special stock is redeemed &c., . . . . .	337
may assess upon shares such sums as the company thinks proper, &c., . . . . .	337
incorporated prior to 29th of June, 1857, to give notice annually in newspapers of affairs of, &c., under penalty on stockholders, . . . . .	338
before commencing business, certificate to	

**MANUFACT'G CORPORATIONS—continued.**  
 be made under oath, and published, setting forth name and purpose of association, &c., . . . . . 339, 342  
 certificate also to be filed with secretary, 339, 342  
 to be filed with city or town clerk, . . . 339, 342  
 also to be filed within thirty days after payment of any instalment, . . . 339, 342  
 no loan of money to be made by company to stockholder, under penalty on officers, . . . . . 339  
 debts of, not to exceed amount of capital stock paid in, . . . . . 339  
 in case of excess, directors, unless absent at the time of contracting debt, to be liable, . . . . . 339  
 incorporated before 23d February, 1830, &c., to have all rights, privileges, &c., then enjoyed, . . . . . 339  
 if such corporation adopt provisions of chapter sixty, and record certificate thereof, &c., stockholders not to be liable for debts contracted afterwards, . . . 339  
 penalty for making false certificate, . . . 340  
 debts of, may be recovered of officers liable therefor, in action of tort, . . . . . 340  
 such action may be brought, although action may be pending against company for same debt, . . . . . 340  
 and both actions may be prosecuted until plaintiff recover his debt, . . . . . 340  
 persons and property of stockholders, liable for debt of company, may be taken on execution, &c., against company, . . . 340  
 not to be taken on execution in any action commenced since 24th of June, 1851, unless, &c., . . . . . 340  
 what charters revocable by legislature, . . 340  
 for manufacture of cotton or woollen goods, may manufacture certain other goods, . . . . . 340, 341  
 provisions concerning, may be amended by legislature, . . . . . 341  
**Shares,** to be transferred by proprietor in writing, and recorded by clerk, . . . . . 337  
 purchaser of, on delivering former certificate to clerk, entitled to new certificate, . . 337  
 may be assessed, &c., not exceeding amount at which each share was originally limited, . . . . . 337  
 may be sold to pay assessments, . . . . . 337, 338  
**Officers,** how chosen, . . . . . 336  
 manner of choice to be prescribed by the by-laws, . . . . . 336  
 liability of, for not making certificate of stock, &c., . . . . . 338  
 making or assenting to loan to stockholder liable to the extent of such loan, &c., . 339  
 penalty on, for making false certificate, . . 340  
 or stockholders, paying debt for the company, &c., may recover, &c., against the company, . . . . . 340  
**President,** how chosen, . . . . . 336  
 directors, &c., after capital is paid in, to make certificate, &c., under oath, . . . . . 338  
 such certificate to be recorded in the registry of deeds, &c., . . . . . 338  
 certificate of additional capital to be made and recorded in the same manner, . . 338  
 penalty on any of said officers for refusal or neglect to make certificate, &c., . . . 338  
**Directors** to be chosen annually, . . . . . 336

**MANUFACT'G CORPORATIONS—continued.**  
 to be not less than three, . . . . . 336  
 one of them to be chosen president, &c., . . 336  
 to be liable for debts of company, if vote to reduce capital is not recorded, &c., . . 338  
 to be liable for debts, &c., if they declare and pay dividend when company is insolvent, &c., . . . . . 339  
 in such case, amount of liability not to exceed amount of dividend, . . . . . 339  
 those absent at the time of making dividend, or objecting thereto, &c., exempted from liability, . . . . . 339  
 to be liable for debts exceeding amount of capital stock, unless absent when debt was contracted, &c., . . . . . 339  
 may exempt themselves from such liability by forthwith giving notice to stockholders, &c., . . . . . 339  
**Clerk** to be chosen annually, &c., . . . . . 336  
 to be sworn, . . . . . 336  
 to record all votes, &c., . . . . . 336  
**Treasurer** to be chosen annually, . . . . . 336  
 to give bond, . . . . . 336  
 to give notice, &c., of sale of shares, &c., . 338  
**Stockholders,** absent, may vote by proxy, . . 337  
 proxy not valid unless executed within six months previous to meeting, &c., . . 337  
 no proxy or attorney to cast more than fifty votes, &c., . . . . . 337  
 and no officer, as proxy, to cast more than twenty votes, . . . . . 337  
 liable, if any part of capital is withdrawn before payment of debts of company, &c., . 338  
 to be liable for debts of company, if statement of affairs, &c., is not published annually, . . . . . 338  
 persons and property of, liable for debt of company, may be taken on execution, &c., against company, . . . . . 340  
 persons and property of, not to be taken on execution in any action commenced since 24th June, 1851, unless, &c., . . 346  
 stockholder summoned, to be admitted to defend, and may have judgment entered for him, and judgment may be entered in same action against company, . . . 340  
 supersedes as to stockholder to be annexed to execution on such judgment, 340  
 if person or property of officers cannot be found, then person or property of stockholders may be taken on execution, . . . . . 340  
 provisions referred to not to apply to executions issued on actions pending on 24th June, 1851, . . . . . 340  
 or officer paying debt of company, &c., may recover against the company, property of stockholders not liable, &c., . . . 340  
**Assessments** may be made by company, from time to time, at legal meetings, . . . 337  
 not exceeding in the whole the amount at which each share was originally limited, . . . . . 337  
 if proprietor neglects for thirty days to pay, his shares to be sold, . . . . . 337, 338  
 members jointly and severally liable for all debts, &c., until capital stock is fixed, &c., and paid in, . . . . . 339  
 (See Corporations.)  
**MANUFACTURING ESTABLISHMENTS.**  
 children between twelve and fifteen years of age,



**MANUF'G ESTABLISHMENTS** — *continued.*  
 &c., not to be employed in, unless they have attended school eleven weeks in the preceding year, &c., . . . 229, 230  
 under twelve years of age, not to be employed in, unless they have attended eighteen weeks, . . . . . 230  
 penalty on owner, &c., of, for violation of these provisions, . . . . . 230  
 how and to what use recovered, . . . . . 230  
 children under twelve, not to be employed in, more than ten hours a day, under penalty, . . . . . 230

**MARBLE.**  
 city and town authorities may establish survey of, . . . . . 274

**MARBLEHEAD NECK.**  
 land at, ceded to United States, for lighthouse, . . . . . 45

**MARBLEHEAD ROCK.**  
 ceded to United States, . . . . . 44

**MARINERS.**  
 provisions concerning, . . . . . 289, 290  
 (*See Seamen.*)

**MARKS.**  
 on logs, &c., in streams, &c., penalty for cutting out, . . . . . 424  
 on inspected hops, penalty for altering or counterfeiting, . . . . . 268  
 on leather, penalty for defacing, &c., . . . . . 270  
 trade marks, how protected, . . . . . 298

**MARRIAGE.**  
**WHO MAY CONTRACT, SOLEMNIZATION OF, &C.**  
 between certain relations, prohibited, . . . 528, 529  
 void, if contracted between such relations, . . . 531  
 void, if contracted while either party has former husband or wife living, . . . 529, 531  
 if either party is an insane person or idiot, . . . . . 529, 531  
 in this state, if solemnized out of state to avoid prohibition, . . . . . 529  
 when, if parties are under age of consent, . . . . . 531, 532  
 intention of, to be entered with town clerk or register in place of residence of parties, . . . . . 529

**Certificate of such entry to be given to parties**  
 by clerk, . . . . . 529  
 to be delivered to minister or magistrate before solemnizing, . . . . . 529  
 not to be issued to certain minors except on application of parents, . . . . . 529  
 may be issued to minors if no parents, &c., within this state, . . . . . 529  
 affidavit of age of parties applying for, may be required by clerk, . . . . . 529  
 such affidavit to be sufficient proof of age, . . . 529  
 penalty on person applying for, for wilfully making false statement respecting age, &c., . . . . . 529  
 if solemnized in another state between parties living here, certificate to be filed with clerk, &c., within ten days after return of parties, under penalty, . . . . . 529  
 of minors not to be solemnized without consent of parents, &c., . . . . . 530  
 by whom to be solemnized, and in what place, . . . 530  
 fees for solemnizing, &c., . . . . . 787  
 of Friends or Quakers, may be solemnized as heretofore practised, . . . . . 530  
 penalty on justice or minister for solemnizing unlawfully, . . . . . 530  
 on person solemnizing without authority, . . . 530

**MARRIAGE** — *continued.*  
 not invalid for want of authority in person solemnizing, if either party believes it lawful, . . . . . 530  
 admission of, by respondent in process before a court, or general repute, &c., to be competent evidence of marriage, . . . 530  
 solemnized in foreign country by consul, &c., of United States, valid, . . . . . 531  
 certificate of, from such consul, &c., to be presumptive evidence thereof, . . . . . 531  
 validity of, not to be tried on collateral issue, . . . 531  
 when void, may be annulled by decree of nullity or divorce, . . . . . 532  
 when validity of, is denied, &c., may be declared valid by decree, . . . . . 532  
 of persons divorced from bond of matrimony, in certain cases, may be authorized by court, . . . . . 534  
 of innocent party, after divorce, allowed, . . . 534  
 of guilty party, after divorce, void, &c., . . . . 534  
 dissolved or annulled, on account of consanguinity, issue of, to be deemed illegitimate, . . . 534  
 on account of adultery of wife, legitimacy of issue not affected, but if questioned may be tried at common law, . . . . . 534  
 on account of nonage, insanity, or idiocy, legitimacy of issue not affected, . . . . . 534  
 of executrix, administratrix, and guardian, extinguishes her authority, . . . . . 504, 546  
 of a female ward, extinguishes guardian's authority as to custody, &c., . . . . . 546  
 no action to be brought on agreement in consideration of, unless in writing, &c., . . . 527

**RECORD OF.**  
 city and town clerks to record and index facts concerning, . . . . . 168  
 form of record, . . . . . 168  
 return to be made by clerk to secretary, under penalty, . . . . . 169  
 certificate of clerk to be evidence of such record, . . . 169  
 towns may make additional rules concerning registration of, . . . . . 170  
 registrars may be appointed in certain towns to make record, &c., concerning, . . . . . 170  
 record of, to be kept by persons solemnizing, . . . 530  
 copies of such record to be returned monthly to town clerks, &c., in town where solemnized, and where parties reside, . . . 530  
 to be presumptive evidence of marriage, . . . 169, 530  
 penalty for neglect to make such returns, . . . 530

**DIVORCE FROM.**  
 provisions respecting, . . . . . 531-537  
 (*See Divorce.*)

**MARRIAGE CONTRACTS.**  
 contracts may be made by parties before marriage, concerning property of either party, . . . . . 541  
 what provisions may be made in, . . . . . 541  
 limitations in, to take effect at time of marriage, &c., . . . . . 541  
 schedule and description of property described in, to be recorded therewith, . . . . . 541  
 when and where to be recorded, . . . . . 541  
 if not recorded within ninety days after marriage, to be void, . . . . . 541

**MARRIED WOMAN.**  
**GENERAL PROVISIONS.**  
 to follow and have settlement of husband, if he have any in the state, . . . . . 390

**MARRIED WOMAN—continued.**

settlement of, not lost by marriage, if husband has none, . . . . . 390  
 may maintain action for damages against person unlawfully selling liquor, after notice from her, . . . . . 444  
 policy of life insurance for benefit of, to inure to her separate use, &c., . . . . . 330  
 trustee may be appointed in such case, to hold interest of, &c., . . . . . 330  
 administration on estate of, to be granted to her husband, unless, &c., . . . . . 483  
 intestate, husband of, entitled to residue of personal estate after payment of debts, &c., . . . . . 485  
 divorced, may assume maiden name, . . . . . 533  
 divorce for adultery by, when not to affect legitimacy of issue of marriage, . . . . . 534  
 to be protected from restraint by husband during pendency of libel, . . . . . 534  
 not liable as accessory after the fact for felony committed by husband, . . . . . 826  
 entitled to dower, on divorce for adultery or confinement in state prison, &c., of husband, . . . . . 535  
 in what case entitled to her real estate on divorce, . . . . . 535  
 may recognize as a witness, . . . . . 833  
 another person may recognize for, . . . . . 833  
 penalty on, for burning dwelling, or certain other property of her husband, . . . . . 796  
 may prosecute and defend suits commenced by and against her before marriage, . . . . . 650  
 may be witness in action against husband, founded on certain matters relating to wife, . . . . . 674  
 (See *Allowance, Dower.*)

**SEPARATE RIGHTS, LIABILITIES OF, &C.,**

may hold property and earnings to her sole and separate use, &c., . . . . . 537  
 property of, so held, not subject to control of husband, nor liable for his debts, . . . . . 537, 538  
 real estate of, not her separate property, how conveyed, . . . . . 538  
 may sell and convey separate property, carry on business, &c., . . . . . 538  
 when such conveyance not valid without assent of husband, &c., . . . . . 538  
 husband not liable for contracts of, in relation to her separate property, &c., . . . . . 538  
 trustee may be appointed on petition of, to take charge of her separate property, . . . . . 538  
 wages, &c., of, may be paid to, . . . . . 538  
 receipt of, for income of her property, &c., valid without husband joining, . . . . . 538  
 property of, received otherwise than from her husband, not liable for husband's debts, contracted after June 3, 1855, . . . . . 538  
 having separate property, may be sued for debts contracted before marriage, . . . . . 538  
 husband of, married since June 3, 1855, not liable for debts of, contracted before marriage, . . . . . 538  
 may make will of her real and her separate personal estate, . . . . . 538  
 will of, not to deprive husband of more than one half of personal estate, without his consent in writing, . . . . . 538  
 not to impair husband's rights as tenant by the curtesy, without his written assent, . . . . . 539

**MARRIED WOMAN—continued.**

husband not authorized to convey property to, . . . . . 539  
 may release dower on sale of land by guardian of her husband, . . . . . 539  
 may join with guardian of husband in conveyance of her land, . . . . . 539  
 proceeds of such sale, how disposed of, &c., . . . . . 539  
 agreement by, with guardian of husband, relative to disposal of such proceeds, valid, . . . . . 539  
 damages awarded for land of, taken by railroads, &c., how disposed of, . . . . . 539  
 may join with guardian of husband in making partition of her real estate, . . . . . 539  
 guardian of, may join with husband in making partition of her real estate, . . . . . 539  
 may be put under guardianship for same cause as if sole, . . . . . 539, 543, 544  
 guardian of, not to be appointed without notice to husband, . . . . . 539  
 not to have care, custody, &c., of, except when husband is insane, &c., . . . . . 539  
 not to apply her property to support of herself and family, unless by leave of probate court, . . . . . 539, 540  
 may be appointed to release dower and homestead in case of insanity, . . . . . 540  
 proceedings in such cases, . . . . . 540  
 when dower or homestead is so released, part of proceeds of sale may be reserved for use of, . . . . . 540  
 such proceeds, how to be invested, &c., for benefit of, . . . . . 540  
 when provision is made for, in lieu of dower, estate, how conveyed, &c., if she is insane, . . . . . 540  
 dower of, how released by guardian in such case, . . . . . 540  
 proceedings in probate court in such cases, in what county to be had, . . . . . 541  
 certified copies of decrees of court in such cases to be recorded in county, &c., where land lies, . . . . . 541  
 allowance to, out of estate of insane husband, how made, . . . . . 541  
 contracts may be made before marriage to secure property to, . . . . . 541  
 in such case, what to contain, when to be recorded, &c., . . . . . 541  
**Coming into state without husband**, he never having lived with her in the state, may make contracts, convey property, &c., in her own name, as if unmarried, &c., . . . . . 541  
 liable to be sued on such contracts, &c., as if unmarried, . . . . . 541  
**Coming into state with husband**, to retain rights and property previously acquired, . . . . . 541  
 subsequent rights and liabilities of, same as if married in the state, . . . . . 541, 542  
**Abandoned by husband**, or he being sent to state prison, may be authorized to sell and convey her real and personal estate, and personal estate of husband, in her right, . . . . . 542  
 may use and dispose of such property during husband's absence, &c., as if unmarried, . . . . . 542  
 may be authorized to make contracts, &c., in her own name, . . . . . 542

- MARRIED WOMAN** — *continued.*  
 authority so granted to continue till return  
 or discharge of husband, . . . . . 542  
 suits in which she is a party, not to abate by  
 husband's return, . . . . . 542  
 judgment against, recovered in such suit,  
 may be enforced against husband, . . . 542  
 petitions of, may be filed and heard by su-  
 preme judicial court, in any county, . 542
- MARSHAL OF UNITED STATES.**  
 exempted from serving as juror, . . . . . 679, 680
- MARSHALS.**  
 at cattle shows, how appointed, and powers and  
 duties of, . . . . . 378
- MARSHES.**  
 provisions for improvement of, . . . . . 750-752
- MARSHPEE.**  
 District of, to continue to be district and retain  
 powers conferred by special acts, . . . 165  
 regulations concerning shell fish in, . . . 433  
 Indians, appropriations, &c., for schools for, . 213
- MARTHA'S VINEYARD.**  
 land for lighthouse in, at Gay Head, ceded to  
 United States, . . . . . 44  
 land and hospital in, ceded to United States, . . 44  
 land at Holmes's Hole, for lighthouse, ceded to  
 United States, . . . . . 44  
 land at Tisbury in, ceded to United States, . . . 45
- MASKED BALLS.**  
 penalty on persons setting up, &c., . . . . . 464  
 offenders to be bound over to superior court,  
 and furnish sureties of the peace, &c., 464
- MASONIC TEMPLE.**  
 in Boston, ceded to United States, . . . . . 45
- MASSACHUSETTS.** (*See Constitution.*)  
 constitution of, . . . . . 13-40
- MASSACHUSETTS GENERAL HOSPITAL.**  
 payment to be made to, by life insurance com-  
 panies, &c., . . . . . 330
- MASSACHUSETTS SOCIETY FOR THE  
 PROMOTION OF AGRICULTURE.**  
 provisions respecting premiums offered by, . . 377
- MASTER.**  
 to be bound by indenture when he takes appren-  
 tice or servant, . . . . . 549, 550  
 money, &c., paid by, to be for use of apprentice, 550  
 complaint for misconduct of, may be heard and  
 determined in superior court, . . . . . 550  
 may be heard with or without jury, . . . . . 550  
 may be discharged from his contract by court, . 550  
 costs, in such cases, how awarded and recovered, 550  
 liable to action on indenture, . . . . . 550  
 damages recovered of, in such case, to be prop-  
 erty of apprentice, . . . . . 550  
 limitation of action against, by apprentice, . . 551  
 death of, to discharge apprentice, . . . . . 551
- MASTER OF HOUSE OF CORREC-  
 TION.**  
 to notify judge of insanity of prisoner, . . . . . 878  
 to report poor convicts, who have been confined  
 for three months, . . . . . 878  
 (*See Houses of Correction.*)
- MASTERS IN CHANCERY.**  
 now in office, to continue, . . . . . 616  
 not more than five in each county, to be ap-  
 pointed by governor and council, . . . 616  
 to be sworn, and hold office for five years, . . . 616  
 to perform duties under direction of supreme  
 court, . . . . . 616  
 fees of such, how taxed and paid, . . . . . 616  
 reports of, to bear interest, . . . . . 685
- MASTERS IN CHANCERY** — *continued.*  
 when all in the county are interested, or dis-  
 qualified to act in any matter, court  
 may appoint some other person, . . . 616  
 may approve bonds to dissolve attachments,  
 proceedings in such cases, . . . . . 632  
 proceedings of, to be finished after termination  
 of commission, . . . . . 616  
 to finish cases in insolvency commenced before,  
 and to return all papers and records  
 in such cases to registers of probate  
 and insolvency, . . . . . 601  
 witnesses, how may be summoned, and com-  
 pelled to attend before, and sworn, 672, 673  
 punishment of, for accepting bribes, . . . . . 813  
 punishment for bribing, or attempting to bribe  
 them, . . . . . 813  
 may authorize arrests on mesne process and ex-  
 ecution in civil actions, . . . . . 633, 634  
 examine, discharge, or commit poor debt-  
 ors arrested, . . . . . 635-640  
 fees of, in such cases, . . . . . 641  
 may approve bail bonds, . . . . . 642  
 take depositions to perpetuate testimony, . 676
- MATERIALS.**  
 for carrying on trade or business, what exempt  
 from levy on execution and from at-  
 tachment, . . . . . 624, 688
- MAYHEM.**  
 punishment of, . . . . . 792  
 attempt to commit, . . . . . 793
- MAYOR.**  
 may make requisition for militia in case of riot, 116  
 duty of, in suppressing riotous and unlawful  
 assemblies, . . . . . 815  
 penalty for neglect of duty, . . . . . 815  
 with consent of aldermen, may remove con-  
 stable for gross misconduct, . . . . . 166  
 if not elected, when chairman of board of alder-  
 men to act until, &c., . . . . . 166, 167  
 when may hold other city offices, . . . . . 167  
 exempted from liability to watch, . . . . . 174
- MAYOR AND ALDERMEN.**  
 to have powers, &c., of selectmen in town, . . 166  
 vacancies in, by non-election, how filled, . . . 166  
 to issue warrants for elections to fill vacancies  
 in city offices, . . . . . 166  
 to make lists of voters, and post them ten days  
 before elections, . . . . . 65  
 to be in session to receive evidence of qualifica-  
 tions of voters, . . . . . 56  
 to give notice of meeting on posted lists, . . . 56, 57  
 to correct lists, . . . . . 57  
 to require proof of naturalization before enter-  
 ing name of naturalized citizen on  
 list, . . . . . 57  
 when not answerable for omissions of names, . . 57  
 penalty for giving false answers to, . . . . . 57  
 on, for neglect of duty, . . . . . 57  
 to call meetings for elections, . . . . . 58, 68, 69  
 in certain elections, to decide whether officers  
 shall be voted for on one or more bal-  
 lots, . . . . . 58  
 with city clerk, to examine returns of votes  
 made by ward officers, . . . . . 59  
 penalty for neglect of duty as to elections of  
 members of congress, district attor-  
 ney, &c., . . . . . 69, 72  
 when may remove collector of taxes and ap-  
 point temporary collector, . . . . . 87  
 to notify and draft enrolled militia upon order  
 of commander-in-chief, . . . . . 92



**MAYOR AND ALDERMEN — continued.**

duties of, in organization of companies of militia, . . . . . 94

to provide armories for military companies, and transmit certificates of rent, &c., to adjutant-general, . . . . . 104

to provide carriages and camp equipage for militia drafted in case of invasion, &c., . . . . . 110

duties of, respecting compensation of militia, . . . . . 111

may make rules for regulation of carriages, &c., to appoint agents to take census, . . . . . 168

to appoint officer of watch, &c., when watch is established, . . . . . 173

may order watch, when none is established, . . . . . 173

power of, at fires, when firewards are not present, . . . . . 176

may appoint engineers, &c., and discharge them in places where there is no fire department, . . . . . 177, 178

may enforce vaccination of inhabitants when public health requires, . . . . . 191

may appoint truant officers, . . . . . 230

powers of, in relation to ways dedicated to public, but not laid out and accepted, . . . . . 243

to cause permanent bounds to be placed at angles of ways laid out by them, . . . . . 244

to ascertain correct location of streets, &c., in certain cases, . . . . . 243

to regulate watercourses in public ways, &c., to determine damages occasioned by repairs, &c., of highways, . . . . . 247

may establish and grade sidewalks in certain cases, . . . . . 250

powers and duties of, in relation to sewers and drains, . . . . . 254

to appoint measurers of grain and meal, . . . . . 265

may appoint and remove weighers of hay, &c., where provisions of statute are adopted by city council, . . . . . 266

may establish regulations for survey of marble, to appoint inspectors of milk, . . . . . 274

may appoint weighers of coal, . . . . . 279

to appoint persons to seize illegal measures, &c., of charcoal, &c., . . . . . 280

may license auctioneers, &c., . . . . . 280

may make regulations restraining, &c., minors, from hawking and peddling certain articles, . . . . . 281

duties of, respecting unclaimed effects of passengers in possession of common carriers, . . . . . 427

to enforce provisions of game laws, . . . . . 430

may grant permits to take oysters and other shell fish from beds, . . . . . 432

may grant licenses to plant and grow oysters, . . . . . 433

to appoint agents to sell intoxicating liquors for medicinal, &c., purposes, annually, penalty on, for neglect, . . . . . 440

to prosecute for breach of bonds of such agents, . . . . . 441

powers of, to abate certain nuisances, . . . . . 453, 454

may grant licenses to innholders, &c., and revoke the same, . . . . . 455, 456

to furnish summary of laws, relating to innholders, to persons licensed, . . . . . 457

may grant licenses to keepers of intelligence offices, dealers in second hand articles, pawnbrokers, &c., . . . . . 457, 458

licenses for steam engines, &c., in certain places, &c., and regulate the use of the same, . . . . . 458, 459

licenses for billiard tables, &c., and for theatrical shows, &c., . . . . . 463

**MAYOR AND ALDERMEN — continued.**

may examine steam engines and boilers, and suspend or prohibit use thereof, . . . . . 459, 460

may remove steam engines, &c., as nuisances in certain cases, . . . . . 460

to require unlicensed dogs to be destroyed, . . . . . 462

proceedings by, in relation to raising or lowering highway crossed by railroad, . . . . . 357

to apply to county commissioners before laying out highway across railroad, . . . . . 358

powers, &c., of, in relation to signboards and gates, &c., at railroad crossings, . . . . . 360, 361

certain acts and doings of gas-light companies to be under control of, . . . . . 343

to designate where posts of telegraph companies shall be located, . . . . . 373

to assess damages to land owners in such cases, compensation of, for services, &c., . . . . . 373

may offer reward, not exceeding five hundred dollars, for arrest of certain offenders, proceedings in such cases, where more than one claimant appears, . . . . . 831

words, when applying to Boston, to mean the board of aldermen, . . . . . 167

**MEADOWS, BEACHES, SWAMPS, MARSHES, LOW LANDS, &c.**

held by several proprietors, how may be drained, flowed, &c., . . . . . 750, 751

person in possession to be deemed proprietor when premises are mortgaged, . . . . . 752

proprietors of, may petition superior court, setting forth proposed improvements, . . . . . 751

court, on hearing, after notice given, may appoint commissioners to cause improvements to be made, . . . . . 751

commissioners to be sworn, to view the premises, give notice, &c., . . . . . 751

to prescribe measures for making improvements, . . . . . 751

power of, to erect dams, &c., to order lands to be flowed, open ditches, remove obstructions in streams, &c., . . . . . 751

to open floodgates of mills, and make passages through or round dams of third persons, . . . . . 752

may employ persons to perform the above work, unless proprietor does it, . . . . . 751

shall apportion and assess expenses on proprietors, and may appoint and give warrant to a collector, . . . . . 751

power, liability, and compensation of collector, how commissioners shall apportion expense on tenants and reversioners, . . . . . 751, 752

expense paid by mortgagee, to be allowed him as in case of other improvements, . . . . . 752

damages caused by opening floodgates, &c., to be determined and paid by commissioners, unless, &c., . . . . . 752

commissioners to make return of their doings to court, including account of money assessed and collected, . . . . . 751

appeal may be taken to superior court from any doings of commissioners, . . . . . 752

shall suspend proceedings on third persons' lands, . . . . . 752

superior court may affirm, reverse, or alter orders of commissioners, . . . . . 752

shall determine compensation of commissioners, . . . . . 751

questions of fact, arising on the hearing of appeals, to be tried by jury, on motion of either party, . . . . . 752

**MEADOWS, &c. — continued.**

**CONSTRUCTION OF ROADS, &c., TO.**

- proprietors, how authorized to establish roads, drains, ditches, tunnels, and railways to, over other lands, . . . . . 752
- may apply to county commissioners, . . . 753
- application, what to contain, . . . . . 753
- notice of, how given, . . . . . 753
- duty of commissioners, . . . . . 753
- parties aggrieved may appeal as in case of highways, . . . . . 753
- improvement, when made, how repaired, . . 753

**MEAL. (See Grain and Meal.)**

- provisions respecting, . . . . . 265

**MEASURES. (See Weights and Measures.)**

- provisions respecting, . . . . . 284-286

**MEASURERS.**

- of grain and meal, how appointed, . . . . . 265
- may be authorized to appoint deputies, . . 265
- duties and fees of, and their deputies, . . 265
- penalty on, for using false weights, . . . 265
- of wood and bark, to be chosen at annual town meeting, unless selectmen authorized to appoint, . . . . . 161
- to be sworn, . . . . . 161
- to measure wood, &c., and deliver certificate of quantity, . . . . . 278
- fees of, and by whom paid, . . . . . 278

**MECHANICS.**

- necessary tools of, exempted from taxation, . 74, 82
- not exceeding one hundred dollars in value, exempted from attachment and execution, . . . . . 688

**MECHANICS' LIEN. (See Lien.)**

- provisions respecting, . . . . . 762, 768, 769

**MEDICINES. (See Drugs.)**

- fraudulent adulteration of, how punished, . . 823

**MEETING-HOUSES, (see Parishes and Religious Societies.)** . . . . . 200-205

**MERRIMACK RIVER.**

- buoys at mouth of, ceded to United States, . . 44
- Half-tide and North rocks in, ceded to United States, . . . . . 44

**MESSENGER.**

- of governor and council, how appointed, and term of office, . . . . . 134
- duties and salary of, . . . . . 134, 135
- may employ an assistant, . . . . . 135
- duties and compensation of assistant, . . . 135
- under laws relating to insolvent debtors, duties of, . . . . . 582, 583
- fees of, and how paid, . . . . . 600

**MESSENGERS.**

- of senate and house of representatives, compensation of, . . . . . 48

**METALS AND ORES.**

- assayers of, how appointed, . . . . . 274
- duties and compensation of, . . . . . 274

**METHODIST EPISCOPAL CHURCH.**

- trustees of any society of, may become corporation, . . . . . 204, 205
- powers of such trustees, . . . . . 205
- limitation of annual income, . . . . . 205
- organization of trustees, . . . . . 205
- copy of record of organization to be left with town clerk, . . . . . 205

**MIDDLESEX COUNTY.**

- Chelsea, North Chelsea, and Winthrop, to vote with, for county commissioners, . . 71, 72
- jurisdiction of, in common with Suffolk, over part of Charles River, . . . . . 144, 145

**MILE STONES AND MILE BOARDS.**

- punishment for wilful, &c., removal, &c., . . . 803

**MILITIA.**

- provisions concerning, in United States constitution, . . . . . 4
- governor to be commander-in-chief of, . . . . 23
- not obliged to march out of state, except, &c., . 24
- officers of, how elected, appointed, commissioned, and removed, . . . . . 24, 32

**I. ENROLLED MILITIA.**

- who to be enrolled, . . . . . 91
- person convicted of infamous crime to be disenrolled, . . . . . 91
- who absolutely exempted from enrolment, 91, 92, 93
- who conditionally exempted, . . . . . 93
- assessors, annually, to make list of persons liable to enrolment, . . . . . 91
- town clerk to transmit return to adjutant-general, . . . . . 91
- names of persons liable to enrolment to be given by themselves and others, under penalty, . . . . . 91
- enrolled militia not liable to active duty except in case of war, &c., . . . . . 92
- in which case may be ordered out by commander-in-chief, . . . . . 92
- how to be drafted upon order of commander-in-chief, . . . . . 92
- penalty on soldier for not appearing or producing substitute when drafted, . . . 92
- when so ordered out, &c., how organized, officered, and equipped, . . . . . 92
- towns to furnish ammunition, &c., under penalty, when ordered by commander-in-chief, . . . . . 92

**II. VOLUNTEER MILITIA.**

**1. ORGANIZATION, &c.**

- active, to be composed of volunteers, . . . . . 94
- in case of war, riot, &c., first ordered into service, . . . . . 94
- number of companies not to exceed one hundred and twenty, . . . . . 94
- no new company to be organized if thereby whole force exceeds five thousand, . . 94
- to be apportioned among counties according to population, . . . . . 94
- if county does not raise its quota, number may be completed in other counties, . . . 94
- members of, to do duty for five years, unless, &c., . . . . . 94
- not to be arrested on civil process when performing military duty, &c., . . . . . 99
- exempted from serving as jurors, . . . . . 680
- what constitutes a legal enlistment, . . . . . 94
- organization and choice of officers of new companies, . . . . . 94
- to be arranged into divisions, brigades, &c., and numbered, . . . . . 94
- Cavalry**, companies of, of what number to consist, . . . . . 94
- when may be attached to brigades, . . . . 94
- squadron of, to consist of two companies, . 94
- regiments of, not less than four companies, 94
- Cadets**, companies of, of what number to consist, . . . . . 94
- Infantry and riflemen**, companies, of what number to consist, . . . . . 94
- Foot artillery**, companies, of what number to consist, &c., . . . . . 94
- when may be attached to brigades, . . . . 94

**MILITIA — continued.**

**Companies** inconveniently located, how to receive orders and make returns, . . . 94  
 attached to divisions, how to receive orders and make returns, . . . 94, 95  
 may be disbanded by commander-in-chief for failure to comply with law relative to uniform, equipment, &c., . . . 95  
 if, when twice ordered, they neglect to elect officers, . . . 95  
 if reduced to less than thirty-two privates for six months, . . . 95  
 if less than thirty-two privates appear for duty, . . . 95  
 articles of agreement of, . . . 107  
**Bands** may be enlisted by commanders of regiments, &c., . . . 95  
 of what number to consist, . . . 95  
 to provide themselves with uniforms and instruments, under penalty, . . . 95  
 by whom taught and commanded, . . . 95  
**Soldiers**, how discharged, . . . 95  
 not to aid in seizing fugitives from service, penalty for so aiding, . . . 741  
 not to apply to any act of military obedience and subordination, . . . 742

**2. OFFICERS, APPOINTMENT, ELECTION, QUALIFICATION, AND DISCHARGE.**

**Commander-in-chief**, governor to be, . . . 23  
 general powers of, . . . 23  
 may order out militia in case of war, invasion, riot, &c., . . . 92, 109, 110  
 power and duty of, as to organizing and disbanding companies, . . . 94, 95  
 aids of, . . . 24, 95, 97  
 may arrange militia into divisions, brigades, &c., . . . 94  
 to commission all commissioned officers, . . 98  
 orders of, by whom distributed, . . . 101  
 may sell certain military stores, . . . 104  
 may detail officers at any time to examine armories, . . . 104  
 may order out any portion of militia for escort, &c., . . . 107  
 may reverse judgments of courts martial, . . 119  
 may call boards of officers to settle military questions, . . . 120  
 may appoint commanding officer when electors fail to choose, . . . 99  
**Adjutant-general**, (See 3,) . . . 24, 97, 101  
**Quartermaster-general**, appointment and rank, . . . 95, 97  
 when office vacant, who to act, . . . 96  
**Major-general**, how chosen or appointed, and commissioned, . . . 24, 95, 97  
 how notified of election, . . . 98  
 when to signify acceptance of office, . . . 98  
 staff, of what to consist, how appointed, and rank, . . . 95, 97  
**Brigadier-general**, how chosen or appointed, and commissioned, . . . 24, 97  
 staff, of what to consist, appointment and rank, . . . 95, 97  
**Regimental field officers**, of what to consist, and by whom elected, . . . 96, 97  
 staff, of what to consist, appointment and rank, . . . 96, 97  
 non-commissioned staff, of what to consist, and how appointed, . . . 96, 97  
**Battalion field officer**, who to be, and how elected, . . . 96, 97

**MILITIA — continued.**

staff, of what to consist, appointment and rank, . . . 96, 97  
 non-commissioned staff, of what to consist, and how appointed, . . . 96, 97  
**Company officers**, of what to consist, and how elected, . . . 96, 97  
 non-commissioned officers, of what to consist, how appointed, and warrants, . . . 96, 97, 98  
 clerk, how appointed, . . . 97  
 to be a sergeant, and have appointment certified on warrant, . . . 96, 98  
 to keep company roll and orderly book, . . 108  
 to record orders and notifications in orderly book, . . . 105, 108  
 duties of, how performed when office is vacant, . . . 97, 98  
 without officers, how to be commanded, 96, 97, 105  
 refusing or neglecting to elect officers, &c., how commanded, until, &c., . . . 97, 99  
 when commanding officer of division, brigade, &c., is absent, &c., next in rank to command, . . . 96  
**Commissions**, to be given by commander-in-chief, . . . 24, 98  
 rank to be determined by date of, . . . 98  
 how, when of even date, . . . 98  
 day of appointment, &c., to be expressed in, . . 98  
 how to be transmitted, . . . 99  
 loss of, how supplied, . . . 98  
 refusal to accept, or qualify, to be indorsed on, and returned to adjutant-general, . . 99  
 of staff officers, when to expire, . . . 101  
 who ineligible to office, . . . 98  
 if person ineligible is chosen, commander-in-chief to appoint another, . . . 98  
**Election of officers** to fill vacancies to be ordered yearly, . . . 98  
 notice of, when and how to be given, . . 98, 99  
 who to preside at, . . . 99  
 roster, &c., to be produced at, . . . 99  
 may be adjourned twice, . . . 99  
 who to be deemed elected, and how notified, . . 99  
 acceptance, when to be signified, . . . 99  
 new, to be had at same meeting, if person chosen refuses to accept, . . . 99  
 may be ordered after refusal to choose officers, unless, &c., . . . 99  
 returns of, how and to whom made, . . . 99  
 upon refusal to choose at, commander-in-chief, &c., to appoint, . . . 99  
 by whom called in companies without commissioned officers, . . . 99  
 candidates not to treat with intoxicating liquors, . . . 99  
 officers, &c., going to, &c., not to be arrested on civil process, . . . 99  
 acceptance of new office, to vacate one previously held, . . . 99  
**Oath** of commissioned officer, form of, and by whom administered, . . . 100  
 to be certified on commission, . . . 100  
 form of certificate, . . . 100  
 of clerk of company, form of, and by whom administered, . . . 100  
 to be certified on warrant, . . . 100  
**Discharge** may be granted upon request of officer, . . . 100  
 resignation not to be approved between May and November, unless for urgent reasons, . . . 100



**MILITIA — continued.**

remedy when approval is unreasonably refused, . . . . . 100

resignation, not to be made by officer under arrest, . . . . . 101

of non-commissioned officer and clerk of company, . . . . . 101

not to be given without officer's request, except, &c., . . . . . 100

may be given without request when unfit to discharge duties or is a convict, . . . . . 100

when he has removed to inconvenient distance from his command, . . . . . 100

when absent more than a year without leave, . . . . . 100

upon address of legislature, . . . . . 100

upon sentence of court martial, . . . . . 100

when corps is disbanded, . . . . . 101

upon accepting appointment in United States army, . . . . . 101

of staff officers, . . . . . 101

officers to perform duties until discharged, . . . . . 101

may be removed as legislature prescribe, . . . . . 32

**3. ADJUTANT-GENERAL.**

how appointed, . . . . . 24, 97

to be inspector-general, . . . . . 95

to act as quartermaster-general when that office is vacant, . . . . . 96

rank of, . . . . . 95

tenure of office, . . . . . 101

to give bond, . . . . . 101

salary of, . . . . . 101

clerk of, and salary, . . . . . 101

to have custody of magazines, munitions of war, &c., . . . . . 55

to distribute all general orders, . . . . . 101

to attend commander-in-chief at reviews, . . . . . 101

to furnish blank rolls and returns, and blanks for company orders, . . . . . 101

to make abstracts of returns of officers of brigades, &c., annually, . . . . . 101

to make returns, annually, of militia, &c., to president of United States and commander-in-chief, . . . . . 101

to transmit to selectmen, &c., certified band and company pay rolls within twenty days of receipt thereof, . . . . . 101, 102

to make, annually, certified roll of officers entitled to pay, and ascertain amount necessary to reimburse towns, and submit the same to auditor, . . . . . 102

to lay before auditor, annually, an account of expenditures, . . . . . 102

to distribute arms, equipments, &c., furnished at public expense, . . . . . 102

may sue for damage to articles so furnished, . . . . . 102, 103

to receive arms, &c., from disbanded companies, . . . . . 103

may permit certain field pieces to remain in possession of towns, &c., . . . . . 102

to audit and allow claims for rent of armories, duty of, in regard to compensation of officers and soldiers, . . . . . 111, 112

to present to auditor accounts of expenses as inspector-general, . . . . . 112

to examine and certify all military accounts, . . . . . 113

such accounts to be allowed by auditor, &c., not to be allowed, &c., unless presented within the time prescribed by law, . . . . . 113

to report annually, to legislature, expenses of his office, . . . . . 141

**MILITIA — continued.**

**4. ARMS, EQUIPMENTS, EQUIPAGE, &C.**

**Uniforms** to be such as prescribed by commander-in-chief, . . . . . 102

officers and soldiers to provide themselves with, under penalty, . . . . . 102

exempted from attachment, &c., . . . . . 102

**Tents and other camp equipage** to be furnished by state to commanders of divisions, brigades, &c., . . . . . 102

such officer to be responsible therefor, . . . . . 102

how released from responsibility, . . . . . 102

**Colors** to be furnished to regiments and battalions, . . . . . 102

commanding officers responsible, . . . . . 102

commander of brigade may draw order for, . . . . . 103

**Arms and equipments** to be furnished to companies on application, . . . . . 102, 103

to be kept in an armory, . . . . . 103, 104

commissioned officers responsible for, . . . . . 103

how discharged from responsibility, . . . . . 103

to be received by adjutant-general when companies are disbanded, . . . . . 103

officers to provide themselves with, . . . . . 92

**Instruments of music** to be furnished, as commander-in-chief shall order, . . . . . 103

commander of brigade may draw order for, . . . . . 103

commanders of companies responsible, . . . . . 103

**Cannon, &c.**, to be furnished to artillery, . . . . . 103

when in state of war, &c., ammunition may be furnished for target practice, . . . . . 103

commissioned officers accountable, . . . . . 103

expenses of battery, &c., how paid, . . . . . 103

**Scott's Infantry Tactics, &c.**, to be furnished to certain officers, . . . . . 103

such books to be delivered to successors, . . . . . 103

**Military stores** may be sold, &c., by commander-in-chief with advice of council, at arsenal in Cambridge, to be examined, &c., annually, . . . . . 104

**5. ARMORIES.**

armories to be provided by selectmen, &c., . . . . . 104

certificate under oath of necessity of, name of company and rent to be transmitted to adjutant-general, . . . . . 104

penalty on towns for false certificate, . . . . . 104

claims for rent of, to be audited by adjutant-general, . . . . . 104

claims allowed, to be paid by state, . . . . . 104

may be examined, &c., by officers detailed for that purpose, . . . . . 104

location of, when company is formed from different places, . . . . . 104

**6. ORDERS AND NOTIFICATIONS.**

**Orders**, general, division, brigade, &c., by whom distributed, . . . . . 104

for encampment, how and by whom issued, . . . . . 104, 105

**Notifications** for company parade and elections of officers, how and by whom given, . . . . . 104, 105

how proved, . . . . . 115, 116

blank forms to be furnished by adjutant-general, . . . . . 101

how long before time appointed, . . . . . 105

in case of invasion, &c., . . . . . 105

to companies without commissioned officers, how given, . . . . . 105

penalties for not giving, according to order, and how recovered, . . . . . 104, 105

**MILITIA — continued.**

orders and notifications to be recorded by clerk in orderly book, . . . . . 105

**7. DISCIPLINE, TRAININGS, INSPECTION, AND CAMP DUTY.**

**Discipline** to be same as in United States army, 105

**Elementary drills** may be ordered by commanders of regiments, &c., . . . . . 105

on two separate days between middle of May and middle of July, . . . . . 105

penalty for non-attendance, how recovered, 105

**Encampments, orders for, how and when issued, . . . . . 105**

when to be held, . . . . . 105

to continue three days, . . . . . 106

place of, to be designated by commander of troops to be assembled, . . . . . 105

and time of, if not designated by commander of division, . . . . . 105

no ground to be occupied for, without consent of selectmen, &c., . . . . . 105, 106

officers and soldiers not obliged to march more than fifteen miles, except, . . . . . 106

parade of larger body than brigade to be ordered by commander-in-chief, . . . . . 106

troops to be inspected, reviewed, exercised, &c., at, . . . . . 106

penalty on non-commissioned officers and privates neglecting to appear, . . . . . 106

company roll calls, under whose supervision made, . . . . . 106

rank of corps in the field, . . . . . 106

when distinct corps parade together, senior officer present to command, . . . . . 106

company without commissioned officers parading with other troops, how commanded, . . . . . 97, 106

inspection of regiments, &c., by brigade major and inspector, . . . . . 106

officers and soldiers may drill in camp in fatigue dress, . . . . . 106

**Parade, bounds of, may be fixed by commander, . . . . . 106**

punishment for intrusion within such bounds, . . . . . 106

officers and soldiers not holden to do duty on election days, except, &c., . . . . . 106

penalty on officer for parading company on election day, . . . . . 106

troops may be ordered out by commander-in-chief for escort duty, &c., . . . . . 107

music at such parades, how paid for, . . . . . 107

voluntary parades allowed, . . . . . 107

and such as prescribed by articles of agreement of companies, &c., . . . . . 107

remedy for breach of articles of agreement, 107

penalty on non-commissioned officer and private for deficiency in arms, &c., at parade, required by law, . . . . . 107

penalty on soldier for having arms loaded with ball on parade, . . . . . 107

for discharging musket, &c., without order from officer, . . . . . 107

for disorderly conduct, &c., . . . . . 107

for quitting guard, company, &c., . . . . . 107

in companies without officers, . . . . . 107

**8. ROSTERS, ORDERLY BOOKS, ROLLS, AND RETURNS.**

**Rosters** and orderly books of divisions, brigades, regiments, &c., by whom to be kept, . . . . . 108

**MILITIA — continued.**

**Orderly book of company, how and by whom kept, . . . . . 105, 108**

files, &c., to be recorded in, . . . . . 108

always to be open to inspection of officers, . . 108

**Roll of company, how and by whom kept, . . 108**

to be revised annually in May, . . . . . 108

**Returns of camp duty by companies to be made in duplicate, by commanders, . . . . . 108**

to be certified by commander of regiment and staff officer supervising roll, . . . . . 108

one to be delivered to brigade-major, and the other transmitted to adjutant-general, . . . . . 108

of companies attached to divisions, how certified, . . . . . 108

of alphabetical pay rolls of companies, to be made under oath, within ten days, . . . . . 108

pay roll not to contain name of private who has done duty as musician, . . . . . 108

not to exceed the number allowed to company, . . . . . 108

penalty for neglect in making, and for false return, . . . . . 108

by masters of regimental, &c., band, to be made and transmitted to adjutant-general within ten days after parade, . . . . . 108

to be certified by commanding officer to whom band reported for duty, . . . . . 108

penalty for neglect and for false return, . . . 109

by commanders of regiments, &c., of field and staff officers, on last day of camp duty, . . . . . 109

and delivered to brigade-major or inspecting officer of camp, . . . . . 109

penalty for neglect and for false return, . . . 109

by brigade-major, to be made to commander of brigade, within twenty days after camp duty, . . . . . 109

to be transmitted by him, under penalty, to commander of division within thirty days, . . . . . 109

what to contain, . . . . . 109

of rolls of field and staff officers of brigade to be transmitted to commander of division, &c., . . . . . 109

penalty for neglect and for false return, . . . 109

commanders of divisions to make return of the state of their divisions, . . . . . 109

to transmit certified roll of field and staff officers to adjutant-general, . . . . . 109

penalty for neglect and making false return, . . . . . 109

**9. CALLING OUT IN CASE OF WAR, INVASION, RIOT, &C.**

militia may be ordered out by commander-in-chief, to repel invasion, &c., . . . . . 109

when may be ordered out by commander of division in such case, . . . . . 109, 110

when draft is ordered, how to be made, . . 110

officers to be regularly detailed, . . . . . 110

company without officers, by whom commanded, &c., . . . . . 110

penalty on soldier neglecting to appear, &c., . . . . . 110

soldiers to take provisions if ordered, . . . . 110

selectmen, &c., to furnish carriages, camp equipage, &c., . . . . . 110

penalty on town for neglect, . . . . . 110

officer receiving articles from town, &c., to be responsible therefor, . . . . . 110

**MILITIA — continued.**

in case of riot, &c., troops may be called out, by order of governor, or precept of magistrate, &c., . . . . . 110, 815, 816  
 whose orders to obey in such cases, . . . 816  
 form of precept, . . . . . 110, 111  
 penalties for disobedience, . . . . . 111  
 troops to appear armed and equipped as for inspection, . . . . . 111

**10. COMPENSATION.**

**Compensation** to general, field, and staff officers, . . . . . 111  
 to inspectors, and adjutants of regiments, &c., . . . . . 111  
 to officers and soldiers of companies, . . . 111  
 to members of bands, . . . . . 111  
 how computed, disbursed, &c., . . . . . 111  
 not to be allowed, unless full duty is performed, except, &c., . . . . . 112  
 nor unless performed personally, . . . . . 112  
 for travel in attending elementary drills, . . 112  
 of detachment on special duty, . . . . . 112  
 to officers for travel in attending elections, . 112  
 to officers composing courts martial, courts of inquiry, and military boards, for travel and attendance, . . . . . 112  
 to witnesses, for travel and attendance before such courts, &c., . . . . . 112  
 fees for subpoenas, &c., same as in civil cases, 112  
 not allowed for military guard unless ordered by officer appointing court, . . 112  
 of militia in actual service same as regular troops of United States, . . . . . 113  
 additional, for uniform, . . . . . 113  
 when discharged, to be allowed pay and rations to their respective homes, . . 113  
 relief to soldiers disabled while performing duty, . . . . . 112, 113  
 military accounts, &c., how examined, certified, and paid, . . . . . 113

**11. EXCUSES.**

**Excuse** for non-appearance may be granted by commanders of companies if applied for within twenty days after training, &c., . . . . . 113  
 not to avail on prosecution for fine, unless proved to have been made within time, &c., . . . . . 113  
 clerks to be informed of, by officer allowing, . . . . . 113  
 not to be granted for deficiency of equipment, . . . . . 113  
 certain conditional exemptions not to be, unless, &c., . . . . . 113

**12. FINES AND PENALTIES.**

**Fines and penalties** to be recorded in company orderly book, . . . . . 108  
 on boarding-house keepers, &c., for not giving names of persons liable to enrolment, . . . . . 91  
 on commanders of regiments, &c., for neglect to make return of field and staff, &c., . . . . . 109  
 on commanders of brigades for neglect to transmit returns, &c., . . . . . 109  
 on commanders of divisions for neglect to make returns and false return, . . . 109  
 on soldiers for not appearing when drafted for actual service, . . . . . 92

**MILITIA — continued.**

on towns for neglect to provide ammunition, &c., when required, . . . . . 29  
 for false certificate of selectmen concerning armories, . . . . . 104  
 on member of band for not providing himself with uniform, &c., . . . . . 95  
 on master of band for not making return of duty, and for false return, . . . . . 109  
 on officers and soldiers for deficiency in uniform, . . . . . 102  
 for not attending at elementary drills, . . 105  
 for breach of articles of agreement of companies, . . . . . 107  
 on non-commissioned officers and privates for absence from company election, 98, 99  
 failing to notify companies for parades and elections, . . . . . 104, 105  
 neglecting to appear at encampment, . . . 106  
 for deficiency in arms, &c., at parades, . . 107  
 for quitting guard, company, &c., . . . . 107  
 for intrusion within bounds of parade, . . . 106  
 on officer for parading company on election day, . . . . . 106  
 commander of company for neglect in making returns of camp duty, &c., . . . 108  
 for refusing to obey order in case of riot, 111  
 on soldier for having arms loaded with ball on parade, . . . . . 107  
 for discharging musket, &c., while on, or going to, or returning from, parade, without order, . . . . . 107  
 for disorderly conduct and neglect of duty on parade, . . . . . 107  
 for neglecting to appear when drafted in case of invasion, riots, &c., . . . . . 110, 111  
 in company without officers, how recovered, &c., . . . . . 107  
 on brigade-major for neglect in making returns and false return of camp duty, &c., . . . . . 109  
 on towns for neglecting to provide carriages, &c., in certain cases, . . . . . 110

**13. PROSECUTIONS FOR FINES AND PENALTIES.**

**Fines** under constitutions of volunteer companies, how collected and disposed of, . . 113  
 clerk to make information for recovery of, . 114  
 form of information, . . . . . 114  
 summons to be issued within nine months, and served seven days before time of hearing, . . . . . 114  
 forms of, to be issued by justice of the peace and police court, . . . . . 114, 115  
 defendant may plead not guilty, . . . . . 115  
 complainant to prove his appointment and qualification as clerk, . . . . . 115  
 to produce roll and prove enlistment of defendant, . . . . . 115  
 to prove order to notify meeting, and notice to defendant, . . . . . 115  
 offence to be proved, in case of absence, burden of proof on defendant, . . . . . 115  
 secondary evidence, when received, . . . 115, 116  
 clerk, &c., may be witness, . . . . . 116  
 commanding officer may be witness, . . . 116  
 exemptions for infirmity, how proved, . . . 116  
 execution, when to be issued, . . . . . 116  
 form of execution, . . . . . 116  
 complaint, &c., may be amended, without costs, . . . . . 116  
 continuances may be allowed, . . . . . 116



**MILITIA — continued.**

when complainant not liable for costs, . . . 116  
 no appeal unless forfeiture exceeds ten dol-  
 lars, exclusive of costs, . . . . . 116  
 complaints by other officers, how prosecuted,  
 imprisonment on execution not to exceed  
 six days, . . . . . 116  
 judgment debtor to remain liable, and exe-  
 cution may be sued out against prop-  
 erty, . . . . . 116  
 money collected for fines, how disposed of, . 117

14. COURTS MARTIAL.  
 complaints, on which courts martial are or-  
 dered, to specify offence, be signed,  
 &c., . . . . . 117  
 no officer to be tried for offence committed more  
 than a year before complaint, . . . . 117  
 nor on charge preferred by soldier, except, &c., 117  
 respondent to be arrested, to have copy of  
 charges, and notice, ten days before  
 trial, . . . . . 117  
 courts may be adjourned, . . . . . 117, 118  
 of whom to consist, and when held, . . . 117  
 only one general and one division court mar-  
 tial in one division in one year, . . . 117  
 general, by whom appointed, and to try  
 whom, . . . . . 117  
 division, by whom appointed, and to try  
 whom, . . . . . 117  
 members of, how and by whom detailed, . . 117  
 provision in case officer detailed is unable  
 to serve, . . . . . 117  
 no officer superior in rank to the president  
 to be detailed, . . . . . 117  
 officers ordered to detail members of, to  
 make return, &c., . . . . . 117  
 officers on, to rank by seniority of commis-  
 sion, . . . . . 117  
 judge-advocate of each division to attend gen-  
 eral and division courts martial, . . . 117  
 if unable to attend, another to be appoint-  
 ed, . . . . . 117, 118  
 if not present at opening of court, president  
 may appoint, . . . . . 118  
 such advocate to finish trial commenced, . . 118  
 if president does not attend, officer highest in  
 rank to preside, . . . . . 118  
 if marshal is not present at opening of court,  
 president may appoint, . . . . . 118  
 members to be sworn, . . . . . 118  
 oath of president, members, and judge-advocate,  
 challenges, how and when made, &c., . . . 118  
 certain causes of, when to be considered as  
 waived, . . . . . 118  
 if accused neglect to appear, &c., trial may pro-  
 ceed, &c., . . . . . 118  
 witnesses summoned, &c., must appear, &c.,  
 under same penalties as in criminal  
 cases, . . . . . 118  
 oath of, . . . . . 118  
 evidence of default in returns, . . . . . 119  
 copies of documents, how authenticated, . . . 119  
 all proceedings, evidence, &c., to be submitted  
 to the court in writing, . . . . . 119  
 votes, how to be taken; two thirds required to  
 convict, . . . . . 119  
 sentence, . . . . . 119  
 order to be preserved in court, . . . . . 119  
 records of trial, &c., certified by judge-advocate,  
 to be transmitted to officer ordering  
 court . . . . . 119

**MILITIA — continued.**

and by him transmitted, with approval, &c., to  
 office of adjutant-general, . . . . . 119  
 pay roll to be transmitted to same office, . . 119  
 copies of records to be furnished by adjutant-  
 general, . . . . . 119  
 judgment may be reversed by commander-in-  
 chief, . . . . . 119  
 commissioned officers, for what offences may be  
 tried by court martial, . . . . . 119, 120  
 fines imposed, to be prosecuted by judge-adv-  
 cate, . . . . . 120  
 costs against judge-advocate, in such case, how  
 paid, . . . . . 120

15. BOARDS OF OFFICERS.  
 may be called to settle military questions, . . . 120

16. GENERAL AND DIVISION COURTS OF INQUIRY.  
 courts, of whom to consist, how ordered and  
 organized, . . . . . 120  
 vacancies, &c., how filled, . . . . . 121  
 oath of president, members, and judge-advocate, 121  
 witnesses summoned, sworn, &c., as in courts  
 martial, . . . . . 121  
 judge-advocate to attend, &c., . . . . . 121  
 proceedings to be recorded and transmitted as  
 in courts martial, . . . . . 121  
 no guard unless necessary for protection, . . . 121

17. RULES AND ARTICLES FOR GOVERNING THE  
 MILITIA IN ACTUAL SERVICE, . . . 121-126

**MILK.**

inspectors of, how appointed, . . . . . 274  
 to be sworn and give public notice of ap-  
 pointment, . . . . . 274  
 to keep an office and books for recording  
 names of persons who sell milk, . . . . 274  
 may enter stores, &c., and analyze milk, . . 274  
 to prosecute violations of these provisions, 274  
 compensation of, . . . . . 274  
 measures, cans, &c., used in sale of, to be sealed  
 by wine measure, . . . . . 275  
 capacity of can to be marked by seller, . . . . 275  
 penalty for neglect to record name, &c., in in-  
 spector's books, . . . . . 275  
 for neglect to place name on carriage used in  
 conveyance of, . . . . . 275  
 for buying or selling, by other than sealed  
 measures, &c., . . . . . 275  
 for adulterating, &c., . . . . . 275  
 for offering for sale, when produced from  
 cows fed on deleterious food, . . . . 275

**MILL DAMS. (See Dams, Mills.)**

**MILLERS.**

duties and compensation of, . . . . . 761  
 to keep scales, &c., and weigh grain, &c., if re-  
 quired, . . . . . 761  
 penalty for neglect or refusal so to do, . . . 761  
 toll for grinding grain, not to exceed one six-  
 teenth thereof, . . . . . 761

**MILL POND.**

penalty for wilfully drawing water from, . . . 804

**MILL PRIVILEGES.**

may be divided among tenants in common by  
 suits in equity, or on petition for par-  
 tition, . . . . . 706

**MILLS.**

I. ERECTION AND REGULATION OF.  
 and dams to raise water for working them,  
 may be erected, &c., on streams not  
 navigable, . . . . . 754

**MILLS—continued.**

shall not be erected to injury of lawfully existing mill on same stream, . . . . . 754

of any mill site ever lawfully occupied as such, unless the right be lost, &c., . . . 754

shall not be placed on land of any one, without grant, &c., . . . . . 755

now lawfully existing, not affected by statute, except as expressly provided, . . . . . 757

punishment for wilful injury to wheels, gear, or machinery of, . . . . . 804

how execution may be levied on, when not divisible, . . . . . 517, 518

height of water, and time of flowing others' lands, liable to regulation by a jury, . . . 755

action for damages caused by erection of, &c., not to be sustained at common law, except, &c., . . . . . 757

owner of land flowed by, may make complaint to superior court to obtain compensation, . . . . . 755

separate and joint owners may join in complaint, and have separate damages, . . . . . 758, 759

contents of such complaint, when to be filed, and what notice thereof shall be given to mill owner, . . . . . 755

by whom notice may be served, . . . . . 755

such complaint not abated by death of either party, . . . . . 759

respondent may tender, in court, past damages, and offer yearly compensation for the future; with what effect on costs, if complainant do not accept, . . . . . 758

if complainant accept sum tendered, he shall have judgment therefor; and with what effect, . . . . . 758

complainant may accept past damages, and proceed to trial for the future; and vice versa, . . . . . 758

what may be answered in bar of such complaint, . . . . . 755

respondent shall not answer that the land is not injured by mill dam, . . . . . 755

other pleadings, and trial on such complaint, to be as in actions at common law, . . . 755

if the complaint be supported, &c., court shall issue warrant for a jury to determine matter thereof, . . . . . 755

either party may appeal to supreme court from decision on answer in bar, . . . . . 755

if supreme court decide for complainant, case shall be remitted, and superior court shall issue warrant for jury, . . . . . 755

proceedings on such warrant to be like those on complaint for damages caused by laying out, &c., highways, . . . . . 755

trial may be in court before the jury, as in other civil actions, if parties agree in writing, . . . . . 756

in such case, either party may have a view, . . . 756

jury to consider damage to complainant's land not flowed, as well as to that flowed, to allow, by way of set-off, benefit caused to complainant by the dam, . . . . . 756

may return verdict that complainant is entitled to no damages, . . . . . 756

such verdict of, not a bar to new complaint for subsequent damages, . . . . . 758

to assess damages for three years only prior to complaint filed, and to the time of verdict, . . . . . 756

**MILLS—continued.**

when shall decide how high, and for what periods, dam may be kept up, . . . . . 756

shall assess yearly damages, and also a sum in gross, . . . . . 756

complainant may elect, within three months, to take sum in gross, . . . . . 756

shall enter such election on the record in the clerk's office, . . . . . 756

mill owner shall, within three months after such entry, pay or secure such sum, &c., or lose benefits of statute till he pay, . . . . . 756

complainant, and his assignees, (if he do not elect to take gross sum,) entitled to receive yearly damages from all future owners, &c., of mill, . . . . . 756

damages and gross sum a lien on mill, &c., for three years, . . . . . 756, 757

may be recovered by action of contract, . . . 757

what may be recovered, . . . . . 757

full costs, although amount recovered is less than twenty dollars, . . . . . 757

execution on judgment for damages, &c., may be levied on mill, &c., and the premises sold like an equity of redemption, . . . 757

may be redeemed within one year, on payment of sum paid, and twelve per cent. interest, . . . . . 757

such sale of, how far valid against assignees of mill owner, . . . . . 757

verdict for damages, &c., subject to control of court, like verdicts in common law trials, . . . . . 757

may be set aside, and new trial ordered, . . . 757

if complaint be abated, or judgment on verdict be reversed, new complaint for same cause may be brought within one year, . . . 759

either party, or his assignees, may apply, and within what time, for a new assessment of damages, &c., . . . . . 757, 759

provisions for an offer of increased compensation, or to accept a smaller, and the effect thereof on costs, if new jury do not award more nor less, . . . . . 758

if such offer be accepted, and memorandum thereof recorded, &c., in clerk's office, it shall establish the future yearly damages, . . . . . 758

**II. REGULATION OF DAMS.**

how made by order of county commissioners, &c., . . . . . 759, 760

(See Dams.)

**III. REPAIR, REBUILDING, &c., OF.**

when joint owners of, do not all agree to repair, majority may do it at expense of the whole, . . . . . 760

manner of calling and warning meeting of proprietors, to consult respecting repairs, &c., . . . . . 760

at such meeting, majority in interest may take measures for repairing, &c., . . . . . 760

if a wife or ward be a proprietor, the husband or guardian may act at such meeting, and in calling it, . . . . . 760

each proprietor shall pay his proportion of expenses of repair to those who advance them, . . . . . 760

proprietors, thus making advances, shall have lien therefor on rents and profits, or may sue, &c., . . . . . 760

**MILLS** — *continued.*

- provision for apportioning expenses of repairs, &c., on tenants and reversionsers, &c., . . . . . 760, 761
- for lien on rents, &c., after reversioner comes into possession, . . . . . 760, 761
- tenant in tail, and mortgagee in possession, regarded as proprietors, for above purposes, . . . . . 761
- mortgagor liable for what is not recovered of mortgagee, . . . . . 761
- sums paid for repairs by mortgagee, to be allowed by mortgagor, . . . . . 761
- sums due from one proprietor to another for advances, may be recovered by an action of contract, or by bill in equity, . . . . . 761
- such bill in equity may be brought in supreme court, . . . . . 761
- court to apportion amount recovered among the plaintiffs according to their respective rights, . . . . . 761
- foregoing provisions not to affect agreements respecting repairs, &c., . . . . . 761
- how execution may be levied on, when not divisible, . . . . . 517, 518
- punishment for wilful, &c., injury to, . . . . . 804
- for flowing water back on, . . . . . 804

**MINISTERS OF THE GOSPEL.**

- exempted from military duty, . . . . . 93
- from liability to watch, . . . . . 174
- from service as jurors, . . . . . 680
- when, together with deacons, &c., to be a corporation to take grants to their churches, . . . . . 205
- may take in succession any parsonage land, &c., . . . . . 205
- may prosecute and defend actions relating to such land, . . . . . 206
- conveyance by, of land held in succession, valid only for time of ministry, unless, &c., . . . . . 206
- limitation of entry by successor, after disceism of, . . . . . 775
- to endeavor that youth regularly attend school, . . . . . 317
- settlement of, in towns, how acquired, . . . . . 391
- powers and duties of, as to solemnizing marriages, &c., . . . . . 530
- penalties on, for violating provision respecting solemnizing marriages, . . . . . 530
- fees of, for solemnizing, &c., marriages, . . . . . 787
- may visit prisoners, as prisoners desire, . . . . . 863
- may be present at execution of criminal, if, &c., . . . . . 847

**MINORS.**

- when executors, how administration of estate to be conducted, . . . . . 482
- property held by, in trust, may be sold and conveyed, in certain cases, . . . . . 502
- sale of real estate of, by guardians, for payment of debts, . . . . . 512
- for maintenance and investment, . . . . . 513
- residing out of state, sale of real estate of, . . . . . 513, 514
- certificate of intention of marriage not to be issued, except on application of parents, &c., . . . . . 529
- unless there is no parent or guardian in this state, . . . . . 529
- marriage of, not to be solemnized without consent of parents, &c., . . . . . 530
- guardians of, how nominated and appointed, . . . . . 543
- may be appointed by will of father, . . . . . 543
- to have custody and tuition of, and care of estate, &c., . . . . . 543
- to continue in office until ward is twenty-one years of age, . . . . . 543

**MINORS** — *continued.*

- father, or mother of, if competent, to have custody of person, and care of education, &c., . . . . . 543
- property of, whose father is living, when may be applied to his support, . . . . . 545, 546
- real estate of, may be sold by guardian, in such case, under license, . . . . . 546
- may be bound as apprentices, or servants, and by whom, . . . . . 549
- power of mother to bind her children to cease upon subsequent marriage, and not to be exercised by herself, or husband, &c., . . . . . 549
- when bound by parent or guardian, minor's consent to be expressed, &c., . . . . . 549
- when may be bound by overseers of poor, . . . . . 549
- not to be bound, except by indenture of two parts, . . . . . 549, 550
- one part of indenture to be kept for, . . . . . 550
- money, &c., allowed by master, to be secured to, . . . . . 550
- duties of parents, &c., in relation to, when apprenticed, . . . . . 550
- complaint for misconduct of, or of master, how heard and determined, . . . . . 550
- may be discharged from apprenticeship by superior court, . . . . . 550, 551
- when discharged, may be apprenticed anew, . . . . . 550, 551
- costs in such cases, how awarded and recovered, . . . . . 550
- damages recovered in action against master, to be the property of, . . . . . 550
- action against master, by whom brought, . . . . . 550
- not bound after master's death, . . . . . 551
- absconding, may be arrested and returned, or imprisoned, . . . . . 551
- proceedings in such case, and costs, of whom recoverable, . . . . . 551
- jurisdiction of appointment of guardians for, and settlement of estate of, given to probate court, . . . . . 574
- may recognize as witnesses, . . . . . 833
- other persons may recognize for, . . . . . 833
- MINOT'S LEDGE.**
- ceded to United States, . . . . . 45
- MISCARRIAGE.**
- unlawful procuring or attempting to procure, how punished, . . . . . 818
- punishment for aiding and assisting, . . . . . 818
- advertising means for procuring, . . . . . 818
- MISCHEVIOUS, &c.**
- taking, &c., of another's property, but not with intent to steal, how punished, . . . . . 801
- injury to property, how punished, . . . . . 803-807
- MISPRISION OF TREASON.**
- how defined and punished, . . . . . 790
- MISTAKE.**
- fraud, and accident, suits in cases of, may be brought in supreme judicial court, in equity, . . . . . 559
- MISTRESS.**
- provisions relating to masters of apprentices, to apply to, . . . . . 551
- MODERATOR.**
- of town meetings, to be chosen, except at national, state, district, and county elections, . . . . . 160
- to be chosen by written ballot, . . . . . 161
- in choice of, town clerk, &c., to preside, with power and duty of moderator, . . . . . 160
- powers and duties of, . . . . . 160



**MODERATOR—continued.**

to receive votes of all persons on voting lists, . . . 58  
 not answerable for refusing, when name not on list, . . . . . 58  
 penalty on, for examining names on ballot before poll is closed, . . . . . 160  
 may administer oaths, in open meeting, to officers then chosen, . . . . . 160  
 shall poll voters, &c., if seven voters question his declaration of any vote, unless, &c., . . . 160  
 no person to speak without leave of, . . . . . 160  
 may order disorderly person to withdraw, after notice, . . . . . 160  
 and may order such persons, upon refusal to withdraw, to be confined, &c., . . . . . 160  
 penalty on person refusing to withdraw, . . . 160  
 of meetings in watch districts, to be chosen, with powers of moderator of town meeting, . . . . . 174  
 of meetings in fire districts, to be chosen, with powers of moderator of town meeting, . . . . . 180  
 of meetings of proprietors of wharves, and real estate lying in common, powers, &c., . . . 380

**MONAMOY POINT.**

in Barnstable county, land on, ceded to United States, . . . . . 44

**MONEY.**

congress may coin, and regulate value of, &c., . . 4  
 to be paid from state treasury only on governor's warrant, except, &c., . . . . . 24  
 sums of, how computed, . . . . . 30  
 at interest, more than owner pays interest for, taxable, . . . . . 74  
 of account, to be dollar, cent, and mill, and accounts in public offices, &c., to be kept accordingly, . . . . . 202  
 charges, &c., otherwise made, not vitiated, but to be reduced to dollars, &c., . . . . . 292  
**Interest of,** to be at the rate of six per cent. a year, . . . . . 292  
 when more than six per cent. is reserved, contract not void, but threefold unlawful interest forfeited, . . . . . 292  
 defendant to recover full costs, in action on such contract, . . . . . 292  
 if more than six per cent. is paid, threefold unlawful interest may be recovered back, . . . . . 292  
 action for such recovery, to be brought within two years, . . . . . 292

**MONTH.**

how construed, . . . . . 51

**MONUMENTS.**

to be erected at every angle of lines between contiguous towns, at joint expense of towns, . . . . . 158  
 at angles, &c., of highways, when laid out, &c., . . . 244  
 punishment for wilful, &c., removal of, . . . . 803

**MORTGAGES OF REAL ESTATE.**

suits concerning conveyances in the nature of mortgage may be brought in supreme court in equity, . . . . . 559  
 to the commonwealth, money due on, may be demanded and received by treasurer, who may give discharge, . . . . . 717  
 may be foreclosed, or redeemed, as other mortgages, . . . . . 717  
 treasurer may make entry, or bring action to foreclose, . . . . . 717  
 suit for redemption to be brought in the supreme court, in Suffolk county, ser-

**MORTGAGES OF REAL ESTATE**

—continued.

vice how made, and other proceedings therein, . . . . . 717  
 tenancy in common not created by, . . . . . 467  
 separate deed, &c., of defeasance, when construed to be a mortgage, . . . . . 716  
 to be recorded or not to defeat absolute conveyance, except, &c., . . . . . 467  
 notice of, to be given by grantor in subsequent conveyance, before consideration is paid, &c., . . . . . 467  
 grantor liable in damages for neglect in such case, . . . . . 467  
 not defeated by subsequent rights of homestead, 525  
 held by banks, may be attached and taken on execution, . . . . . 308  
 held by insurance company, may be attached or taken on execution, . . . . . 322  
 lands mortgaged, &c., how seized in such cases, 308  
 damages to real estate, subject to mortgage, how assessed when taken for railroad, 353  
 may be discharged by entry on margin of record, &c., signed by mortgagee, &c., . . . 468  
 such entry to have effect of deed of release, &c., . . . . . 468  
 liability of mortgagee for refusing to discharge, . . . . . 468  
 in hands of executors, &c., be considered personal assets, . . . . . 489  
 if such mortgage is redeemed, executors, &c., to release, meantime to hold in trust, 490  
 mortgagee, not in possession, may pay taxes in certain cases, . . . . . 85  
 in possession, liable to pay taxes in certain cases, . . . . . 85  
 entitled to deed from purchaser at sale for non-payment of taxes, upon tender, &c., 85  
 entitled to receipt for payment of taxes, and may add sum paid to mortgage, . . . 86  
 such receipt recorded in registry of deeds to be notice of payment, &c., . . . . . 86  
 liability of, for refusing to discharge mortgage on request, &c., . . . . . 468  
 mortgagee of an undivided interest concluded by partition among owners, . . . . . 702  
 real action founded on mortgage to allege seisin to be in mortgage, . . . . . 654

**FORECLOSURE OF.**

mortgagee or his assigns, after condition broken, may obtain possession by peaceable entry, or by action, . . . . . 712  
 an entry may be made, or action brought, by an assignee of the mortgage, whether such assignment is by deed, or by operation of law, . . . . . 712  
 such possession obtained in either way, and continued three years, shall forever foreclose the right of redemption, . . 712  
 certificate of peaceable entry to be made on deed by mortgagor, or, by affidavit of two witnesses, and recorded in registry of deeds, . . . . . 712  
 not effectual unless such certificate is recorded within thirty days, . . . . . 712  
 writ of entry to foreclose, may be brought in supreme or superior court, . . . . . 553, 562  
 action may be brought against tenant of freehold, and mortgagor may always be joined, 712  
 mortgagor not liable for costs if he has no interest and makes no defence, . . . . . 712

**MORTGAGES OF REAL ESTATE**

*—continued.*

plaintiff to declare on his own seisin in mortgage, . . . . . 654, 712

if it appears that plaintiff is entitled to possession for breach of condition of mortgage, conditional judgment shall be entered on motion of either party, . . . 712

if defendant is neither mortgagor, nor entitled to hold under him, conditional judgment not to be rendered, . . . . . 712

judgment in all cases may be for possession as at common law, unless conditional judgment is moved for, . . . . . 712

when conditional judgment is to be entered, court shall inquire and determine how much is due plaintiff, . . . . . 712

such judgment to be, that if defendant within two months pays to plaintiff sum so found due, with interest and costs, mortgage to be void, and defendant to hold premises; otherwise that plaintiff have execution for possession, . . . 712

if condition of mortgage is for doing something other than payment of money, or if part only is due, judgment to be varied accordingly, . . . . . 712

mortgagee, or person claiming under him, may recover possession by entry or action, before condition broken, when no agreement to contrary, . . . . . 713

in such case, if the debt is paid afterwards, or the mortgage redeemed, rents and profits to be accounted for, . . . . . 713

when entry is so made, the three years for foreclosure not to begin to run until after condition is broken, and certain written notice given to mortgagor or person claiming under him, . . . . . 713

after such entry, mortgagee may make a new entry or bring an action, notwithstanding he has possession, . . . . . 713

certificates of such notice, and of such new entry, to be made and recorded in like manner as in case of an original entry, . . . 713

foreclosure may be opened if mortgagee afterwards recovers judgment for part of his debt by reason of value of premises being less than sum due him, . . . 715

suit to open foreclosure to be brought within one year after such judgment, . . . . . 716

mortgagee in possession, when liable to pay taxes, . . . . . 85

**REDEMPTION.**

suits for, may be brought in supreme or superior courts, . . . . . 714

if brought in superior court, an appeal may be had, as in other cases, . . . . . 714

when bill in equity is inserted in writ, what shall be deemed commencement of suit, . . . 714

mortgagor, his heirs, devisees, executors, or administrators, after condition broken, may redeem if redemption is not foreclosed by three years' possession, . . . 713, 715

may redeem after such possession and foreclosure opened, if mortgagee afterwards recovers judgment for part of debt on account of value of premises being less than sum due on debt, . . . . . 715

in such case, suit for redemption to be brought within one year after such judgment, 716

**MORTGAGES OF REAL ESTATE**

*—continued.*

assignees of insolvent corporations may, within sixty days after their appointment, redeem mortgages foreclosed while proceeding in insolvency, and before their appointment, . . . . . 599

if mortgagee, or person claiming under him, has had possession, he shall account for rents and profits, and be allowed for sums expended in repairs, &c., . . . 715

on such account, balance found due on either side, how paid, . . . . . 715

person entitled to redeem to pay, or tender sum due, or perform other condition, and pay cost if suit is brought, . . . . 713

tender and payment may be made to guardian, and he may execute a release when person entitled thereto is under guardianship, . . . . . 715

may be made by executors, administrators, heirs, or devisees, . . . . . 715

tender may be made at any time before or after entry, and within the three years limited for redemption, . . . . . 713

if tender is not accepted, mortgagor, or those claiming under him, may recover premises by suit in equity, . . . . . 713

if not accepted, foreclosure not prevented, unless a suit for redemption is commenced within one year after tender, . . . 713

if in such suit plaintiff alleges that he has tendered or offered to pay sum due, he shall pay amount to clerk for party entitled thereto, . . . . . 713, 714

suit may be brought by executors, administrators, heirs, devisees, upon tender made by deceased, . . . . . 715

plaintiff entitled to redeem on certain terms, although a previous tender was insufficient, . . . . . 714

right of redemption may be taken on execution, 516

proceedings in levy of execution on right of, 517, 518

right may be redeemed by debtor when so taken, &c., . . . . . 521

may be sold on execution, &c., . . . . . 522

liability of mortgagee, &c., for refusing to discharge mortgage after performance of condition, on request, . . . . . 468

persons entitled to redeem may, within time limited for redemption, bring a suit therefor without previous tender, . . . 714

may therein offer to pay the sum which may be found due, or to perform other conditions of mortgage, . . . . . 714

court, after commencement of suit in term time or vacation, may determine what sum not in dispute is due, and order its payment to mortgagee or clerk, . . . . . 714

new parties appearing, during pendency of suit, to be interested, may be summoned in, and made parties to proceedings, . . . 715

suits may be commenced and prosecuted by executors, administrators, heirs, and devisees, . . . . . 715

**Decree of redemption**, if plaintiff is entitled to redeem, court shall determine sum due, or what other acts are to be done, and enter a decree that upon paying sum, or performing such acts, within a specified time, plaintiff shall hold the premises discharged of mortgage, 714

**MORTGAGES OF REAL ESTATE**

—continued.

- if mortgagee has not unreasonably neglected to render an account, court may also allow him twelve per cent. interest from expiration of the three years after entry, . . . . . 714
- if plaintiff refuses or neglects to accept the money or other thing according to decree, money may be left with clerk, and after performing terms of decree, execution for possession may issue, 714, 715
- if defendant has received, from rents and profits or otherwise, more than is due on mortgage, judgment and execution may be awarded against him for the balance, . . . . . 715
- in such case, if there are several defendants, judgment and execution may be awarded against them jointly or severally, . . . . . 715
- if money tendered and brought into court exceeds amount due on mortgage, or if any amount is awarded to plaintiff for rents and profits or costs, how same to be paid, . . . . . 715
- if mortgagee, or person claiming under him, receives more than is due on mortgage, and no suit for redemption is brought, balance may be recovered back in an action of contract, . . . . . 715
- if after levy of execution on judgment for possession, the amount due and the costs are paid, discharge to be entered on record or release given, . . . . . 715
- when mortgage is redeemed after an attachment, and before judgment on the original writ, attachment not affected, . . . . . 625

**BY RAILROAD CORPORATIONS.**

- how road and franchise may be mortgaged, 365, 366
- trustees and bondholders under, meetings of, . . . 366
- how made to commonwealth to secure loan, &c., 367  
(See *Railroads*.)

**MORTGAGES WITH POWER OF SALE.**

- when conditional judgment is entered on suit to foreclose, a decree of sale may be entered instead of execution issuing, 716
- all parties interested in equity of redemption, including married women who may have dower, to be notified, . . . . . 716
- notices to be given and other acts done according to the power, and the order of court, . . . . . 716
- party selling shall, within ten days, make report thereof on oath to the court, and file same in clerk's office, . . . . . 716
- court may confirm sale, or set it aside and order a re-sale, . . . . . 716
- any person interested may intervene, or be summoned, and be heard, . . . . . 716
- order of court confirming sale to be conclusive, instead of suit, mortgagee, or person claiming under him, may give the notice and do all acts authorized by the power, . . . . . 716
- within thirty days after such sale, affidavit of facts, with copy of notice, to be recorded in registry of deeds, . . . . . 716
- affidavit or office copy may be admitted as evidence, . . . . . 716
- such sales to bar married women who in mortgage released dower, whose husbands executed the same before marriage, 716, 717

**MORTGAGES OF REAL ESTATE**

—continued.

- power of attorney in the mortgage not impaired or annulled by a sale of the property by mortgagor, . . . . . 716

**MORTGAGES OF PERSONAL PROPERTY.**

- not valid except between the parties, unless it is recorded, or mortgagee takes and keeps possession, . . . . . 766, 767
- to be recorded where mortgagor resides at date of mortgage, and where he then principally transacts his business, . . . . . 766
- if mortgagor resides out of state, to be recorded where property is, . . . . . 766
- mortgages, transfers, &c., of vessels, need not be recorded, . . . . . 767
- contracts of bottomry, &c., and transfers, &c., of ships or goods at sea need not be recorded, . . . . . 767
- mortgages of goods at sea need not be recorded if mortgagee takes possession on their arrival in this state, . . . . . 767
- city and town clerks' duty, as to such mortgages, and their fees therefor, . . . . . 767
- to be considered as recorded when left in clerk's office for that purpose, . . . . . 767
- when mortgaged property is redeemable, and by whom, . . . . . 767
- proceedings for its redemption and recovery, . . . 767
- mortgagor may replevy, if property is not restored on tendering the sum due and charges, . . . . . 767
- notice of foreclosure by mortgagee or assigns, how given, . . . . . 767
- notice, with the affidavit of service, to be recorded where mortgage is recorded, . . . 767
- the originals, or a copy of the record, to be evidence of giving such notice, . . . . . 767
- right to redeem foreclosed if money is not paid, &c., in sixty days after notice, . . . . . 767
- property held by, how attached, and proceedings thereon, . . . . . 627, 628
- how attached, and mortgagee summoned as trustee of defendant, . . . . . 628
- how held by trustee process, . . . . . 727
- fraudulent concealment of property subject to, how punished, . . . . . 803
- mortgagor assenting to concealment so punished, . . . . . 803
- mortgagor selling without consent of mortgagee, how punished, . . . . . 803

**MOTHER.**

- when to inherit children's property, . . . . . 474
- illegitimate child to inherit property of, . . . . . 474
- when heir to illegitimate child, . . . . . 474
- may bind children as apprentices, . . . . . 549

**MOTIONS.**

- to dismiss for defect of form, decisions on, when to be final, . . . . . 566
- for new trial, exceptions may be taken to judgment of court thereon in matters of law, . . . . . 566

**MULES.**

- where taxable, . . . . . 76
- less than a year old, exempted from taxation, . . . 75
- found going at large contrary to law, &c., to be impounded, . . . . . 185, 186

**MURDER.**

- in first degree, how defined and punished, . . . . . 791
- in second degree, how defined and punished, . . . . . 791
- degree to be found by jury, . . . . . 791



**MURDER** — *continued.*  
 forms of indictment not to be changed, . . . 791  
 distinction between, and petit treason abolished, 791  
 body of person executed for, may be dissected,  
     unless, &c., . . . . . 791  
     to whom to be delivered for that purpose, . 791  
 by fighting duels, . . . . . 791, 792  
 punishment for assault with intent to commit, . 793  
     attempts to commit, . . . . . 793, 794  
 indictment for, may be found at any period, . . 839  
**MUSICIANS.** (*See Militia.*)  
 bands of, how enlisted, &c., . . . . . 95

**MUSTER.**  
 military, and other public gatherings, penalty  
     for gaming at, . . . . . 437  
 booths used for gaming, illegal sale of liquors,  
     within one mile of, how removed, &c., 454  
**MUTUAL ACCOUNTS.**  
 how adjusted in insolvency proceedings, . . 584, 587  
     how, in trustee process, . . . . . 723, 724  
     how may be set off in actions, . . . . . 669-671  
 limitations in action on, . . . . . 777, 778  
**MUTUAL INSURANCE COMPANIES.**  
 provisions respecting, . . . . . 324-329

N.

**NAILS.**  
 wrought and cast, and brads, how made and  
     packed, . . . . . 275  
 to be packed free from waste iron, . . . . . 275  
 casks for, quality, and how branded, . . . . . 275  
 forfeited, if offered for sale or shipped, &c.,  
     without branding, . . . . . 275  
 penalty for mixing refuse with, . . . . . 275  
     for counterfeiting brand, . . . . . 275  
     for shifting contents of casks after brand-  
     ing, . . . . . 275  
     for shipping out of state casks of, not  
     branded, . . . . . 275  
**NAMES.**  
 of others not to be used in business without  
     their written consent, . . . . . 298  
 illegal use of, restrained by supreme court, . . 298  
**Change of,** applications for, to be heard and de-  
     termined by probate court, . . . . . 548  
 not to be made, unless for reasons satisfac-  
     tory to court, . . . . . 548  
     except in case of divorce, &c., . . . . . 533, 548  
 notice of application for, to be given be-  
     fore decree, . . . . . 548  
     of decree of, to be given, . . . . . 548  
     on return of proof of, certificate of name  
     to be given by court, . . . . . 548  
 of child adopted, may be decreed at time of  
     adoption, without notice, &c., . . . . . 548  
 returns of, to be made annually by judges to  
     secretary, . . . . . 549  
     to be published, in tabular form, with acts  
     and resolves, . . . . . 50, 549  
 women divorced may resume their former  
     names, . . . . . 533  
**NANTUCKET.**  
 lighthouse, &c., on, ceded to United States, . . 44  
 land in, ceded to United States, . . . . . 45  
 selectmen of, to act as county commissioners, . 148  
 may raise money for county expenses, . . . . . 148  
 town treasurer of, to be county treasurer, . . 149  
 certain provisions respecting fencing unen-  
     closed land not to apply to, . . . . . 184  
 regulations concerning shell fish in, . . . . . 433  
**County of,** jurors in, liable to be drawn and  
     serve once in two years, . . . . . 680  
     attachments in, on writs returnable else-  
     where, or in other counties on writs  
     returnable therein, to continue sixty  
     days after judgment, . . . . . 625  
**NASHAUN ISLAND.**  
 land in, for lighthouse, ceded to United States, 44  
**NATURALIZATION.**  
 congress may establish uniform rule of, . . . . 4

**NATURALIZATION** — *continued.*  
 supreme and superior court alone have jurisdic-  
     tion of application for, . . . . . 618  
 clerks of no other courts in this state to act in  
     such cases, . . . . . 618  
 proceedings for, to be in open court, and to be  
     entered of record, . . . . . 618  
 penalty on clerks for filing papers or acting in  
     cases of naturalization except as pro-  
     vided by law of this state, . . . . . 618  
**Naturalized citizens** not entitled to vote, nor  
     eligible to office, until after two years'   
     residence, &c., . . . . . 39  
 proof of naturalization to be required by select-  
     men, &c., before putting name on list  
     of voters, . . . . . 57  
**NAVY.**  
 power of congress to establish, . . . . . 4  
**NAVY YARD.**  
 land for, in Charlestown, ceded to United States, 44  
**NEAT CATTLE.**  
 when taxable, . . . . . 76  
 less than a year old, exempted from taxation, . 75  
 to be impounded for being at large contrary to  
     law, &c., . . . . . 185, 186  
 (*See Animals, Beasts.*)  
**NEGROES.**  
 punishment for selling the service or labor of,  
     when kidnapped, . . . . . 794  
**NETS.**  
 of fishermen, when exempt from levy on execu-  
     tion and attachment, . . . . . 624, 688  
**NEW BEDFORD.**  
 land in, ceded to United States, . . . . . 44, 45  
 Palmer's Island in harbor of, ceded to United  
     States, . . . . . 45  
 Egg Island Shoal in harbor of, ceded to United  
     States, . . . . . 45  
 penalty for boarding vessels in harbor of, with-  
     out leave, except by pilot, &c., . . . . . 290  
 what to be deemed limits of harbor of, for cer-  
     tain purposes, . . . . . 290  
 penalty for taking fish within harbor, &c., of,  
     by persons living out of state, . . . . . 431  
**NEWBURY.**  
 land in, for breakwater, ceded to United States, 44  
**NEXT FRIEND,** (*see Guardian,*) . . . . . 543  
**NEXT OF KIN.**  
 what to inherit, . . . . . 474, 485  
 when liable for support of paupers, . . . . . 392, 393  
**NEW TRIAL.**  
**In civil cases,** may be granted by supreme and  
     superior courts at any time after judg-  
     ment, . . . . . 566

**NEW TRIAL**—*continued.*

may be had in cases where trial by jury is waived, as in other cases, . . . . . 661  
 when motion for, is overruled, court may enter judgment as of term when verdict was rendered, . . . . . 685

In criminal cases, how may be granted within one year, . . . . . 843  
 when ordered, where may be had, . . . . . 844

**NEW POINT.**

land at, ceded to United States, . . . . . 45

**NIX'S MATE.**

ceded to United States, . . . . . 45

**NIGHT TIME.**

what shall be deemed, as regards commission of offences, . . . . . 841

**NIGHT WALKERS.**

common, how arrested, secured, and punished, \$20, \$21 imprisoned, how discharged as reformed, or bound out, . . . . . 859

**NOBILITY.**

titles of, not to be granted by Congress, . . . . . 5

**NOBSQUE POINT.**

land on, ceded to United States, . . . . . 44

**NON COMPOS.**

included in words "insane" and "lunatic," . . . . . 51

**NON JOINDER OF DEFENDANTS.**

by reason of cause of action barred by limitation, not to abate action, . . . . . 779  
 amendment may be made introducing new defendants, . . . . . 508, 657, 658, 759

**NON SUIT.**

of executor or administrator on being cited, &c., in suits commenced by deceased, effect of, and liability for costs, . . . . . 648

may be entered on motion of court, when local action is brought in wrong venue, . . . . . 661

may be entered when a party refuses to answer interrogatories, or to amend or expunge the same, . . . . . 660

costs on, must be paid, or second suit for same cause to be stayed or dismissed, . . . . . 781

defendant not to have, when caused by his insolvency, . . . . . 780

**NON TENURE.**

may be pleaded in abatement or in bar, . . . . . 693

**NORTH CHELSEA.**

to vote with Middlesex county for county commissioners, . . . . . 71, 72

returns of votes in, for county commissioners and register of deeds, to whom made, . . . . . 59

county commissioners of Middlesex to have jurisdiction in, . . . . . 148, 242

not to be taxed for county purposes, . . . . . 78

to have no interest in county property, . . . . . 144

**NORTH ROCKS, &c., IN MERRIMACK RIVER.**

ceded to United States, . . . . . 44

**NOTARIES PUBLIC.**

appointment, removal, and tenure of office of, . . . . . 32

may administer oaths, . . . . . 131

fees of, . . . . . 787

upon death, resignation, &c., records, &c., to be deposited in clerk's office, . . . . . 131

clerks to take charge of records, &c., of, and make and certify copies thereof, . . . . . 131

penalty on, and on executors, &c., of, for neglect to deposit, &c., . . . . . 131

penalty for destroying records, &c., of, . . . . . 131

in other states and countries may take acknowledgments of deeds of land in this state, . . . . . 467

**NOTES.**

provisions respecting, . . . . . 293  
*(See Banks, Promissory Notes.)*

**NOTICE.**

on petitions to general court, how to be given, &c., . . . . . 47, 48

to defendant, absent, or residence unknown, or upon insufficient service, . . . . . 605, 623, 646  
*(See Absent Defendant.)*

of the impounding of cattle, how given, . . . . . 186

by finder of lost goods, &c., to be given to town clerk and recorded, . . . . . 425

before allowing wills proved in another state or country, . . . . . 478

by executors, &c., of their appointment, how given, . . . . . 491

of sales of real estate by executors, &c., under license, . . . . . 511, 512

of sales of property on mesne process and execution, . . . . . 628, 629, 688, 690  
*(See Attachment, Execution.)*

of proceedings in probate courts, and courts of insolvency, to be in such newspapers as parties select, . . . . . 577, 582

but court may order same to be published in one additional paper, . . . . . 577, 582

of appeals from probate courts, . . . . . 575

from courts of insolvency, . . . . . 585, 592

**NOXIOUS ANIMALS.**

money may be granted by towns for destruction of, . . . . . 158

**NUISANCES.**

boards of health may make regulations respecting, and may abate, &c., . . . . . 188-190

penalty for violating such regulations, . . . . . 188, 189

expenses of removal of, by towns, &c., how sued for, and recovered of individuals, . . . . . 193

from offensive trades, may be prevented and removed by superior court, . . . . . 194

persons injured in comfort, &c., may have action for damages, . . . . . 194

intoxicating liquors, &c., when declared to be, . . . . . 448

burnt and dangerous buildings may be adjudged, proceedings in such cases, . . . . . 453

powers of mayor and aldermen or selectmen to abate, in such cases, . . . . . 453, 454

buildings resorted to for prostitution, gaming, &c., to be deemed, . . . . . 454

booths, &c., used for gaming near public shows, &c., when may be abated as, . . . . . 454

steam engines and furnaces erected and used contrary to law, to be deemed, . . . . . 459

injurious to public health, how removed by order of court, . . . . . 189

may be stayed, &c., by injunction from superior court, or any justice thereof, . . . . . 189, 190

suits concerning, whether relating to real or personal estate, may be brought in supreme court in equity, . . . . . 559

in action of tort, when plaintiff prevails, court may enter judgment for removal of nuisance, and for damages and costs, . . . . . 710

may issue execution for damages and costs, and a warrant for removal of nuisance, . . . . . 710

such warrant may be stayed, not exceeding six months, on defendant's motion, that he may remove it, . . . . . 710

on recovering judgment in second suit, for continuance or repetition of nuisance, plaintiff may of right have judgment for abatement and removal, . . . . . 710, 711

**NUISANCES — continued.**

- expense of abating, to be collected by officer as damages and costs are collected on execution, . . . . . 711
- when buildings and other things are removed as nuisances, they may be sold as on execution, and proceeds applied to pay charges of removal, . . . . . 711
- after commencement of suit in equity concerning a nuisance, supreme court, or any justice thereof, in term time or vacation, may issue an injunction to prevent or stay waste, . . . . . 711

**NUISANCES — continued.**

- when an action of tort for a nuisance is pending in supreme or superior court, the court, or any justice thereof, may in like manner issue such injunction, . . . 711
- such injunctions may be dissolved by court issuing same, or any justice thereof, in term time or vacation, . . . . . 711

**NUNCUPATIVE WILL.**

- when may be made by soldiers and mariners, . . 477

**NUTS.**

- to be sold by dry measure, under penalty, . . . 264

**O.**

**OATH.**

- to include "affirmations," where they may by law be substituted for oaths, . . . . . 51
- may be administered by senators and representatives, as members of committees, . . 49
- commissioners to take, &c., in other states and countries, . . . . . 132
- usual mode of administering, heretofore practised, to be observed, . . . . . 673
- how administered to persons not believing in the existence of God, . . . . . 673
- affirmations may be substituted for, in case of Quakers and persons having conscientious scruples, &c., . . . . . 673
- may be administered in all cases by justices of the peace, except where different provision is made, . . . . . 610
- Of office,** form of, . . . . . 29, 33
- of public officers, how administered, . . . 131, 132
- Of attorneys at law,** on admission to practice, 615
- Of jurors in civil and criminal cases,** . . . 682, 841
- Of grand jurors,** . . . . . 837
- For relief of poor debtor,** form of, . . . . 637
- Judges and registers,** and assistant registers of probate and insolvency, . . . . . 601-603
- In insolvency proceedings,** may be administered by judge, and in certain cases by register, . . . . . 581
- to be taken by insolvent debtors, &c., at second meeting of creditors, . . . . . 590, 598
- when may be taken by debtor subsequently, . . . . . 592
- required on proof of claims against insolvent debtors, . . . . . 584, 585
- may be taken before justices of the peace, . . 585
- In probate proceedings,** of accountants, may be administered by judge out of court, or by a justice of the peace by him authorized, &c., . . . . . 576, 577
- in all other cases, may be administered by the register or a justice of the peace, . . . 577

**OATS.**

- standard weight of bushel of, . . . . . 265

**OBSCENE BOOKS AND PRINTS, &c.**

- punishment for importing, printing, selling, receiving, having in possession, &c., . . . 819
- search warrant may issue for, . . . . . 819, 830
- to be kept as evidence, and then destroyed, . . 819
- prosecutor to conviction to have half the fine, . . 819

**OFFENCES.**

- to be prosecuted by indictment, except, &c., . . 790
- punishment of, how stayed by reparation of injured party, . . . . . 834-839

**OFFENCES — continued.**

- persons to be held to answer for, upon indictment, 790
- upon information authorized by statute, . . . 790
- by police courts and justices of the peace, . . 790
- by courts martial, . . . . . 790
- not to be convicted of, except by verdict, plea, &c., . . . . . 790
- not to be punished for, unless duly convicted, . . . . . 790
- former conviction or acquittal of, . . . . . 790
- concealing and compounding, how punished, . . 814
- Against the sovereignty of the commonwealth,** . . . . . 790
- Against the person,** . . . . . 791
- Against property,** . . . . . 795
- Of forgery and against the currency,** . . . 807
- Against public justice,** . . . . . 811
- Against the public peace,** . . . . . 815
- Against chastity, morality, and decency,** . . 817
- Against the public health,** . . . . . 822
- Against public policy,** . . . . . 823

**OFFENSIVE TRADES.**

- places for exercise of, how assigned, . . . . . 193, 194
- assignment of places to be recorded, . . . . . 194
- when places assigned for, become nuisances, assignment may be revoked by superior court, . . . . . 194
- person damaged in comfort by, may sue for damages, . . . . . 194
- exercise of, may be forbidden, . . . . . 194
- orders therefor, how served on occupant, . . . . 194
- penalty for disobeying such order, . . . . . 194
- appeal to superior court, and trial by jury, . . . 194
- to be suspended, pending appeal, . . . . . 194
- form, return, and effect of verdict, . . . . . 194
- costs in such cases, . . . . . 194

**OFFER OF JUDGMENT.**

- how may be made by defendants in suits at law and in equity, . . . . . 660, 661
- to be accepted within ten days after notice, unless further time is allowed by court, 660
- if not accepted, or plaintiff does not recover more damages and costs, how recovered and execution issued, . . . . . 660, 661
- not to be evidence in any other suit, nor in any subsequent proceeding in same action, 661

**OFFICE.**

- right of people to secure rotation in, . . . . . 15
- person fighting duel, or sending or accepting a challenge, or promoting a duel, incapable of holding, &c., . . . . . 792
- forfeited by conviction, and sentenced to state prison, . . . . . 846



**OFFICE—continued.**

reversal of conviction by writ of error, to cause restoration to, . . . . . 846  
 pardon not to work such restoration, unless so expressed therein, . . . . . 846  
 tenure of, by commission, to be expressed therein, . . . . . 27  
 judicial, except of justices of the peace, to be held during good behavior, . . . . . 17, 27  
 incompatibility of, . . . . . 30, 33, 49, 149, 742  
 public offices to be closed on certain holidays, . . 49

**OFFICERS.**

of United States, not to receive presents, titles, &c., . . . . . 5  
 public, accountable to the people, . . . . . 14  
 to submit to speaker of house of representatives estimates of expenditures required for their department, . . . . . 139  
 disbursing mouny, to make annual report to auditor, . . . . . 139  
 duties of, in making purchases and incurring liabilities of state, . . . . . 140  
 travelling expenses of certain, not to exceed three and a half cents a mile, . . . . . 141  
 salaries of, when and how payable, . . . . . 140  
 receiving fees, costs, &c., to make return, annually, to secretary, under oath, . . . . . 128, 129  
 penalty for neglect to make such returns, . . . 129  
 of civil government, list of, to be published with acts and resolves, . . . . . 50  
 not to be disqualified from acting by reason of being an inhabitant of any town interested in suit, . . . . . 618  
 liability of, for escape of debtor arrested, &c., on execution, . . . . . 641  
 must state true reason of arrest to person arrested, . . . . . 789  
 must exhibit precept on request, . . . . . 789  
 penalty for false answer, or refusal to answer, or to exhibit precept, . . . . . 789  
 arresting on pretended process, &c., how punished, . . . . . 790  
 public, falsely accusing person of an offence, that he may be held as a fugitive slave, to be disqualified, . . . . . 793, 794  
 receiving fees, to furnish specific account to person paying, . . . . . 788  
 penalty for neglect, . . . . . 788  
 serving writs, to indorse fees thereon, . . . . 788  
 not to purchase or have any interest in certificates of witnesses in criminal cases, . . 788  
 rescuing prisoner from, how punished, . . . . 813  
 voluntarily suffering prisoner to escape, how punished, . . . . . 813  
 negligently suffering prisoner to escape, how punished, . . . . . 813  
 refusing to receive prisoner, how punished, . . 813  
 refusing to arrest prisoner, how punished, . . 813  
 refusing to assist, how punished, . . . . . 813  
 falsely assuming to be, how punished, . . . . 814  
 those disguised to hinder, how punished, . . . 814  
 taking rewards for omitting duty, how punished, . . . . . 814  
 recording officer, extortion by, how punished, . 814  
 of state prison, of whom to consist, and salaries of, . . . . . 870  
 certain public, may commence or prosecute actions on contracts, &c., with predecessors, . . . . . 650

**OFFICIAL INFORMATION.**

intended for the public, to be published in newspapers, by secretary, . . . . . 50

**OILS.**

what to be deemed pure winter-pressed, or summer-strained, spermaceti, . . . . . 275  
 what to be deemed whale, . . . . . 275  
 what to be deemed tight-pressed, . . . . . 276  
 liability of seller of adulterated, under false name, . . . . . 275, 276  
 unless mixture is disclosed to buyer, . . . 276  
 vessels of less than five gallons in such case, to be labelled with proportion of mixture, . . . . . 276  
 penalty for selling adulterated, as pure, without notice to buyer, . . . . . 276  
 how and to whose use recovered, . . . . . 276  
 test of, to be Harris's oleometer, . . . . . 276

**OIL OF VITRIOL.**

wilful, &c., injury by, to houses, how punished, 804

**ONIONS.**

standard weight of bushel of, to be fifty-two pounds, . . . . . 278  
 mean weight, how to be ascertained, . . . . . 278  
 penalty for selling without ascertaining weight, when these provisions not to apply, . . . . . 278

**OPERATIVES.**

wages of, in manufacturing establishments, how recovered of stockholders, . . . . . 386  
 certain claims of, privileged debts when debtor is insolvent, . . . . . 594, 595

**ORCHARDS.**

wilful and malicious injury to, how punished, . 806  
 how, when committed on Lord's day, . . . . 806

**ORDERS.**

grace on, when payable in the state at a future day certain, . . . . . 294  
 not, when payable on demand, . . . . . 294  
 for payment of money, within this state, damages on, when protested, . . . . . 294

**ORDINANCE.**

as applied to cities, to be synonymous with by-law, . . . . . 52

**ORES.**

how to be assayed, &c., . . . . . 274  
 punishment for digging up, &c., without license, . . . . . 805

**ORNAMENTAL TREE ASSOCIATIONS.**

may be formed in any county, town, &c., by ten or more persons, . . . . . 378  
 powers and privileges of, . . . . . 378  
 may hold real and personal estate not exceeding ten thousand dollars, . . . . . 378

**ORNAMENTAL WOOD.**

and ship timber, . . . . . 271  
 (See Lumber.)

**ORNAMENTS.**

of widows and children, to be allowed to them in settlement of estates of deceased persons, . . . . . 489

**OVERSEERS OF THE POOR.**

to be chosen at annual town meeting, . . . . . 160  
 to be sworn, . . . . . 161  
 to be directors of almshouses, if others not chosen, . . . . . 171  
 powers and duties of, in relieving paupers, &c., to have the same authority over paupers as masters of almshouses, . . . . . 392  
 may remove to almshouse children suffering from neglect, &c., of parents, . . . . . 392  
 to provide for immediate relief of persons having lawful settlement in other places, 393  
 to support, &c., indigent strangers, and bury them, in case of their death, . . . . . 393  
 may notify, in writing, overseers of place where

**OVERSEERS, &c. — continued.**

pauper has settlement, and request his removal, . . . . . 394

provisions concerning such notifications by, and service thereof, . . . . . 394

may take effects of deceased paupers to reimburse expenses of support, &c., . . . 394

to prosecute and defend suits concerning paupers, in behalf of their town, . . . . 394

to return, annually, to secretary of commonwealth, statement of paupers, &c., . . 394

form and contents of such return, . . . . 394, 395

penalty on, for not making return, . . . . 395

to perform duties of superintendents of alien passengers, where there is no superintendent, . . . . . 400

may complain in bastardy case when woman refuses to complain, . . . . . 404

may bind as apprentices children chargeable to their towns, &c., . . . . . 549

duty of, to inquire into treatment of children so bound, . . . . . 550

**OVERSEERS OF HOUSES OF CORRECTION.** (*See Houses of Correction.*)

powers and duties of, . . . . . 858-868

**OWNERSHIP.**

of property, in whom it may be proved in prosecutions for offences relating to real or personal estate, . . . . . 841

**OYSTERS.**

penalty for unlawfully taking, from beds, &c., . 432

permits to take, may be granted by selectmen, &c., . . . . . 432

may be taken at certain seasons without permits, for family use, . . . . . 432

vessels, boats, &c., having them illegally on board, may be seized, . . . . . 432, 433

to be discharged if owner, &c., pay penalty before prosecution, . . . . . 433

prohibitions concerning, not to extend to Indians, . . . . . 433

licenses to plant and grow, may be granted by selectmen, &c., . . . . . 433

shall describe flats and creeks so appropriated, and be recorded by city or town clerk, . . . . . 433

fees of mayor and aldermen, or selectmen, and clerk, . . . . . 433

rights of persons licensed, and penalties for trespassing thereon, . . . . . 433

**P.**

**PAGE.**

the word defined, . . . . . 788

**PAGES.**

of senate and house of representatives, . . . 133, 134

**PALMER'S ISLAND.**

land on, ceded to United States, . . . . . 45

**PAPER.**

to be packed in reams, half reams, or quarter reams, . . . . . 276

printing, may be packed in parcels of two reams, number of quires in ream, &c., and number of sheets in quire, . . . . . 276

packages of, how to be marked, . . . . . 276

penalty of selling, not packed and marked, according to law, . . . . . 276

not packed or marked, to be forfeited, . . . . 276

**PAPERS.**

secured in prosecution for perjury, . . . . . 812

detained from the person producing them, . . . 812

**PARDONS.**

power of, in governor, by advice of council, . . 24

not to be granted before conviction, . . . . . 24

to persons convicted by impeachment, . . . 24

governor may grant, upon such conditions as he thinks proper, . . . . . 855

terms of pardon must be specified in the warrant, . . . . . 855

bond may be required for the performance of the terms of the pardon, . . . . . 855

how taken, and where deposited, . . . . . 855

if terms and conditions of pardon are not kept, convict must be arrested and detained, . . . 855

time of conditional pardon not to be counted, . 852

proceedings in such case, . . . . . 855, 856

how the question whether condition is broken, to be tried, . . . . . 856

officer to make return of warrant for pardon or commutation of punishment to secretary of state, . . . . . 856

**PARDONS — continued.**

to file in clerk's office copy of warrant and return, . . . . . 856

clerk to subjoin brief abstract thereof to record of conviction and sentence, . . . . . 856

granted after divorce by reason of imprisonment not to restore party to conjugal rights, . . . 532

not to cause restoration to office, unless so expressed therein, . . . . . 846

**PARENTS.**

not punishable as accessories after the fact of felony committed by children, . . . . . 826

(*See Children.*)

**PARISHES AND RELIGIOUS SOCIETIES.**

established or organized by law, to continue bodies corporate, . . . . . 200

actions by and against, where to be brought, 621, 622

processes in suits against, how served, . . . . 623

powers of taxation given by special laws, &c., not affected, . . . . . 200

to enjoy existing rights, &c., unless, &c., . . . 200

churches connected with, to have their accustomed privileges, . . . . . 200

unincorporated, may organize as corporation if there are ten voters, . . . . . 200

may hold real and personal estate, . . . . . 200

may hold and manage donations, like incorporated societies, . . . . . 202, 203

powers of, may be revoked by legislature, . . 200

first meeting of, how called, . . . . . 200

contents of warrant, how served and returned, &c., . . . . . 200, 201

justice to preside till clerk is chosen, . . . . 201

may choose officers, &c., . . . . . 201

clerk to record proceedings of organization, . 201

may grant money, and for what purposes, . . . 202

money granted by, to be assessed on members like town taxes, . . . . . 202

**PARISHES, &c. — continued.**

taxes in, to be assessed on property of members, wherever it is, . . . . . 202

no citizen to be taxed for parochial purposes in, except where he is a member, . . . . . 202

corporations, guardians, &c., not to be taxed for parochial purposes in, . . . . . 202

may authorize abatement of taxes, . . . . . 202

may appoint trustees to hold trust funds, . . . . . 203

may establish rules for government of such trustees, . . . . . 203

may sell meeting-house, or take down pews therein, . . . . . 204

pews not to be paid for, if house is unfit for public worship, . . . . . 204

deacons, and other similar officers of, bodies corporate for taking and holding grants, &c., . . . . . 205

ministers, &c., in certain cases, to be joined in such body corporate, . . . . . 205

ministers of, may take in succession parsonage lands, &c., . . . . . 205, 206

conveyance of such land by minister valid only during ministry, unless, &c., . . . . . 206

conveyance of church lands, how made, . . . . . 206

churches, except episcopal, may choose committees to settle accounts of deacons, &c., limitation of grants to churches, &c., . . . . . 206

overseers of monthly meeting of Friends may hold lands, &c., as corporation, . . . . . 206

limitation of grants to such meetings, . . . . . 206

trustees of funds held by towns for religious purposes, &c., to report annually to selectmen, &c., . . . . . 206

may be removed, and vacancies filled, by probate court, . . . . . 206

**Members of,** to remain such till they file notice with clerk, . . . . . 201

no persons to be, without their consent in writing, . . . . . 201

admission of, may be regulated by by-laws, none but members to vote in affairs of society, . . . . . 201

not taxable for property held as guardians and trustees, . . . . . 202

**Meetings, how warned,** . . . . . 201

annual, when to be held, . . . . . 201

power of assessors or committees to call, . . . . . 201

if assessors, &c., refuse, justice may call, . . . . . 201

warrant for, what to contain, . . . . . 201

nothing done at, valid, unless subject be in warrant, . . . . . 201

clerk, &c., to preside at, till moderator is chosen, . . . . . 201

moderators of, to be chosen by ballot, . . . . . 201

powers of moderator, . . . . . 201, 202

**Officers,** what to be chosen at annual meeting, vacancies in office may be filled at any meeting, . . . . . 202

**Clerk,** to be chosen at annual meeting, by ballot, . . . . . 201

to be sworn, and by whom, . . . . . 201

to preside in choice of moderator, . . . . . 201

may swear assessors and collectors, . . . . . 201

if absent, &c., clerks pro tempore may be elected, . . . . . 201

**Assessors,** two or more, to be chosen by ballot, at annual meeting, . . . . . 201

to be sworn, and by whom, . . . . . 201

form of oath, . . . . . 79, 201

to manage prudential affairs, unless a standing committee is appointed, . . . . . 201

**PARISHES, &c. — continued.**

to have power of selectmen in calling meetings, . . . . . 201

to insert in warrant for meeting any matter which five voters in writing request, . . . . . 201

**Collector,** to be chosen at annual meeting by ballot, . . . . . 201

to be sworn forthwith, if present, . . . . . 201, 202

if not present, to be notified, . . . . . 202

if he refuses to accept, or is not qualified within seven days, society to make new choice, . . . . . 202

**Treasurer,** to be chosen at annual meeting by ballot, and sworn, . . . . . 201

may be appointed collector, with power of town collector, . . . . . 202

**MEETING-HOUSES,**

exempted from taxation, . . . . . 74

proprietors of, may organize themselves as corporation, . . . . . 203

powers, liabilities, &c., when so organized, . . . . . 203

such corporation may hold real and personal estate, . . . . . 203

copy of proceedings at organization of, to be filed with town clerk and recorded, . . . . . 203

proprietors may raise money for alteration, repairs, &c., . . . . . 203

meetings of, how called and warned, . . . . . 203

money raised for, may be assessed on pews, . . . . . 203

assessment of, may be committed to treasurer to collect, . . . . . 203

to be collected, if not paid, by sale of pews at auction, . . . . . 203

notice of assessment, and sale of pews, how to be given, . . . . . 203

what to be evidence of such notice, . . . . . 204

deeds of pews sold to be given by treasurer, . . . . . 204

proprietors of, may take down pews, &c., for purpose of repairing, rebuilding, &c., . . . . . 204

pews to be appraised before taken down, . . . . . 204

new, to be sold at auction by treasurer, &c., money from sale of, how to be applied, . . . . . 204

not to be paid for, if house is unfit for public worship, . . . . . 204

in certain meeting-houses, may be assessed, and how, for parochial purposes, . . . . . 204

to be purchased, in certain cases, at an appraisal, . . . . . 204

**PROTESTANT EPISCOPAL CHURCH,**

who may act as moderator at meetings of, . . . . . 202

wardens and vestry to exercise powers of standing committee, . . . . . 202

assessors and collectors not to be chosen unless, &c., . . . . . 202

duties of assessors may be performed by wardens, . . . . . 202

what officers of, to be chosen by ballot, . . . . . 202

**METHODIST EPISCOPAL AND AFRICAN METHODIST EPISCOPAL CHURCH,**

trustees of any society of, may organize as corporation, . . . . . 204, 205

powers of such trustees, . . . . . 205

annual income of, not to exceed four thousand dollars, . . . . . 205

first meeting, how called, . . . . . 205

choice of officers, secretary to be sworn, . . . . . 205

copy of record of organization to be left with town clerk within ten days, and to be recorded, . . . . . 205

organization void if such copy is not so left, . . . . . 205



**PARTIES.**

- severally liable on written contracts, may be joined in suit, . . . . . 654
- judgment and executions in such suit, . . . 654
- To actions,** when may be witnesses, . . . 673, 674
- may manage their own cases personally or by counsel, . . . . . 615
- new, may be brought in, . . . . . 657, 658
- amendments discontinuing as to, may be made, . . . . . 658
- may be examined on interrogatories, . . 661, 662
- death, and other disabilities of, . . . . 648-650
- in trustee process, . . . . . 725, 726
- corruption of jurors, arbitrators, &c., by, how punished, . . . . . 813

**PARTITION.**

- of lands held by joint tenants, or tenants in common, may be made by writs or petition in supreme or superior courts, . . 698
- may be made among heirs, devisees, and those claiming under them, by probate court, . . . . . 574, 703
- proceedings for, legally commenced in either court, that court to have jurisdiction throughout, . . . . . 705, 706
- may be made notwithstanding existence of a lease, . . . . . 705
- may be made of estate subject to homestead, . . 525
- and notwithstanding any of the tenants in common are trustees, attorneys, or guardians for other tenants, . . . . . 705
- former partitions in such cases confirmed, . . 705
- persons not in being at time of application for, bound by proceedings, upon notices to parents, . . . . . 705
- in such case, next friend to be appointed for person not in being, whose expenses shall be paid by applicant, . . . . . 705
- when money is awarded, partition not to be established until money is paid, . . . . . 706
- returns of, may be set aside, and case recommitted to same or other commissioners, . . . . . 706
- when accepted, to be recorded, and remain in office of clerk or register, and a copy recorded in registry of deeds, . . 705
- records in registry of deeds, heretofore made from originals, confirmed, . . . . . 706
- may be made by guardian of wards in certain cases, . . . . . 545
- married woman or her guardian may join with her husband or his guardian in making partition, . . . . . 539
- proceedings for, to survive on death of parties, and heirs, &c., how admitted, . . . 649, 650
- remedy against co-tenants who commit waste while proceedings are pending, . . . . . 709
- Water rights,** and other incorporeal hereditaments, partition of, may be made by suit in equity in the supreme court, or as above provided, . . . . . 706
- partition may be so made of water of a navigable stream, in certain cases, . . . 706

**IN SUPREME AND SUPERIOR COURTS.**

- jurisdiction given to supreme and superior courts, . . . . . 553, 562
- proceedings for, when commenced in superior, how may be removed to supreme court, by affidavit or consent, . . . 562, 700
- to be made in the county where lands lie, but if parties interested are absent or un-

**PARTITION—continued.**

- known, petition may be made, and order of notice issued, in any county, . . 698, 699
- may be made on petition of one or more part owners, . . . . . 698, 699
- shares of petitioners only to be set off, and residue to be left, . . . . . 698, 699
- Petition** may be maintained only by one having an estate in possession, . . . . . 699
- but may be made, although the estate is leased in whole or in part, . . . . . 705
- cannot be maintained by tenant of freehold, by tenant having a term for years less than twenty years to run, . . . . 699
- may be maintained between tenants for years, but partition not to affect landlords or reversioners, . . . . . 699
- to be indorsed in like manner as writs in other cases, . . . . . 699
- what shall be alleged therein . . . . . 699
- may be filed in clerk's office in term time or vacation, . . . . . 699
- summons on, how issued and served in such case, . . . . . 699
- may be served without being filed in clerk's office, . . . . . 699
- absent and unknown persons interested may be notified by publication in newspaper, according to order of court, or absent persons may be notified personally, . . . . . 699
- in such case, petition may be presented in any county, and summons issued returnable in county where lands lie, . . . 699
- persons not in being for whom estate is limited in trust, how protected and bound, and proceedings in relation thereto, . . . . . 705
- if service is defective or insufficient, or any person notified fails to appear, court may order further notice, . . . . . 699
- court may at any time order case continued, that absent parties, whether named in petition or not, may have time to appear, . . . . . 699, 700
- death of parties to, effect of, and how heirs and devisees may be admitted, . . . . . 649, 650
- a guardian may be assigned by court for any infant or insane person interested, . . 700
- for persons not in being, . . . . . 705
- all persons interested may appear and plead, or answer jointly or severally, . . . . . 700
- pleadings in, to be conducted as in actions at law, . . . . . 700
- if person not named in petition appears and pleads or answers, petitioner may reply that he ought not to be admitted, and any other matter also, . . 700
- if it appears, in such case, that respondent has no interest, the matter of his objection shall not be inquired of, . . . . . 700
- Advancements,** questions may be heard in said courts, or case may be continued and the question of advancement determined in probate court, . . . . . 705
- Improvements,** value of, to be allowed to respondent in certain cases, . . . . . 703
- if awarded to respondent, petitioner not to have judgment for partition until he has paid the same, . . . . . 703
- how allowed on new petition when made after a former partition, not binding

**PARTITION** — *continued.*

on certain parties, or when they are subsequently evicted, . . . . . 702, 706

**Costs** on trial of an issue, . . . . . 700

how allowed against a respondent who objects to partition, . . . . . 703

**Judgment** for partition to be awarded for such share as petitioner is entitled to, although not all he claims, . . . . . 700

appeal from such judgment, in superior court, on matters of law apparent on record, may be taken to supreme court, 701

**Commissioners**, three or five to be appointed by court, to make partition, . . . . . 700

warrant to, to express shares to be set off, . 700

to be sworn, and certificate of oath made on warrant, . . . . . 700

to give notice to all parties interested who are in the state, . . . . . 700

all of, to meet, but acts of majority to be valid, . . . . . 700

costs and expenses of, how allowed and paid, . . . . . 703, 787

shares of petitioners may be set off together or separately, . . . . . 700

when premises consist of mill or tenement, which cannot be divided without injury, whole may be set to one, who will accept it, upon paying award of commissioners to make it equal, . 700, 701

or exclusive occupancy of whole or part may be set off to parties alternately, . 701

in such case, how far tenants liable to each other to premises during their occupancy, . . . . . 701

how far tenants, while so occupying, entitled to redress against wrong doer, . . 701

how far all tenants entitled to damages against wrong doer, and how such damages to be divided, . . . . . 701

returns of commissioners' doings, with their warrant, to be made to court, . . . . 701

may be set aside, and recommitted to same or other commissioners, . . . . . 706

judgment to be rendered, if the report is confirmed that partition be firm and effectual, . . . . . 701

appeal therefrom in matters of law, apparent on record when entered in superior court, may be taken to supreme court, . . . . . 701

in such appeal, on petition for, or writ of partition, judgment awarding that partition be made shall not be drawn in question, . . . . . 701

when finally established, to be recorded, where, . . . . . 706

not to be established until money awarded is paid, . . . . . 706

final, to be conclusive as to rights of possession and property of all parties and privies thereto, . . . . . 701

and on all who might have appeared, . . 701

if a part owner, for whom a share is left, is out of state, he may, within three years, apply for new partition, . . . . 701

court may grant such petition if it appears that his share was less than he was entitled to, . . . . . 701

in such case, new division of whole premises shall not be required, but partition may be made equal by taking

**PARTITION** — *continued.*

from and adding to shares, or by awarding money, . . . . . 701, 702, 706

person claiming in severalty, who did not appear, not concluded by judgment, but may bring action for land claimed by him, . . . . . 702

person who did not appear, claiming a share assigned or left, concluded by partition, . . . . . 703

in such case, how action for his share shall be brought, . . . . . 702

proceedings when two or more respondents appear and claim same share, . . . . . 702

rights and remedies of persons who did not appear, if they afterwards claim as part owners with parties to the suit, and their share was not known, or not left, . . . . . 702

if a person to whom a share was assigned or left was dead at the time, his heirs or devisees shall have same rights as if they had not been notified, . . . . . 702

party evicted of share assigned or left by title paramount, entitled to new partition of residue, . . . . . 702, 706

mortgagees, attaching creditors, and persons having liens on any interest, concluded by judgment, and may hold share set off, or left for such interest, 702

**IN PROBATE COURT.**

may be made in, of all the real estate of deceased person, among his heirs and devisees, and those claiming under them, in probate court of county where his estate is settled, . . . . . 490, 574, 703

and of lands acquired for the estate by executor or administrator, by foreclosure of mortgage or levy of execution, . . . . 490

partition for, by whom and how made, and how served, . . . . . 703

shall not be made when shares are in dispute, or depend upon construction of wills, or other matters proper for court of common law and a jury, . . . . . 704

if estate of deceased is owned in common with others, it may be first set off from their shares, before being divided among his heirs and devisees, . . . . 704

notice in such case, how given to co-tenants, . . 704

death of parties, effect of, and how heirs and devisees may be made parties, . . 649, 650

to be made by three or five commissioners, who shall be sworn, . . . . . 703

and to be made upon like proceedings as on petitions for partition in supreme and superior courts, except as hereinafter specified, . . . . . 703

if estate lies in different counties, separate warrants may be issued to different commissioners in each county, . . . . . 703

absent heirs or devisees to have agents appointed for them, . . . . . 703

in case of persons interested being out of state, petition may be dismissed, or continued until they appear, or consent in writing that partition be made, . . . . . 704, 705

minors and insane persons to have guardians for the suit appointed, if they have no other guardians in this state, . . . . . 704

**PARTITION** — *continued.*

persons not in being, how to be protected, and bound, and proceedings respecting, . . . . . 705

all estate of deceased which party interested as heir or devisee, or persons under them, desire to have included, to be divided, . . . . . 704

petitioners' share to be set off, and the residue to be divided among each of the owners, unless two or more consent to hold undivided, . . . . . 704

when any part of estate cannot be divided without injury, it may be assigned to one, he paying to others the sums awarded by the commissioners, . . . . . 704

males to be preferred to females, and elder sons to younger, . . . . . 704

whole or any part may be set off to one or more, upon paying to others sums awarded by the commissioners, . . . . . 704

in such cases, partition not to be established until money is paid, . . . . . 706

costs, how allowed and paid, . . . . . 704, 787

if not paid, execution may issue, . . . . . 704

advancements may be settled in probate courts, 705

improvements, after partition, how allowed in second partition, to persons evicted, or against persons not parties to first, 706

original return to remain in clerk's office or probate office, and be recorded there, and a copy recorded in registry of deeds, . . . . . 706

how far conclusive, when confirmed, on persons interested, . . . . . 705

persons not concluded may pursue their remedy as if proceedings had not been had, . . . . . 705

**PARTNERSHIPS.**

how and when taxed for personal property employed in their business, . . . . . 76, 77

when taxed jointly, each partner liable for whole tax, . . . . . 77

ships and vessels of, how and where taxed, . . . . . 77

embezzlement by clerks and servants of, how punished, . . . . . 800

names of former members of, not to be used by other partners, without consent, &c., . . . . . 298

proceedings by and against, in insolvency, . . . . . 597

suits in equity, between partners, may be brought in supreme court, and receivers appointed, . . . . . 559

**Limited**, may be formed for mercantile, mechanical, or manufacturing business, . . . . . 296

to consist of general and special partners, . . . . . 296

not authorized to transact insurance or banking business, . . . . . 296

general partners of, to be responsible, like partners in other firms, . . . . . 296

special partners to furnish specific sum in cash, and not personally liable, except, &c., . . . . . 296

certificates of, to be made, specifying names, residence, stock, &c., . . . . . 296

to be acknowledged and recorded in registry of deeds, . . . . . 296

if false, all liable as general partners, . . . . . 296

to be published, otherwise partnerships to be deemed general, . . . . . 296

to be recorded and advertised on every renewal of partnership, . . . . . 296

name or style of, to contain names of general partners only, . . . . . 297

special partner, whose name is used with

**PARTNERSHIPS** — *continued.*

his consent, to be deemed general partner, . . . . . 297

liable on contract made by him, unless he shows he acted as special partner, 297

responsible if effects of partnership insufficient to pay debts, . . . . . 297

capital stock of, not to be withdrawn so as to reduce it below amount certified, . . . . . 297

suits to be by and against general partners, except, &c., . . . . . 297

dissolution of, before time originally limited, how to be recorded, &c., . . . . . 297

members of, when not otherwise provided, to have rights and liabilities of general partners, . . . . . 297

insolvency proceedings by and against, how conducted, . . . . . 579

**PASSENGERS.**

liability of common carriers of, for loss of life of, for gross carelessness in the carriage of, . . . . . 794

drivers of stage-coaches, &c., how punished for leaving horses untied, and persons in the coach, . . . . . 794

(See *Alien Passengers.*)

**PASSPORTS.**

to be furnished by secretary to citizens of any color, . . . . . 128

**PAUPERS.**

**SUPPORT OF BY TOWNS, &c.**

money may be granted by towns for support of, 158

settlement of, how acquired, . . . . . 390, 391

to be relieved by city or town where legally settled, . . . . . 392

to be under care and oversight of overseers of the poor, . . . . . 392

overseers of poor to have same authority over, as masters of workhouses, . . . . . 392

what kindred of, if able, bound to support them, kindred of, may be assessed by superior court, on complaint of town, &c., where pauper has been relieved, &c., . . . . . 392

not to be assessed for expense incurred more than six months before complaint, . . . . . 392

may be assessed in weekly sum, payable quarterly, for future support of, . . . . . 392

execution against, may be issued and renewed for past assessments and for arrears, . . . . . 392

costs against, how taxed when two or more are adjudged liable to support, . . . . . 393

court may order with which of, and how long with each, pauper shall live, . . . . . 393

complaint against, how filed, and notice given, . . . . . 393

not summoned in original process, may be afterwards summoned, &c., . . . . . 393

court may make new orders altering assessment on, &c., . . . . . 393

liability of, for support of paupers in state almshouses when they have a legal settlement within the state, . . . . . 403

needing relief in places where they have no settlement, to be relieved by overseers of poor, . . . . . 393

expenses of supporting such may be recovered by place incurring them against place liable therefor, . . . . . 393

action for such recovery to be commenced within two years after cause arises, . . . . . 393

recovery in such action to bar defendants from disputing settlement in future actions, 393



**PAUPERS — continued.**

towns liable for support of, not required to pay more than one dollar a week to another town, if removed within thirty days, . . . . . 393

having no settlement within this state, to be relieved, &c., till removed to state almshouse, . . . . . 393

expenses of relief in such cases, how to be paid, towns liable to individuals for support of, after notice, &c., till overseers provide, . . 393

provisions for notice to towns where paupers have settlement, that they are supported in other places, . . . . . 394

for removal of, to place of settlement, . . 394

may be removed, if overseers do not, within two months after notice, return written objections, . . . . . 394

towns barred from contesting settlement of, if overseers do not reply to notice within two months, . . . . . 394

notifications and answers thereto, sent by overseers by mail, to be deemed sufficient, 394

penalty for bringing into and keeping, in place where they have no legal settlement, knowingly, &c., . . . . . 394

how recovered, and to whose use, . . . . 394

effects of deceased may be taken by overseers, and applied to reimburse expense of support, &c., . . . . . 394

suits concerning, to be prosecuted and defended by overseers in behalf of their towns, 394

returns of, &c., to be made annually by overseers, &c., to secretary of commonwealth, . . . . . 394

form and contents of such returns, . . 394, 395

penalty on overseers, &c., for neglect in making returns, . . . . . 395

abstract of returns to be made by secretary for use of legislature, . . . . . 395

in state almshouses, having settlement within state, to be supported by town where such settlement is, . . . . . 402, 403

liability of kindred for support of such paupers, . . . . . 403

**STATE PAUPERS.**

board of commissioners of, and of alien passengers, how constituted, . . . . . 396

commissioners may appoint persons to see that laws respecting, are enforced in state almshouses, &c., . . . . . 396

to prescribe forms for, and furnish certificates to be used in, sending to almshouses, . . . . . 397

to prescribe forms of returns by superintendents of almshouses, &c., respecting, . 397

to have power of overseers of poor in relation to state paupers in hospitals, . . 397

to make annual report to governor and council, . . . . . 397

compensation of, . . . . . 397

may be transferred from one state almshouse or hospital to another by commissioners, . . . . . 397

arriving by water, when they cannot be removed to state almshouse, to be supported at Rainsford Island hospital, 400

may be sent by towns to hospital, by permission of commissioners of alien passengers, 400

liability of kindred of, &c., in such cases, and how enforced, . . . . . 400

**PAUPERS — continued.**

may be sent to state almshouses by towns, &c., 401

discharged from state prison, &c., to be removed to state almshouses in certain cases, 401, 402

if settlement of, is discovered, such pauper to be removed to place of settlement, . . . 402

if too sick to be removed, may be provided for in state prison, &c., . . . . . 402

may be supported in place where wife has legal settlement, at expense of state, . . . 402

accounts of expense in such case, how audited, &c., . . . . . 402

to be provided for by towns, &c., at expense of state, when state almshouses are full, . . . . . 402

inspectors of state almshouses to have powers of overseers in relation to, and their property, . . . . . 402

employment of, may be contracted for with superintendent, &c., . . . . . 402

refusing to avail themselves of such employment, to forfeit claims as a state pauper, . . . . . 402

penalty on, for leaving state almshouse without consent of inspectors, . . . . . 403

may be sent to place where they belong by justice of superior court, &c., . . . . . 403

lunatic paupers may be sent away in like manner by probate court, on complaint, &c., . . . . . 403

no allowance to be made to counties, towns, &c., for, except in cases expressly provided by law, . . . . . 403

accounts of counties, towns, &c., for support of, how audited, paid, &c., . . . . . 403

**PAWNBROKERS.**

may be licensed by mayor and aldermen or selectmen, . . . . . 458

license to designate place of business and prescribe restrictions, &c., . . . . . 458

penalty for carrying on business of, without license, or contrary to provisions of license, &c., . . . . . 458

**PAYMENT.**

effect of part, not altered by statute of limitations, . . . . . 779

indorsement of, on note by payee, not to prevent statute from running, . . . . . 779

**PEDLERS.**

provisions concerning, . . . . . 281

(See *Hawkers and Pedlers.*)

**PENALTY.**

action for, where to be brought, . . . . . 621

(See *Fines, Forfeitures.*)

if accruing to commonwealth, suit therefor to be brought in two years, . . . . . 779

if to private persons, in one year, . . . . 779

**PERJURIES AND FRAUDS.**

provisions for the prevention of, . . . . . 527, 528

**PERJURY.**

how punished, . . . . . 812

in trials for capital crimes, . . . . . 812

in other cases, . . . . . 812

what to be deemed, . . . . . 812

subornation of, . . . . . 812

inciting to commit, penalty for, . . . . . 812

on presumption of, by witness, court may commit witness, . . . . . 812

papers, &c., necessary in prosecution for, may be secured, . . . . . 812

by persons summoned as trustees, in making answers, how punished, . . . . . 722

**PERSON.**  
 may be applied to bodies corporate and politic, 513

**PERSON ACCUSED.**  
 (See *Prisoners.*)

**PERSONAL ESTATE.**  
 what included in, for purpose of taxation, . . . 74  
 where taxable, . . . . . 75, 76  
 mortgaged or pledged, to whom taxable, . . . 76  
 of persons under guardianship, where taxable, . 76  
 held in trust, where taxable, . . . . . 76  
 deposited to accumulate, where taxable, . . . 76  
 of religious society, held as ministerial fund,  
 where and to whom taxed, . . . . . 76  
 of partners, how and where taxable, . . . . . 76, 77  
 may be disposed of by will, . . . . . 476  
 of deceased person, how distributed, . . . . . 485  
 what to be deemed, in certain cases, . . 489, 490  
 to be accounted for at its appraisal, except,  
 &c., . . . . . 494, 495

**PERSONAL LIBERTY.**  
 provisions of law for the protection of, . . 740-742  
 governor to appoint commissioners in each  
 county to defend fugitives, . . . . . 740  
 any attorney, when desired by fugitive, may act  
 as counsel, . . . . . 740  
 commissioners to pay expenses of defence, . 740, 741  
 and be reimbursed by commonwealth, . . . 741  
 persons holding office of honor, trust, &c., under  
 state laws, not to issue warrant  
 under fugitive slave law, . . . . . 741  
 justices of the peace to be fined or imprisoned  
 if they so act, . . . . . 741  
 state jails or prisons, not to be used for detention  
 of persons claimed as fugitives, . . 741  
 punishment for persons removing, or aiding in  
 removing, from the state those not  
 held to service or labor, . . . . . 741  
 for coming here with intent so to remove, . 741  
 those suffering from such removal, &c., may  
 also have damages therefor, . . . . . 741  
 penalty on sheriffs, &c., arresting fugitives  
 from labor, . . . . . 741  
 on members of volunteer militia for acting  
 in seizure, detention, or rendition of  
 such fugitives, . . . . . 741  
 penalties and prohibitions not to apply to  
 acts of military obedience of any officer  
 or private, . . . . . 742  
 these provisions not to apply to fugitives from  
 justice, . . . . . 742  
 persons holding judicial office under the United  
 States, or office of commissioner of  
 circuit court, to hold no judicial office  
 in state except that of justice of the  
 peace, . . . . . 742  
 no justice of the peace, while such commissioner,  
 can issue any state process except  
 to summon witnesses, . . . . . 742

**PERSONAL PROPERTY.**  
 wilful and malicious destruction of, how punished,  
 . . . . . 806  
 punishment when value of property does  
 not exceed fifteen dollars, . . . . . 806

**PERSONAL REPLEVIN.** (See *Replevin.*)  
 provisions concerning, . . . . . 739, 740

**PESTILENCE.**  
 adjournment of courts in consequence of, . . . 617  
 prisoners may be removed from jail, &c., in case  
 of, . . . . . 864

**PETIT TREASON.**  
 distinction between, and murder, abolished, . . 791  
 prosecution and punishment of, . . . . . 790

**PETITION TO LEGISLATURE.**  
 right of, . . . . . 16  
 notice of, to be given, and how, when affecting  
 rights of individuals, &c., . . . . . 47  
 when affecting cities or towns, . . . . . 47  
 when for act of incorporation, &c., . . . . 47, 48  
 for incorporation, notice of, to specify capital  
 required, . . . . . 48  
 for extension of charter, notice to specify the  
 same, . . . . . 48  
 proof of publication of notice, how made, . . . 48  
 proof and petition to be presented within first  
 ten days of session, . . . . . 48

**PEWS.**  
 to be personal estate, . . . . . 204  
 proceedings relating to, when house is rebuilt,  
 &c., . . . . . 204  
 to be purchased in certain cases at appraised  
 value, . . . . . 204  
 used by debtor and family, exempted from attachment  
 and execution, . . . . . 688  
 may be sold for non-payment of tax legally laid  
 thereon, . . . . . 688  
 exempted from taxation, except for parochial  
 purposes, . . . . . 74, 204  
 from levy on execution and from attachment,  
 . . . . . 624, 688

**PHYSICIANS AND SURGEONS.**  
 to certify certain facts concerning deaths, when  
 requested, under penalty, . . . . . 169  
 to give notice to board of health, &c., of dangerous  
 disease, under penalty, . . . . . 193  
 dead bodies may be furnished to, by overseers  
 of poor, &c., . . . . . 195  
 to give bond that such body shall be used for  
 promotion of anatomical science, . . . 195  
 and to cause remains to be decently buried, . . 195  
 aiding in coroner's inquest, pay of, . . . . . 850  
 when may have body of person executed, for  
 dissection, . . . . . 791  
 exempted from serving as jurors, . . . . . 680  
 of state prison, appointment, duty, &c., . . 870, 872

**PICKEREL.**  
 provisions respecting the taking of, &c., . . . . 431

**PICKLED FISH.**  
 provisions respecting, . . . . . 261-264  
 (See *Fish.*)

**PIGEONS.**  
 wilfully killing or frightening from beds, how  
 punished, . . . . . 806  
 person so doing liable to owner for actual  
 damage, . . . . . 806

**PILFERERS.**  
 common, how arrested, secured, and punished,  
 . . . . . 820, 821

**PILOTAGE.**  
 fees for, to be established by commissioners, 288, 289  
 registered vessels, of two hundred tons and  
 under, to pay half pilotage, . . . . . 289  
 vessels exempt from, . . . . . 289  
 rates of, for vessels taking steam towage, . . . 289

**PILOTS.**  
 commissioners of, how appointed, and term of  
 office, . . . . . 287  
 to grant commissions to port and bay pilots,  
 . . . . . 287  
 to keep an office, and register and examine  
 complaints against pilots, . . . . . 288  
 to notify treasurer when condition of pilot's  
 bond is broken, . . . . . 288  
 to make and publish regulations concerning  
 pilots and pilotage, . . . . . 288, 289

**PILOTS — continued.**  
 to keep record of all official acts, . . . . . 289  
 to make annual report to secretary, . . . . . 289  
 compensation of, . . . . . 288  
 exempted from military duty, . . . . . 92  
 how commissioned, . . . . . 287  
 to give bond, . . . . . 288  
 how surety may terminate liability on bond of, . . . . . 288  
 if bond insufficient, commissioners may require  
   new one, . . . . . 288  
 not to interfere upon each other's limits, . . . . . 287  
 to take charge of all vessels within limits, ex-  
   cept fishing and certain coasting ves-  
   sels, . . . . . 287, 288  
 fees of, to be fixed by commissioners, . . . . . 288, 289  
   division of, in certain cases, between bay  
   and port pilots, . . . . . 287  
   to be paid by inward bound vessels, except,  
   &c., to first pilot offering his services, 288  
   vessels of two hundred tons and under, not  
   taking pilot, to pay half, . . . . . 288  
   lien for, upon vessel, . . . . . 288  
 to render quarterly accounts to commissioners, 288  
 penalty for false return, . . . . . 288  
 to pay six per cent. of fees received to commis-  
   sioners, . . . . . 288  
 penalty on person acting as, without commis-  
   sion, . . . . . 288  
 to make complaint for injury to property of  
   Humane Society, . . . . . 806  
 duties, fees, &c., of bay or general pilots, . . . . . 287

**PIPERS.**  
 common, how punished, . . . . . 820, 821

**PLACE.**  
 how construed, . . . . . 52

**PLANTS.**  
 punishment for wilfully digging up, . . . . . 805

**PLEADING AND PRACTICE.**  
 provisions respecting, . . . . . 653, 669  
   not to change rules of evidence, measure  
   of damages, jurisdiction of any court,  
   nor the locality of any action, . . . . . 662

**PLEADINGS.**  
 divisions of personal actions, . . . . . 653  
 method of declaring, . . . . . 653, 656, 657  
 in action of trover, . . . . . 654  
 to set forth copy of written instrument relied  
   on, or legal effect thereof, . . . . . 654  
 to set forth condition of bonds, &c., . . . . . 654  
 when whole contract is not set out, court may,  
   on motion, order original, or copy to  
   be filed, . . . . . 654  
 referring to general statute, how to designate  
   same, . . . . . 654  
 may allege facts in the alternative, . . . . . 657  
 to be so construed by court as to secure pre-  
   cision and certainty, and discourage  
   vagueness, . . . . . 657  
 facts alleged, and not denied, to be deemed to  
   be admitted, . . . . . 657  
 need not state evidence, nor disclose means of  
   proof, . . . . . 657  
 shall be deemed at issue when allegations are  
   closed, as in real and mixed actions,  
   when plea is filed, . . . . . 657  
 court may order either party to file a statement  
   of particulars, . . . . . 660  
   require unnecessary counts and statements  
   to be stricken out, . . . . . 661  
 not to be evidence, . . . . . 661  
 changes in suit after commencement, may be  
   suggested and entered of record, . . . . . 663

**PLEADINGS — continued.**  
 in relation to set-off of mutual demands, . . 670, 671  
 in writs of entry, to be same as heretofore, ex-  
   cept in certain changes specified, . . . . . 692, 693  
**In petitions for partition, to be same as**  
   in actions at law, . . . . . 700  
 (See Declaration, Answer, Issue, General Issue.)

**PLEAS.**  
**In abatement, may be made by answer, . . . . . 655**  
   after amendment in consequence of, or  
   when overruled, defendant to answer  
   or plead, . . . . . 655, 656  
**Special in bar, abolished; and answer, or in**  
   real or mixed actions, general issue  
   substituted, . . . . . 656  
**Of general issue, abolished except in real**  
   or mixed actions, and actions before  
   justices of the peace, . . . . . 606, 656  
   in real and mixed actions, defendant may  
   give in evidence under it, which for-  
   merly might have been pleaded in bar,  
   before justices of the peace, may be pleaded  
   orally, . . . . . 606  
   to indictments, provisions concerning, . . . . . 840

**PLEDGES.**  
 attachment of property held as, how made, 627, 628  
 how held on trustee process against pledger, . . 727  
 holder of personal property in pledge may give  
   notice that he intends to sell, to en-  
   force payment, . . . . . 767  
 notice to be in writing, how served, and where  
   recorded, . . . . . 767  
   copy of record to be evidence, . . . . . 767  
 if debt is not paid, &c., in sixty days after  
   notice is recorded, pledge may be  
   sold, . . . . . 767, 768  
 sale to be by public auction, . . . . . 768  
   proceeds of, how applied, . . . . . 768  
 of stocks, debts, &c., to be specified in transfer  
   and certificate, . . . . . 385  
 contracts not affected hereby, nor other rights  
   of pledgee limited, . . . . . 768  
 pledgee of person having possession of mer-  
   chandise, &c., when to acquire rights  
   of such person, &c., . . . . . 295  
   to acquire no further right, if pledgee is for  
   antecedent debt, . . . . . 295

**PLUMB ISLAND.**  
 in Essex county, lighthouses on, ceded to Uni-  
   ted States, . . . . . 44

**PLURALITY.**  
 of votes to elect officers chosen by the peo-  
   ple, . . . . . 36, 59

**POINT ALDERTON BAR.**  
 site for beacon on, ceded to United States, . . . . . 45

**POINT GAMMON.**  
 in Yarmouth, land on, for lighthouse, ceded to  
   United States, . . . . . 44

**POISON.**  
 mingling with food, water, medicine, &c., with  
   intent to kill, how punished, . . . . . 794  
 administering or exposing to cattle, &c., wil-  
   fully, . . . . . 805  
 persons selling, without written prescription  
   of a physician, to keep record of sale, 823  
   penalty for neglect, . . . . . 823  
 penalty on purchasers giving false names, . . . . . 823

**POLICE COURTS.**  
 cities and towns where now established, . . . . . 569  
 not to be established in any town having less  
   than ten thousand inhabitants, . . . . . 569  
 record of, how to be kept by clerk, . . . . . 569



**POLICE COURTS—continued.**

in civil and criminal cases to be kept separately, . . . . . 569

terms of, to be fixed by justice or court, and civil and criminal to be separate, . . . . . 571

to be held by judge, or in his absence, or disability, or in case of vacancy, by senior special justice, . . . . . 571

to be held as often as necessary, in place provided by district, and may be adjourned, . . . . . 571

two or more sessions may be held at same time, and a special justice may, on request of judge, hold a session at same time as judge, . . . . . 571

expenses of, for rent, care of room, stationery, &c., to be audited by court, and paid from county treasury, . . . . . 571

two thirds of the expenses to be repaid from state treasury, . . . . . 571

to make rules, . . . . . 571

may issue summons and other process to witness to run into any county, . . . . . 571

complaints to, to be entered on docket, . . . . . 571

processes of, to be under seal, bear test of judge or senior judge, and signed by clerk or assistant clerk, . . . . . 571

in other respects to be like processes of justices of the peace, . . . . . 571

when cases are adjourned to future day, parties and witnesses need not attend from day to day, but shall recognize to attend at time of adjournment, . . . . . 571

fees and costs in, how taxed, certified, and paid, . . . . . 572, 783

return of criminal statistics, &c., how made, . . . . . 129

appeals from, to superior court, to be had, entered, conducted, and disposed of like appeals from justices of the peace, . . . . . 572

costs on appeals from judgments of, in civil cases, . . . . . 780

to enter on docket the day when any civil case is finally disposed of for the term, . . . . . 783  
(See *Justices of the Peace*.)

**JURISDICTION.**

same as that of justices of the peace, . . . . . 570

to have powers necessary to discharge their duties, . . . . . 570

of offences within their district, jurisdiction to be exclusive, . . . . . 570

additional and concurrent with superior court of certain cases of assault and battery, . . . . . 570

of offences punishable by fine not exceeding one hundred dollars, or imprisonment not exceeding six months, or both, . . . . . 570

of certain cases of obtaining property by false pretences, games, fortune telling, and other tricks; and of buying, concealing, and aiding in concealing, stolen property, . . . . . 570

court may decline to exercise final jurisdiction of cases within the concurrent jurisdiction of superior court, . . . . . 570

warrants in criminal cases issued by the court, justices, or any justices of the peace, to be returnable before police courts, in certain cases, . . . . . 570

to be returned to court specified therein, with return of officer indorsed thereon, . . . . . 571

witnesses and parties need not attend from day

**POLICE COURTS—continued.**

to day, when cases are adjourned to a future day, . . . . . 571

may discharge poor convicts, . . . . . 878, 879

**In civil cases**, same as justice of peace, and exclusive when all plaintiffs, defendants, and trustees, if any, reside in the district, . . . . . 570, 571

police court of Boston to have additional jurisdiction, concurrently with superior court, of civil cases in which damages or property claimed does not exceed three hundred dollars, . . . . . 573

**JUDGES.**

one justice and two special justices to each court, . . . . . 569

appointment and tenure of office of, . . . . . 569

not to be retained or employed as counsel in any case pending or tried in their courts, . . . . . 569

may receive complaints and issue writs, when court not in session, . . . . . 570

to make rules, and act as clerk when no clerk is appointed, . . . . . 571, 572

to hold courts, and in case of their disability or vacancies, special justice to act, . . . . . 571

processes of courts to bear test of, . . . . . 571

may discharge poor debtors, take bail, &c., . . . . . 633, 635, 642

**Salaries of**, . . . . . 572, 573

not to receive fees for any additional services, nor for issuing warrants and other processes in any capacity, . . . . . 573

**Special**, not to be retained as counsel in cases in which they shall have officiated, . . . . . 569

senior to act in case of vacancy, or disability of judge, . . . . . 571

may, on request of judge, hold different session of court, . . . . . 571

writs to bear test of, in case of disability of judge or vacancy in office, . . . . . 571

compensation of, to be paid by justice at same rate as his compensation, not exceeding fees taxable for the services, . . . . . 571

**CLERKS.**

to be elected by certain cities and towns where courts are established, . . . . . 569

vacancies in, how filled by election, . . . . . 569

to be sworn, give bonds, attend courts, and keep records, . . . . . 569

may be appointed by judges of those courts for which the office of clerk is not established by law, . . . . . 569

may appoint assistants, with approval of judge or court, . . . . . 569

shall be responsible for, and may remove their assistants, . . . . . 569

on death, absence, or removal of, clerk pro tempore to be appointed, . . . . . 569

duties, compensation, and oath, of clerk pro tempore, . . . . . 569

not to be retained as counsel in cases pending or tried in their courts, . . . . . 569

to sign processes, . . . . . 571

to make all warrants and processes, tax costs, receive fees, fines, and costs, and make returns, . . . . . 572

fees of, for copies, to be indorsed thereon, . . . . . 572

to account with and pay to county treasurer fees and cost, and fines quarterly, . . . . . 572

to pay certain fines to cities and towns, . . . . . 572

**POLICE COURTS—continued.**

certain fees to parties entitled thereto, or account therefor to county treasurer, . . . 572  
of police court of Boston to account to board of accounts and pay fees and cost to city treasurer, . . . . . 573, 574  
assistant clerks of Boston court, salaries of, . . . 573  
**Salaries of,** . . . . . 572, 573  
not to receive fees for any additional services, nor for issuing warrants and other processes in any capacity, . . . . . 573

**POLICE COURT OF BOSTON. SPECIAL PROVISIONS.**

court established, . . . . . 569  
three justices, how appointed and tenure of offices, . . . . . 573  
justices to make rules, and distribute business among themselves, . . . . . 573  
senior justice to be first justice, . . . . . 573  
any justice may receive complaints and issue warrants, . . . . . 573  
assistant clerks, salaries of, payable out of state treasury, . . . . . 573  
court to be held daily for criminal business, . . . 573  
weekly for civil business, each term commencing on Saturday, and action may be continued to any future day, . . . 573  
different justices may hold different sessions at same time, . . . . . 573  
to have same jurisdiction as justices of the peace, which shall be exclusive when all plaintiffs and defendants reside in the district, . . . . . 573  
additional jurisdiction to extent of three hundred dollars concurrently with superior court, . . . . . 573  
records, proceedings, jurisdiction of justices' court for county of Suffolk transferred to, . . . . . 573  
clerk to render an account to board of accounts, and pay over costs and fees to treasurer of Boston, . . . . . 573, 574

**POLICE OFFICERS.**

may be appointed by selectmen, to hold office during their pleasure, . . . . . 161  
to have power of constables, except to serve civil process, . . . . . 161  
refusing to assist, how punished, . . . . . 813  
falsely assuming to be, how punished, . . . . . 814

**POLICY.**

of insurance on mutual plan, not to be issued for more than three fourths of property insured, . . . . . 327  
lien on building, land, &c., . . . . . 327  
to be set forth on face of policy, . . . . . 328  
to cease upon alienation of property to a bona fide purchaser, unless policy is continued, . . . . . 328  
manner of enforcement of, . . . . . 328  
if property sold on execution, right of redemption reserved to owner, . . . . . 328  
shall designate the class of property to be insured, . . . . . 328  
forms of declarations and answers, in suits on, . . . . . 665, 668

**POLL TAX,** (*see Taxes,*) . . . . . 74, 75

**POLYGAMY.**

defined and punished, . . . . . 817, 818  
excepted cases, . . . . . 818

**POOR CONVICTS.**

duty of magistrate ordering the commitment of, 845  
discharge of, . . . . . 878, 879

**POOR CONVICTS—continued.**

discharge of, after confinement for three months for fine and costs, . . . . . 878  
proceedings in such case, . . . . . 878  
for thirty days, if fine, or fine and costs do not exceed ten dollars, . . . . . 878, 879  
for forty days, if fine or fine and costs do not exceed twenty dollars, . . . . . 879  
proceedings in such cases, . . . . . 878, 879  
in Suffolk county, poor convicts held only for fine and costs, may be discharged at any time, by justices of police court, . . . . . 879  
if held under sentence of other court, one justice thereof must assent to discharge in writing, . . . . . 879  
persons under guardianship, if property is not in their actual control, may be so discharged, . . . . . 879  
commonwealth may recover fine and costs of guardian, if he has assets, . . . . . 879  
suit therefor to be brought in one year, . . . 879  
fees of justices for discharging poor convicts, . 879

**POOR DEBTORS.**

provisions concerning, . . . . . 633  
not to be arrested on mesne process, in actions of contract, unless affidavit is made, and certificate of magistrate procured, before whom affidavit must be made, and what must be set out therein, and proved, . . 633  
how arrested on mesne process in actions of contract for money collected as attorneys at law, . . . . . 633  
how arrested on mesne process in actions of tort, . . . . . 634  
how arrested on executions in actions of contract, . . . . . 634  
what affidavit to be made in such case, and before whom, . . . . . 634  
for arrest of attorney at law, on execution, for money collected by him, . . . 634  
may be arrested on execution for costs only, without affidavit, . . . . . 634  
female not to be arrested, except in actions of tort, . . . . . 634  
not to be arrested after sunset, unless arrest is specially authorized, . . . . . 635  
not to be arrested in civil actions for libel and slander, . . . . . 635  
officer need not arrest, unless specially directed by plaintiff, . . . . . 632, 634  
death of creditor not to affect proceedings against, when arrested, . . . . . 637  
imprisoned for non-payment of taxes, how discharged, . . . . . 82

**ARRESTED, HOW TO BE PROCEEDED WITH, AND DISCHARGED.**

arrested on mesne process, may procure bail, and have time therefor, . . . . . 635, 642  
on execution, or mesne process, in actions of contract, to have time to procure sureties for recognizance, . . . . . 635  
to be taken before magistrate, . . . . . 635  
when taken before magistrate, if he desires to take the poor debtor's oath at a future time, he may recognize for his appearance within thirty days, . . . . . 635  
recognizance, how taken, . . . . . 635  
surrendered by his sureties, may recognize anew, . . . . . 635  
if he desires to take poor debtor's oath, or

**POOR DEBTORS—continued.**

oath that he does not intend to leave state, magistrate to appoint a time for his examination, and issue notice to creditor, . . . . . 635

form of notice, . . . . . 635

notice may be given that he desires to take both oaths, . . . . . 635

service of notice, how made in different cases, 635, 636

when notice that defendant desires to take poor debtor's oath has once been given, new notice not to be given until expiration of seven days, . . . . . 636

when notice has been served, some magistrate to attend at time and place appointed, and examine debtor, . . . . . 636

pending examination, how recognizance may be taken, . . . . . 636

but debtor not to recognize after oath is refused, except in cases of appeal, . . . . . 636

examination of, upon notice of desire to take oath that he does not intend to leave state, and how discharged, . . . . . 636

examination of, upon notice of desire to take poor debtor's oath, and how discharged, . . . . . 636

not entitled to benefit of poor debtor's oath, if, after being arrested, he mispends or misuses certain property, . . . . . 636

nor if he makes default, after charges of fraud are filed against him, or is convicted thereon, . . . . . 639

may be discharged by magistrate, upon taking poor debtor's oath, if magistrate is satisfied that facts set forth in oath are true, . . . . . 636, 637

form of poor debtor's oath, . . . . . 637

form of certificate, of discharge, and the effect thereof, . . . . . 637

after discharge, judgment to remain in force, . . . . . 637

execution subsequently issued on judgment to run against estate, and not against body of debtor, . . . . . 637

on bail on mesne process, or imprisoned on any execution, may be discharged on taking oath as when under arrest, . . . . . 637

not to be discharged, after writ of scire facias on bail bond has been served on sureties, unless they pay costs on such writ, . . . . . 637

**IMPRISONMENT OF.**

to be imprisoned when arrested on mesne process, in actions of tort, unless they give bail, . . . . . 637

in actions of contract, if they do not desire to take oath, or fail to recognize, or do not give bail, or the oath is refused by the magistrate, . . . . . 637

in such cases, magistrate to make certificate, and defendant to be imprisoned, . . . . . 637

to be kept, when so committed, until final judgment, and for thirty days thereafter if judgment is against him, unless he recognizes, gives bail or a bond, or takes the oath, . . . . . 637, 638

to be imprisoned when arrested on execution, if they do not desire to take the oath, or fail to procure sureties, or the oath is refused them, . . . . . 638

certificate to be made by magistrate, in such case, . . . . . 638

**POOR DEBTORS—continued.**

to be kept until they recognize, satisfy the execution, take the oath, or are released by the creditor, . . . . . 638

when imprisoned, to be supported at expense of creditor, if he claims support as a pauper; jailer may discharge him, if creditor fails to pay on demand, . . . 638

may be discharged by creditor, if he claims support as a pauper, . . . . . 638

when so discharged by jailer or creditor, debtor to remain liable for debt and costs, but his body not to be again arrested, . . 638

not to be discharged from imprisonment, upon satisfying execution, unless he also pays the cost and the expenses of his support in prison, . . . . . 638

how long to be imprisoned, when surrendered by bail, . . . . . 643, 644

**PUNISHMENT FOR FRAUD.**

pending examination of debtor desiring to take poor debtor's oath, charges of fraud may be filed against him, . . . . . 638

when charges are made in affidavit for arrest, or are filed, the same to be considered in the nature of a writ at law, debtor to plead, and trial, and evidence therein, 638

either party may appeal to superior court from judgment of magistrate thereon, . 638, 639

appellant to recognize, . . . . . 639

if debtor makes default, after charges are filed, or is convicted thereon, how punished, 639

not afterwards to be bailed in same action, . . 642

**DISCHARGE OF, WHEN COMMITTED ON WARRANTS OF DISTRESS IN FAVOR OF STATE.**

persons so committed may be discharged in like manner as poor debtors, . . . . . 639

may represent to jailer their desire to take poor debtor's oath, . . . . . 639

jailer to notify magistrate, who shall appoint time for hearing, and cause notice to be given to district-attorney, . . . . . 639

district-attorney to attend, or appoint some one to attend; compensation therefor, . . . . . 639

**POOR DEBTORS WHO ARE INSANE, HOW DISCHARGED OR REMOVED.**

when imprisoned, and unable, by reason of insanity, to take poor debtor's oath, any person interested may petition judge of probate court for his removal from jail, . . . . . 639

judge to appoint time and place for hearing and order notice to creditor, . . . . . 639

may discharge debtor, or remove him to hospital or other place, if he is satisfied of his insanity, . . . . . 639, 640

when debtor is so discharged or removed, legal rights of creditor to remain, . . . . . 639

**DISCHARGE OF IN, SPECIAL CASES.**

when committed for non-payment of taxes, . . 82

in bastardy process, . . . . . 465

**IMPRISONED WHEN JUDGMENT IS RENDERED AGAINST THEM, OR WHEN SURRENDERED BY BAIL AFTER JUDGMENT.**

when a debtor is in prison on mesne process, where judgment is rendered against him, he may be discharged by giving



**POOR DEBTORS—continued.**

bond to surrender himself in thirty days, . . . . . 640  
 how debtor may afterwards be arrested on execution issued in such action, . . . . . 640  
 jailer to certify on execution, if left with him, whether debtor has surrendered, and give certificate to officer, . . . . . 640  
 when debtor is surrendered by his bail after judgment, he may be discharged by giving bond to surrender himself in thirty days, . . . . . 640  
 bond, conditions of, . . . . . 640  
 debtor, in either of said cases, may be taken and committed on execution within said thirty days, . . . . . 640, 641

**SURRENDER OF PRINCIPAL ON RECOGNIZANCES.**

sureties in recognizances may surrender principal, . . . . . 641

**REMEDY ON RECOGNIZANCES AND BONDS.**

when recognizance and bond are broken, actions of contract may be brought thereon, . . . . . 641  
 judgment in such case, . . . . . 641

**REMEDY AGAINST OFFICER FOR ESCAPES.**

when prisoner escapes from officer, creditor may maintain action of tort against officer, and also scire facias or contract against debtor, . . . . . 641

**FEES.**

of magistrates, amount, how allowed and taxed, . . . . . 641  
 of judges of probate court, for removal or discharge of insane poor debtors, . . . . . 641  
 of jailers, . . . . . 641, 642

**POSTMASTERS.**

and persons in care of United States mail, exempted from military and jury duty, . . . . . 92, 680

**POST OFFICES AND ROADS.**

power of Congress to establish, . . . . . 4

**POSTHUMOUS CHILDREN**

considered as living at death of their parent, . . . . . 475  
 omitted in will of father, to take share as if he had died intestate, . . . . . 479  
 devisees, &c., to contribute equally, in such cases, to shares of, . . . . . 479  
 to contribute with devisees, &c., for payment of debts of testator, . . . . . 479  
 may claim contribution from devisees, &c., . . . . . 479  
 guardian of, may be appointed by father in his will, . . . . . 543

**POSTS.**

on bridges, sidewalks, &c., punishment for breaking, removing, &c., . . . . . 803

**POT AND PEARL ASHES.**

inspector-general of, appointment of, and term of office, . . . . . 258  
 to be sworn, . . . . . 258  
 to give bond, . . . . . 276  
 may appoint deputy-inspectors, in seaports where pot and pearl ashes are exported, . . . . . 258, 276  
 to be responsible for his deputies, . . . . . 276, 277  
 to make returns annually to secretary, . . . . . 277  
 fees of, . . . . . 277  
 deputy-inspectors to be sworn and give bond, . . . . . 276, 277  
 to make returns once in six months, . . . . . 258

**POT AND PEARL ASHES—continued.**

penalty on inspectors for neglect, &c., in inspection, . . . . . 277  
 fees of inspectors, . . . . . 277  
 casks, quality and size of, . . . . . 277  
 to be branded by manufacturer, under penalty, . . . . . 277  
 to be weighed by inspector, and weight marked on each head, . . . . . 277  
 how inspected, &c., . . . . . 277  
 sorts and denominations of, how branded on casks, . . . . . 277  
 not to be shipped for exportation until inspected, . . . . . 277  
 imported from other states, may be exported without reinspection, . . . . . 277  
 to be forfeited, if shipped without branding, . . . . . 277  
 inspector to seize and libel casks if so shipped, . . . . . 277  
 penalty on master of vessel for receiving on board casks not branded, . . . . . 277  
 on master or crew for obstructing search by inspectors, . . . . . 278  
 for counterfeiting brands, or branding falsely, . . . . . 278  
 for shifting contents of inspected casks, . . . . . 278

**POTATOES.**

standard weight of bushel of, to be sixty pounds, . . . . . 278  
 mean weight, how to be ascertained, . . . . . 278  
 penalty for selling without ascertaining weight of, . . . . . 278  
 when these provisions not to apply, . . . . . 278

**POUND.**

one or more to be maintained in every city and town, . . . . . 185  
 penalty on town, &c., for neglect to maintain, &c., . . . . . 185  
 on persons for wilfully injuring, . . . . . 185

**POUND-KEEPER.**

to be appointed annually, by towns, &c., for each pound, . . . . . 185  
 to provide beasts distrained with food, &c., . . . . . 185  
 fees of, . . . . . 185  
 not to deliver beasts to owner until fees, damages, &c., are paid, . . . . . 185  
 to pay over field-drivers' fees when received, . . . . . 185  
 may retake, within seven days, beasts that escape or are rescued, . . . . . 186

**POWER OF ATTORNEY.**

to convey real estate, to be acknowledged and recorded, . . . . . 468  
 when to be acknowledged by both husband and wife, . . . . . 468

**PRACTICE.**

in civil actions, provisions concerning, . . . . . 657-669

**PRECEDING SECTION.**

in these statutes, means next preceding, . . . . . 51

**PRESIDENT AND VICE PRESIDENT.**

of the United States, electors of, . . . . . 69  
 constitutional provisions respecting, 4, 5, 6, 7, 10

**PRESS.**

liberty of, not to be restrained, . . . . . 16

**PRETENCE.**

of process, punishment for arrest under, &c., . . . . . 790  
 (See *False Pretences*.)

**PRINTING.**

convicts in state prison, not to be employed in, . . . . . 874

**PRISON BOOK.**

to be kept by jailers and masters of houses of correction, . . . . . 866  
 punishment for neglecting to keep, or wilfully making false entries therein, . . . . . 863

**PRISONS.**

- not to be used for the detention of persons under the fugitive slave law, . . . . . 741
- PRISONERS.**
- entitled to know from officer arresting the reason of their arrest, . . . . . 789
- to see, on request, the precept of officer, . . . 789
- may have counsel, or defend themselves, . . . 790
- produce witnesses in their favor, . . . . . 790
- entitled to meet witnesses against them, . . . 790
- former conviction or acquittal to bar, &c., . . . 790
- when no defence, . . . . . 790
- aiding to escape from prison, how punished, . . 813
- from officer, how punished, . . . . . 813
- officer voluntarily suffering escape of, how punished, . . . . . 813
- negligently suffering escape, how punished, . . . . . 813
- refusing to receive, how punished, . . . . . 813
- refusing to arrest, how punished, . . . . . 813
- refusing to assist officer in securing, how punished, . . . . . 813
- refusing to obey justice of peace in securing, how punished, . . . . . 814
- in examination before magistrate, entitled to counsel, . . . . . 833
- may be detained in jail, &c., . . . . . 857
- may be removed from one jail to another in same county, . . . . . 857
- list of, to be returned into superior court at opening of each term, . . . . . 858
- provisions for classifying, &c., . . . . . 858, 862
- (See *Houses of Correction, State Prison.*)

**PRIVATE WAYS AND BRIDGES, (see Highways.)** . . . . . 239, 248

**PRIZE FIGHTING.**

- penalty for, . . . . . 792
- for aiding, promoting, &c., . . . . . 792
- for leaving the state to engage in, out of the state, . . . . . 792

**PROBATE COURTS.**

- established in each county, . . . . . 574
- to be held on days fixed by law, . . . . . 27
- judges and register of probate and insolvency to be judge and register of, . . . . . 574
- have jurisdiction of the probate of wills, and granting administration, . . . . . 574
- of the appointment of guardians to minors and others, . . . . . 543, 544, 574
- of all matters relating to the settlement of estates of deceased persons and wards, . . . 574
- of petitions for adoption of children and change of names, . . . . . 547, 548, 574
- of certain matters relating to funds for charitable and religious purposes, . . . . . 206
- of the appointment of trustees in certain cases, . . . . . 234, 330, 500
- when a case is within jurisdiction of two courts, the one in which proceedings are first commenced shall retain it throughout, . . . 574
- administration or guardianship first granted by, shall extend throughout the state, . . . 574
- jurisdiction, so far as it depends upon residence of any person, not to be contested in any suit except upon appeal in the case, . . . . . 574
- may decree specific performance of written contracts for conveyance of land made by deceased persons, and persons subsequently put under guardianship—proceedings in such cases, . . . . . 575
- may make rules, to be returned to, approved,

**PROBATE COURTS—continued.**

- altered, or amended by, supreme court, . . . . . 576
- judges may frame and issue necessary warrants, decrees to be in writing, and with certain other papers to be recorded, . . . . . 576
- regularity of proceedings to be presumed after twenty years, . . . . . 576
- orders of notice, and certain other official acts, may be done in vacation, . . . . . 576
- may award costs in certain cases, and issue executions therefor, . . . . . 576
- judges, when accountant is unable to attend court, may administer oath out of court, or authorize justice of the peace to do it; certificate, accounts, and vouchers to be returned, . . . . . 576, 577
- all other oaths required of persons in relation to probate matters may be administered by justices of the peace, . . . . 577
- parties having business in, may select newspapers in which to have notices published, . . . . . 577
- county to provide books and stationery for, . . 577
- register to prepare certain copies without charge, . . . . . 577
- clerks in office of, not to be commissioners of insolvency, or dividers of estate of deceased persons, unless requested by parties, . . . . . 577
- judges may keep order in their court and punish for contempt, . . . . . 577
- Sessions** of the court in the several counties, . . . . . 577, 578, 579
- to be held at such places in the cities and towns as the judge orders, . . . . . 577
- may be adjourned by judge or by register, in certain cases, . . . . . 577
- not to be held unless registers, assistant registers, or register pro tempore, is present, . . . . . 577
- Appeals** may be had to supreme court in all cases, . . . . . 415, 422, 518, 575, 576
- to be claimed, and notice given, within thirty days, . . . . . 575
- to be entered at rule days of supreme court, . . 575
- reasons to be filed fourteen days before time of entry, . . . . . 575
- omitted to be entered, may on petition within one year, be entered subsequently, . . . 575
- if petitioner was out of United States at time of passing decree, he may within two years thereafter, and within three months after his return, petition for allowance of appeal, . . . . . 572
- to be entered in supreme court on docket with equity cases, . . . . . 575
- proceedings in probate court suspended after appeal, . . . . . 575
- may be waived before entry, . . . . . 575
- supreme court, in case of, may affirm former decrees, reverse the same in whole or in part, or pass any other order, and remit the case to the probate court, . . . . . 575, 576
- proceedings when appellant fails to enter appeal, . . . . . 576
- jury trial on such cases may be had in supreme court, . . . . . 576
- (See *Estates of Deceased Persons, Administrators, Executors, Guardians, Trusts, Wills, &c.*)

**PROBATE COURTS—continued.****SPECIAL JURISDICTION OF JUDGES.**

- judges of, may commit lunatics to state lunatic hospitals, in counties other than Suffolk, . . . . . 407
- fees of, for committing and discharging lunatics, . . . . . 408
- may commit girls to State Industrial School, . . . . . 414
- may commit boys to State Reform School, . . . . . 421
- may order removal of lunatics in jails and houses of correction, . . . . . 878
- may authorize arrests on mesne process and execution in civil actions, . . . . . 635, 636
- examine, discharge, or commit poor debtors arrested, . . . . . 635-640
- may remove to hospitals poor debtors who are insane, . . . . . 639, 640
- (*See Judges of Probate and Insolvency.*)

**PROCESS.**

- civil, not to be served on Lord's day, . . . . . 434
- punishment for arrest under pretence of, &c., . . . . . 790

**PROFANE CURSING AND SWEARING.**

- how punished, . . . . . 819
- prosecution to be commenced in twenty days, . . . . . 819

**PROFERT.**

- in declarations, need not be made, . . . . . 654

**PROHIBITION.**

- writs of, may be issued by supreme court, . . . . . 553

**PROMISSORY NOTES.**

- maturing on Sundays and public holidays, when payable, . . . . . 293
- when may be protested in such case, . . . . . 293
- payable on demand, when demand to be made to charge indorser, . . . . . 293
- liability of indorsers of, . . . . . 293
- makers of, to have same defence against indorsers as against payees, . . . . . 293
- grace not to be allowed on, . . . . . 294
- payable within this state on a day certain, grace to be allowed on, . . . . . 294
- of less than five dollars, other than of banks, not to be issued and circulated as currency, under penalty, . . . . . 810
- forms of declarations, and answers in actions on, . . . . . 663, 668
- actions upon, witnessed, may be brought by payee or his executor, in twenty years, 777

**PROPRIETORS.**

- of common fields and wharves, &c., in actions against, how process to be served, &c., . . . . . 622, 623

**PROSECUTIONS.**

- for criminal offences, not to bar civil actions, . . . . . 840
- criminal, for certain misdemeanors, may be stayed, upon reparation to party injured and payment of costs, . . . . . 834, 839
- such proceedings to bar civil action, . . . . . 839, 840

**PROSTITUTION.**

- abduction of unmarried woman for, how punished, . . . . . 817
- prosecutions therefor limited to two years, . . . . . 817
- buildings, &c., resorted to for purposes of, deemed common nuisances, . . . . . 454
- use of building for purposes of, to render lease void, . . . . . 454
- penalty on landlord for letting building for purpose of, . . . . . 454

**PROTEST.**

- of bills of exchange, &c., maturing on Sunday or on a public holiday, to be made on the next preceding business day, . . . . . 293

**PROTEST—continued.**

- making or procuring false, how punished, . . . . . 805
- fees of notaries public for, . . . . . 757

**PROTESTANT EPISCOPAL CHURCH.**

- powers and duties of officers of, . . . . . 202

**PROVERS OF FIRE-ARMS.**

- provisions concerning, . . . . . 260, 261
- (*See Arms.*)

**PROVINCE LANDS.**

- limitation to suits for recovery of lands by commonwealth not to apply to, . . . . . 776

**PROVINCETOWN.**

- land in, ceded to United States, . . . . . 44, 45
- lobster fishery on shores of, regulated, &c., . . . . . 432

**PROVISIONS.**

- what exempt from levy on execution, and from attachment, . . . . . 624, 688
- punishment for knowingly selling diseased and corrupted, without notice, . . . . . 822
- fraudulently adulterating food or drink, . . . . . 822, 823

**PROXIES.**

- In banks, vote of stockholders by, . . . . . 304
- form, execution, and filing of, . . . . . 304
- to be recorded, . . . . . 304
- to be valid for three months only from date, . . . . . 304
- list of, to be read at meetings, . . . . . 304
- not to be received by salaried officers, under penalty, . . . . . 304

- In insurance companies, how executed, used, &c., . . . . . 323, 326

- In manufacturing companies, how executed, used, &c., . . . . . 337

- In railroad companies, how executed, used, &c., . . . . . 350

**PUBLIC ADMINISTRATORS.**

- one or more to be appointed by governor, &c., in each county, . . . . . 486
- when administration to be granted to, . . . . . 483, 486
- when not to be granted to, . . . . . 486
- to be discharged when husband, widow, or heir claims administration, . . . . . 486
- powers of, to cease upon appointment of successor, &c., . . . . . 486
- to surrender letters of administration, &c., if will of deceased is proved, &c., . . . . . 486
- and to account to executor or administrator who succeeds in such case, . . . . . 486
- to give bond as other administrators, . . . . . 486
- or general bond; conditions thereof, . . . . . 486, 487
- under general bond, to account annually to probate court, . . . . . 487
- additional sureties may be required by probate court at any time, . . . . . 487
- limitations, under general bond, to begin to run in each case from date of letters of administration, . . . . . 487
- to administer estates, &c., as other administrators, and may be licensed to sell real estate, &c., . . . . . 487
- may sell all real estate in certain cases, . . . . . 487
- to take oath, give bond, &c., in such cases, as other administrators, . . . . . 487
- to render accounts annually, in all cases, until trust is fulfilled, . . . . . 487
- balance in hands of, to be deposited with state treasurer, . . . . . 487
- not depositing balance with treasurer within one month after notice, bond of, to be put in suit, . . . . . 487
- after such balance is deposited by, heirs, &c., may take administration thereon within six years, . . . . . 487



**PUBLIC ADMINISTRATORS—continued.**  
to be notified in such case, and to appear for  
commonwealth, . . . . . 487  
upon death, removal, &c., of, accounts to be ex-  
amined by another, . . . . . 488  
such other to be appointed administrator on all  
estates not administered, . . . . . 488  
neglecting duties, &c., district-attorneys to prose-  
cute if there are no heirs, . . . . . 488  
money and personal property found on or near  
a dead body, when to be given to, . . 850

**PUBLIC AMUSEMENTS.**  
provisions concerning, . . . . . 463, 464

**PUBLIC ASSEMBLIES.**  
penalty for disturbing, . . . . . 820

**PUBLIC CONVEYANCES.**  
liability for careless management, &c., of, . . . 794

**PUBLIC LANDS.**  
conveyances of, to be subject to approval of gov-  
ernor and council, . . . . . 55, 139

**PUBLIC LIBRARIES. (See Libraries.)**  
provisions concerning establishment of, . . . . 208

**PUBLIC OFFICERS AND OFFICES.**  
(See Officers and Offices.)

**PUBLIC PROPERTY.**  
who to have charge of, . . . . . 55  
magazines, munitions, &c., to be in custody of  
adjutant-general, . . . . . 55  
safe keeping of, at public expense, . . . . . 55

**PUBLIC PROPERTY—continued.**  
tools and implements to be marked as, . . . . . 55  
unauthorized possession of, how punished, . . 55

**PUBLIC REPORTS AND DOCUMENTS.**  
annual, when to be made by certain public offi-  
cers, . . . . . 53  
special, when may be made, . . . . . 53  
certain, to be laid before legislature in printed  
form, . . . . . 53  
when certain reports may be put in type, . . . . 54  
number of, to be printed, and distribution there-  
of, . . . . . 54  
complete sets of public series of, to be fur-  
nished to towns, . . . . . 54  
penalty on officers neglecting to make reports,  
&c., . . . . . 54

**PUBLIC WORSHIP.**  
right and duty of, . . . . . 14, 34  
houses for, exempted from taxation, . . . . . 74  
punishment for disturbing assemblies met for, . 819

**PUNISHMENT.**  
no law to be made subjecting to capital or infam-  
ous, (except in army or navy,) with-  
out trial by jury, . . . . . 9, 15  
cruel and unusual, not to be inflicted, . . . . . 16  
when not provided by statute, to be according  
to common usage, . . . . . 844  
may be commuted by governor, . . . . . 855

Q.

**QUAKERS.**  
may affirm instead of swearing, . . . . . 30, 33, 673  
how exempted from enrolment in the militia, . . 93  
overseers of monthly meetings of, to be body  
corporate to take and hold grants for  
use of meeting, &c., . . . . . 206  
to manage, &c., property, and prosecute and  
defend actions concerning the same, . . . . 206  
limitation of such grants, &c., . . . . . 206  
marriages of, may be solemnized as heretofore  
practised, . . . . . 530

**QUARANTINE.**  
may be established by towns, . . . . . 192  
may be established in another town with its  
assent, . . . . . 192  
by two or more towns, jointly, . . . . . 192  
of vessels, and regulations concerning, may be  
established by board of health, . . . . . 192  
regulations to extend to all persons and effects  
on board, &c., . . . . . 192  
penalty for violation after notice, . . . . . 192  
vessels, when found, &c., may be removed to,  
by board of health, . . . . . 192  
expenses of, how and by whom to be paid, . . . 192  
penalty on seamen and passengers of infected  
vessel, &c., for refusal to answer on  
oath certain questions, . . . . . 192

**QUARTERMASTER-GENERAL.**  
how appointed, . . . . . 97

**QUESTIONS OF LAW.**  
arising in counties of Barnstable, Bristol, Dukes,  
Essex, Middlesex, Nantucket, Nor-  
folk, Plymouth, and Suffolk, for su-  
preme court, to be heard by court for  
commonwealth, . . . . . 555, 556  
in other counties, at terms of the court estab-  
lished therefor, . . . . . 556

**QUESTIONS OF LAW—continued.**  
or by consent of parties, or order of court,  
in said court for commonwealth, . . . . . 567  
how raised, entered, heard, and determined,  
&c., . . . . . 554-557, 563, 566, 567  
entry of, in supreme court, not to transfer cases  
but only the questions, . . . . . 567  
(See Appeals, Exceptions.)  
In equity cases before single judge, how may  
be reserved and reported to full court, 560  
(See Equity.)

**QUIETING TITLES.**  
of real estate, proceedings for, . . . . . 696

**QUINTAL.**  
of fish, weight of, . . . . . 264

**QUITCLAIM.**  
deed of, . . . . . 466  
(See Deed.)

**QUO WARRANTO.**  
writ of, may be issued by supreme court, . . . 553  
who may apply for leave to file information in  
nature of, . . . . . 744  
when application may be made and heard, . . . 744  
hearing to be had summarily, and leave granted  
to file information upon probable  
cause, . . . . . 744  
in what county to be filed, and notice thereof, . 744  
after leave given, court may issue injunction, . 744  
attorney-general may intervene, and ask for  
judgment or forfeiture, . . . . . 744  
in such case, he shall have control, . . . . . 744  
complainant no longer responsible for costs, 744  
court to enter such judgment as the princi-  
ples of the common law require, . . . . . 744  
when attorney-general does not intervene, judg-  
ment of forfeiture not to be entered, . 744  
form of judgment, . . . . .

**QUO WARRANTO**—*continued.*

if judgment is for defendant, he shall have costs, as in action at law, against the complainant, . . . . . 744  
 other duties of attorney-general not hereby affected, . . . . . 744  
 costs on petition for, . . . . . 781

**QUORUM.**

of federal senate, and house of representatives, 3  
 of senate of Massachusetts, . . . . . 21, 39  
 of house of representatives, . . . . . 23, 39  
 of the supreme court, . . . . . 553  
**Justices of the peace** may discharge poor debtors and bail bonds, . . . . . 635, 642

**R.**

**RACE GROUNDS.**

in cities and towns, not to be laid out or used without consent of selectmen, &c., . . . 825  
 to be under control of selectmen and mayor and aldermen, . . . . . 825  
 unauthorized, to be deemed common nuisances, persons owning, using, &c., punished, . . . 825

**RACE POINT.**

land on, for lighthouse, ceded to United States, . . . . . 44

**RACING.**

for wagers, bets, or money, &c., horses, &c., declared unlawful, . . . . . 825  
 persons engaged therein, how punished, . . . 825  
 lands in town or city not to be used for, . . . 825

**RAILERS AND BRAWLERS.**

common, how arrested and punished, . . . . . 820

**RAILROAD CORPORATIONS.**

subject to provisions of General Statutes, as far as consistent with charters, . . . . . 350  
 to publish lists of unclaimed effects of passengers, . . . . . 426  
 to give notice to selectmen, &c., of towns and cities where articles are, . . . 426, 427  
 penalty on for neglect to advertise, &c., . . 427  
 not subject to insolvent laws, . . . . . 598  
 conductors and engine drivers exempted from military duty, . . . . . 93  
 officers and agents of, to furnish information concerning alien passengers, under penalty, . . . . . 397

**1. ORGANIZATION, OFFICERS.**

government of, vested in board of not less than five directors, . . . . . 350  
 directors to elect one of their number to be president of the board and corporation, . . . . . 350  
 may choose a clerk, who shall be sworn, and a treasurer, who shall give bonds, . . . 350  
 with exception of president, no officer, &c., receiving salary from corporation to which the state credit has been loaned, to be eligible as director, . . . . . 350

**2. MEETINGS, VOTES.**

meetings of, to be called and warned according to by-laws, . . . . . 350  
 each member of, entitled to a vote for each share held by him, if not more than one tenth of whole number, . . . . . 350  
 proxies not valid unless executed within six months of meeting, &c., . . . . . 350  
 no person as proxy, &c., to cast more than fifty votes, unless shares are owned by one person, . . . . . 350  
 no officer of corporation, as proxy, to cast more than twenty votes, . . . . . 350

**RAILROAD CORPORATIONS**—*continued.*

**3. CAPITAL STOCK, ASSESSMENTS, &c.,**  
 no corporation chartered since June 20th, 1852, to begin to build road until certificate is filed with secretary, &c., stating that all stock, &c., has been subscribed for, &c., and twenty per cent. paid in, . . . . . 350  
 president and directors may make assessments, &c., to be paid to the treasurer, . . . 350, 351  
 treasurer to give notice of assessment to stockholders, . . . . . 351  
 if stockholder neglects to pay assessment for thirty days, his shares may be sold by order of directors, &c., . . . . . 351  
 stockholders liable to corporation for deficiency on sale of shares, . . . . . 351  
 and entitled to the surplus if they sell for more, . . . . . 351  
 no assessment to be laid on shares to greater amount than the sum at which they are fixed by charter, &c., . . . . . 351  
 the directors may declare shares forfeited if nothing has been paid after thirty days from time assessment has become due, . . . 351  
 and may transfer them to any responsible person, &c., . . . . . 351  
 shares to be deemed personal estate, how transferred, &c., . . . . . 351  
 may hold stock in a telegraph company, &c., not exceeding two hundred dollars for each mile, &c., . . . . . 351

**4. CHARTERS.**

petition for, not to be acted on unless accompanied by report of engineer, map, &c., . . . 351  
 plans and profiles presented to committee in hearing of petition for, to be placed in state library, . . . . . 351  
 petition for, not to be acted on until notice, designating route, &c., has been published, &c., . . . . . 351  
 legislature may require surveys, plans, and estimates, . . . . . 351  
 every charter to confine the road within the limits indicated by such notice, . . . . . 351  
 and specify the several cities and towns through which the road may pass, &c., . . . 351

**5. LOCATION OF ROAD.**

corporation may lay out road not more than five rods wide, . . . . . 352  
 to file with county commissioners, within one year, the location of road, &c., . . . . . 352

**6. TAKING LAND, &c.**

may purchase or take land, &c., for making or securing its road and for depot and station purposes, . . . . . 352

**RAILROAD CORPORATIONS—continued.**  
 if not able to obtain such land, by agreement with owner, shall pay damages estimated, &c., by county commissioners, land, &c., without limits of road, not to be so taken without permission of owner, unless county commissioners prescribe limits, &c., . . . . . 352  
 land taken, &c., for depot and station purposes, &c., not exempt from taxation, . . . . . 352

**7. DAMAGES.**  
 corporation to pay all damages occasioned by laying out, &c., its road, or by taking land, &c., . . . . . 352, 355  
 such damages to be estimated by county commissioners, as in laying out highways, application to be made for land, &c., before taking, &c., . . . . . 352  
 either party, dissatisfied with commissioners' estimate, &c., may, within one year, apply for jury, &c., . . . . . 352  
 upon such application, prevailing party to recover costs, and proceedings to be as provided for recovery of damages in laying out highways, . . . . . 352  
 but no jury to alter or reverse any order of commissioners in relation to construction and maintenance of embankment, drains, &c., . . . . . 352, 355  
 owner of land in adjoining counties may apply to commissioners of either county, . . . . . 352  
 and either party may apply for jury, &c., . . . . . 352  
 jury to be from same county as commissioners, and to estimate damage as though land lay in one county, . . . . . 352  
 guardians or trustees may release damages, &c., damages to be assessed to person having different interests in land, as provided in other cases, &c., . . . . . 353  
 to whom to be paid, &c., . . . . . 234, 235, 353  
 mortgagors and mortgagees to have same rights, &c., as land owners, . . . . . 353  
 petitions for estimate of damages to state all mortgages known, &c., . . . . . 353  
 mortgagors and mortgagees may join in such petition, . . . . . 353  
 notice to be given to all interested as mortgagors, &c., that they may appear and become parties, &c., . . . . . 353  
 damages to be paid to satisfy mortgages when mortgagors, &c., petition or become parties, &c., . . . . . 353  
 separate judgment to be entered for each mortgagee, to be held in trust, &c., . . . . . 353  
 balance to be paid to mortgagor, &c., . . . . . 353  
 application for damages for crossing private way by railroad to be made within year, . . . . . 353  
 for land, &c., taken, to be made within three years, unless suits are pending, &c., . . . . . 353  
 provisions when suits are pending, . . . . . 353  
 if, upon application for damages, or jury, proceedings are quashed, &c., applicant may commence anew at any time within one year, . . . . . 353, 354  
 if requested, commissioners may require security of corporation for payment of damages and costs, &c., . . . . . 354  
 upon petition of owner, &c., they may require of corporation further security, &c., . . . . . 354

**RAILROAD CORPORATIONS—continued.**  
 and all right of corporation to enter upon or use land, &c., suspended until it gives security, &c., . . . . . 354  
 upon award of damages, &c., against corporation, the commissioners, after time to petition for jury has expired, may issue warrants of distress to compel payment, &c., . . . . . 354  
 and if corporation, for thirty days after, neglects to satisfy the same, all right to enter, &c., except to make surveys, suspended, &c., . . . . . 354  
 supreme judicial court may restrain corporation from entering such land, &c., . . . . . 354  
 corporation may tender damages after commissioners have estimated them, . . . . . 354  
 if damages are not satisfactory, costs how taxed when determined by jury, . . . . . 354  
 damages in Boston, to be estimated by mayor and aldermen, . . . . . 354  
 either party, if dissatisfied with estimate of damages by mayor and aldermen, may apply for jury at next term of superior court, &c., . . . . . 354  
 when awarded for land of married woman, how disposed of, . . . . . 539

**8. ALTERATION OF ROAD.**  
 on what terms may vary direction of road, within their prescribed limits, after taking land, . . . . . 354, 355  
 liable to the owners of land taken, &c., . . . . . 355

**9. CONSTRUCTION.**  
 county commissioners may order corporation to construct, &c., embankments, drains, &c., for security of owners, &c., . . . . . 355  
 in case of neglect, supreme judicial court may compel performance, &c., . . . . . 355  
 if corporation, for more than forty-eight hours after notice of such neglect, have neglected to commence the work, &c., person interested may maintain an action of tort, &c., . . . . . 355  
 to make, &c., fences upon railroad constructed prior to April 17, 1841, where owner has not received damages assessed, &c., . . . . . 355  
 to erect and maintain suitable fences, &c., entire length of road constructed subsequent to May 16, 1846, except at crossings of turnpike, &c., . . . . . 355  
 to erect barriers, &c., to prevent entrance of cattle upon the road, . . . . . 355  
 penalty for neglect to erect fences, &c., . . . . . 355  
 supreme judicial court may compel compliance; and upon neglect, may restrain corporation from crossing any turnpike, &c., . . . . . 355  
 to furnish plan of land taken, to owner, before proceeding to construct, &c., . . . . . 355, 356  
 and to fence land if requested, &c., . . . . . 356  
 upon demand of owner, within three years of taking, to furnish plan, &c., within thirty days, . . . . . 356  
 if plans, &c., are not furnished, corporation not to enter land, &c., except for surveying, &c., . . . . . 356

**10. CROSSING HIGHWAYS.**  
 turnpike road or other way not to be obstructed by crossing, . . . . . 356



**RAILROAD CORPORATIONS — continued.**

- to cross over or under turnpike, highway, or town way, &c., . . . . . 356
- may raise or lower highway or town way, &c., . . . . . 356
- before proceeding to cross, alter, or excavate, &c., to obtain decree from county commissioners prescribing what alterations may be made, &c., . . . . . 356
- and before excavating, &c., to give security, &c., upon application of mayor and aldermen or selectmen, the county commissioners may prescribe what alterations, &c., . . . . . 356
- and may order the corporation to give security, &c., . . . . . 356
- if corporation has excavated without obtaining such decree, the supreme judicial court may, by injunction, restrain the corporation, &c., . . . . . 356
- may raise or lower turnpike, &c., . . . . . 356, 357
- but before making such alteration, to notify president or clerk of turnpike corporation, &c., . . . . . 356, 357
- parties disagreeing as to alterations, either may appeal to county commissioners, &c., . . . . . 357
- if corporation, &c., neglects to make alterations, proprietors may recover damages, . . . . . 357
- mayor and aldermen or selectmen may request corporation to raise or lower turnpike at railroad crossing, . . . . . 357
- and if corporation neglects, may apply to county commissioners, . . . . . 357
- county commissioners may decide upon necessity of raising or lowering ways, . . . . . 357
- mayor and aldermen to pay costs upon decision that alteration is not necessary, . . . . . 357
  - may carry decision into effect if corporation neglects, and recover against corporation all charges, &c., . . . . . 357
- may alter the course of a highway or town way upon obtaining decree of county commissioners, &c., . . . . . 357
- before granting decree, after notice to town, &c., commissioners to decide that alteration will not injure the way, . . . . . 357
- to pay all damages occasioned to private property, &c., . . . . . 357
- may, with consent, &c., alter course of a turnpike road, canal, &c., . . . . . 357
- turnpike road or other way may be laid across railroads when authorized by commissioners, &c., . . . . . 357
- expenses of constructing way at such crossing, &c., to be borne by owners of way, . . . . . 357
- notice to be given to corporation by commissioners before laying out way across railroad, &c., . . . . . 357
- commissioners may direct manner of constructing, &c., not permitting such crossing to be at a level unless public necessity requires it, . . . . . 357
- if such way pass over railroad, commissioners to determine in what manner bridge shall be constructed, . . . . . 357, 358
- commissioners may authorize mayor and aldermen or selectmen to lay out way across a railroad, &c., . . . . . 358
  - may permit it to be laid upon a level with railroad, &c., . . . . . 358
- the corporation shall, at their own expense, so guard, &c., their rails, by plank,

**RAILROAD CORPORATIONS — continued.**

- &c., where road is crossed by turnpike, as to secure safe and easy passage across, . . . . . 358
- shall establish additional safeguards at such crossing if required by commissioners, . . . . . 355, 358
- shall keep in repair all bridges, &c., over or under any turnpike road, canal, highway, or other way, . . . . . 358
- original jurisdiction of questions touching obstructions to turnpikes, &c., vested in county commissioners, . . . . . 358
- supreme judicial court to have jurisdiction in equity, and may compel such corporations to raise or lower any turnpike, &c., and to comply with orders, &c., of commissioners, . . . . . 358

**11. CROSSINGS IN PRIVATE LANDS.**

- in case of difference between owner of land and corporation as to place or manner of crossing, either party may apply to the commissioners, &c., . . . . . 358
- commissioners may make order in relation thereto, &c., and as to costs, &c., . . . . . 358
  - may alter crossings deemed inconvenient by owner or corporation, upon application of either party, . . . . . 358
  - unless the corporation makes application, commissioners not to order corporation to construct or maintain crossing except where it is liable, &c., . . . . . 358
  - such application not to be proceeded with until applicant furnishes recognizance to county for payment of costs, &c., . . . . . 358

**12. DAMAGES AT CROSSINGS.**

- corporation liable to towns, &c., for expenses incurred by neglect at crossings, . . . . . 359
- liable to fine for obstructing ways, . . . . . 359
- towns, &c., subject to damages for injury by defect in highway within location of railroad, may recover of corporation, if liable, . . . . . 359

**13. PURCHASE OF TURNPIKES.**

- turnpike corporations may assign franchises as to the whole or part of its road, &c., . . . . . 359
- rights and duties of such turnpike corporation then to cease as to its road, &c., and railroad may be located thereon, &c., . . . . . 359
- no part of a turnpike road to be assigned without consent of commissioners or superior court, . . . . . 359
- damages caused by taking property, &c., how to be estimated, . . . . . 352, 359

**14. DRAWBRIDGES.**

- corporation to provide superintendent of drawbridge, &c., . . . . . 359
- powers and duties of superintendent, . . . . . 359
- duties of masters of vessels passing through drawbridge, . . . . . 359
- time allowed for railroad trains to cross, . . . . . 360
- rights of such corporations, as they existed on May 21, 1855, not abridged, . . . . . 360
- penalty for obstructing superintendent, . . . . . 360
  - for impairing bridge, &c., obstructing draw, &c., . . . . . 360
  - for injuring railroad bridge, wharf, &c., or hindering superintendent, &c., . . . . . 360

**RAILROAD CORPORATIONS—continued.**

**15. REGULATIONS FOR OPERATING ROAD.**

- to provide one brakeman to every two cars in passenger train, . . . . . 360
- to the hindmost car of every freight train, under penalty, . . . . . 360
- to cause bells to be placed on locomotive engines, and to be rung before crossing ways, &c., . . . . . 360
- sign-boards to be erected at crossings, &c., . . . 360
- at travelled places, upon application by selectmen, &c., to commissioners, &c., 360, 361
- costs of application, by whom to be paid, . . . 361
- when shall also erect gates across their road, and station persons to open and close them, . . . . . 361
- may be required by county commissioners to station flagmen at crossings, . . . . . 361
- penalty on, and liability of, for neglecting so to place bells, boards, gates, &c., . . . . . 361
- gate-keeper and flag-man for neglect of duty, . . . . . 361
- corporation liable in damages also for their neglect, &c., . . . . . 361, 362
- gates at crossings may be altered by county commissioners, . . . . . 362
- locomotive engines of, to be stopped within five hundred feet from intersection with another railroad, . . . . . 362
- engines of, need stop only once for crossings within six hundred feet of each other, . . . . . 362
- penalty on, for loss of life of passenger by negligence of, or of their agents, . . . . . 362
- of any one not passenger or employee, by negligence of, or of their agents, . . . . . 362
- recoverable by indictment, to use of family, or heirs of deceased, . . . . . 362
- indictment to be prosecuted within one year after injury, . . . . . 362
- not to extend to case of person unlawfully walking, or being on railroad, . . . . . 362
- punishment of agent, &c., for negligence, . . . 361, 362
- to give notice to coroner of accidents attended with loss of life, . . . . . 362
- liable for damages caused by fire from their engines, . . . . . 362
- to have insurable interest in property exposed to fire from their engines, . . . . . 362

**16. PENALTIES FOR OBSTRUCTING ROAD, &c.**

- penalty for walking or standing on track of, knowingly, . . . . . 363
- on, and liability of, persons for riding, driving, &c., beasts on road, after it is opened for use, without consent, . . . . . 363
- on persons by whose fault horses and other beasts are at large on road, after it is so opened, . . . . . 363
- for obstructing passage of engines or carriages, &c., on road of, . . . . . 363
- for attempting so to obstruct, &c., . . . . . 363
- penalties accruing to, may be recovered by treasurer, in an action of tort, . . . . . 363

**17. ACCOMMODATIONS FOR PASSENGERS, &c.**

- to furnish reasonable accommodations for passengers, under penalty, . . . . . 363
- checks to passengers for baggage, &c., when requested, under penalty, &c., . . . . . 363
- how may establish tolls, and regulate conveyance and transportation, . . . . . 363, 364

**RAILROAD CORPORATIONS—continued.**

- penalty for fraudulent evasion, &c., of tolls or fare, . . . . . 364
- persons refusing to pay toll or fare upon demand, not to be entitled to passage, &c., . . . . . 364

**18. RELATIONS OF CONNECTING ROADS.**

- freight on connecting roads to be delivered promptly and forwarded according to directions, . . . . . 364
- corporations, whose roads unite, may make contracts as to transportation, . . . . . 364
- income from such contracts to be subject to right of commonwealth to reduce tolls, or to purchase roads, . . . . . 364
- required to allow use of their road by other corporations authorized by legislature, . . . 364
- compensation and times of such use to be determined by commissioners appointed by supreme court, if parties are unable to agree, . . . . . 364
- where roads terminate in same place, each to furnish depots, &c., . . . . . 364
- if parties cannot agree, commissioners to be appointed by supreme court, &c., 364, 365
- compensation of such commissioners, how paid, 365
- locomotive engines, &c., not belonging to road, not to be run thereon without consent of corporation, . . . . . 365

**19. BONDS AND MORTGAGES.**

- bonds may be issued by, to amount of capital stock, by vote of stockholders, . . . . . 365
- payable to bearer, &c., to be negotiable in the same manner, and to the same extent, as promissory notes, . . . . . 293
- not to be issued without approval of finance committee, &c., . . . . . 365
- binding, though sold below par, . . . . . 365
- to be included in any subsequent mortgage, 365
- mortgages of property of, powers and duties of trustees entitled to possession under, . . . . . 365, 366
- annual meetings of creditors and bondholders secured by, . . . . . 366
- election of trustees under, . . . . . 366
- equity jurisdiction of supreme court over, . . . . . 366, 367
- given to commonwealth, terms and effect of, . . . . . 367
- to be in full force, without being recorded, what property bound by, . . . . . 367
- and bonds so given, directed to be recorded in counties through which road passes, . . . . . 367

**20. RETURNS AND REPORTS.**

- books of, to be at all times open, under penalty, to inspection of committee of legislature, . . . . . 367
- annual reports to be made by directors to secretary of commonwealth, with one thousand printed copies of same, . . . . . 367
- contents of, . . . . . 367-369
- to contain account of accidents, and causes thereof, . . . . . 369
- to be made before the first Wednesday of January, under penalty, . . . . . 367, 369
- if not full, directors to state reasons, . . . . . 369
- distribution of, . . . . . 53
- one set of reports to be furnished by secre-

**RAILROAD CORPORATIONS**—*continued.*

tary to each member of legislature,  
 &c., . . . . . 369  
 special, to be made to legislature, upon  
 completion, &c., of road, . . . . . 370

**21. RIGHTS OF COMMONWEALTH.**

state may purchase railroad after twenty years  
 from opening, &c., . . . . . 370

**HORSE RAILROADS.**

corporations not subject to statutes concerning  
 railroads, except as provided in their  
 charters, . . . . . 370  
 to be constructed within twelve months after  
 location, &c., . . . . . 370  
 location to be void unless construction com-  
 menced within six months, &c., . . . 370  
 penalty on traveller for fraudulent evasion of  
 toll or fare, . . . . . 364, 370  
 cars to be stopped within one hundred feet of  
 intersection with steam railroads, . . 370  
 penalty on driver and corporation, &c., . . . 370  
 provisions respecting travel on roads not to  
 apply to, . . . . . 423  
 annual report to be transmitted to secretary,  
 with one thousand printed copies of  
 same, . . . . . 370  
 time of making, . . . . . 370  
 penalty for refusal or neglect to make, . . . 372  
 form and contents of, . . . . . 370-372  
 secretary to prepare and transmit blank  
 forms for, . . . . . 372

**RAILS.**

for protection of tombs, &c., destruction of,  
 how punished, . . . . . 197, 821, 822  
 on or across town ways, &c., how removed, 245, 251  
 on bridges and ways, liability for injury from  
 want of, . . . . . 247  
 punishment for breaking, removing, &c., . . . 803

**RAINSFORD ISLAND HOSPITAL.**

provisions respecting, . . . . . 400

**RAMS.**

and he-goats, when not to go at large, . . . . . 187  
 penalty on owner, for suffering to go at large, . 187

**RAPE.**

not a bailable offence, . . . . . 836  
 ravishing a female child under ten years, how  
 punished, . . . . . 793  
 a female of ten years or more, . . . . . 793  
 assault with intent to commit, . . . . . 793

**RATABLE POLLS.**

census of, when and how to be taken, . . . 167, 168

**REAL AND MIXED ACTIONS.**

special pleas in bar in, abolished, and all mat-  
 ters which might formerly have been  
 pleaded in bar, may be given in evi-  
 dence under general issue, . . . . . 656  
 not to abate by death of parties, . . . . . 692, 693  
 on death of parties in, how heirs and devise-  
 es may be admitted to prosecute  
 and defend, . . . . . 649  
 how to be conducted, when part of several ten-  
 ants are out of state, . . . . . 647  
 not to be defeated by descent or discontinuance, 692  
 writ of right, and certain other real actions,  
 abolished, saving existing rights, . . 696  
 tenants and persons in possession liable for  
 three times amount of damages for  
 waste while actions for possession are  
 pending, . . . . . 709  
 executions for possession to be recorded in

**REAL AND MIXED ACTIONS**—*continued.*

registry of deeds within three months  
 after levy, . . . . . 690  
 limitation of, . . . . . 523, 775, 776

**WRIT OF ENTRY.**

lies for recovery of all estates of freehold, un-  
 less a different action is prescribed, . . 692  
 may be brought by parties not concluded by  
 judgment in favor of commonwealth  
 in informations, . . . . . 718, 719  
 demandant to declare on his own seisin within  
 twenty years, without specifying any  
 particular day, . . . . . 692  
 to allege disseisin, but need not aver a tak-  
 ing of profits, . . . . . 692  
 to set forth the estate claimed, but not the  
 original title, . . . . . 692  
 not required to prove an actual entry under  
 his title, . . . . . 692  
 shall recover if he proves his title, and that  
 he has a right of entry, . . . . . 692  
 on mortgage titles, to declare seisin to be in  
 mortgage, . . . . . 654, 712  
 who may be considered as a disseisor for pur-  
 pose of trying right, . . . . . 692  
 pleading and practice in, and trial of, how con-  
 ducted, . . . . . 692, 693  
 tenants in common, and others claiming same  
 premises, may join in suit for recov-  
 ery thereof, or any one may sue alone  
 for his share, . . . . . 692  
 demandant may recover such part as he proves  
 title to, though less than is demanded, . 692  
**Rents and profits, and damages for de-  
 struction and waste,** may be re-  
 covered in, . . . . . 693  
 shall be assessed by jury, when issue of  
 fact is joined, unless otherwise or-  
 dered by court, . . . . . 693  
 may be assessed by arbitrators, or by as-  
 sessor appointed by court, . . . . . 694  
 how estimated, . . . . . 693  
 value of use of improvements not to be com-  
 puted, . . . . . 693  
 not to be estimated against tenant for longer  
 term than six years, . . . . . 693  
 except by way of set-off for improvements  
 claimed, . . . . . 694  
**Improvements, how recovered, &c.,** when  
 the tenant in the action, or those under  
 whom he claims, have held pos-  
 session six years, he shall be compen-  
 sated for improvements, . . . . . 693  
 so if he has held less time, under a title which  
 he believed to be good, . . . . . 693  
 improvements when claimed, to be suggested  
 on record by tenant, with a request  
 that their value be ascertained, . . . 693  
 suggestion to be entered at same term with plea,  
 unless otherwise allowed by court, . . 693  
 when value of improvements shall be assessed  
 by jury, and when by court, . . . 693, 694  
 may in all cases be assessed by arbitrators or as-  
 sessors appointed by court, . . . . . 694  
 to what amount allowance for improvements  
 limited, . . . . . 694  
 sum allowed for improvements to be set off  
 against rents and profits, when due, . . . 694  
 in such case, if balance is for demandant, he  
 shall have judgment therefor, as well  
 as for seisin, . . . . . 694



**REAL AND MIXED ACTIONS—continued.**

if for tenant, demandant to pay before taking out execution for seisin, . . . . . 694

demandant not to recover against tenant, &c., subsequent rents and profits, until he pay such balance, . . . . . 694

if improvements exceed rents and profits accrued within six years, tenant chargeable with earlier rents, so far as to balance his claim, . . . . . 694

demandant's right to maintain actions against third parties, for mesne profits and damages, not affected by above provisions, . . . . . 694

when tenant claims for improvements, demandant may require that value of estate, without improvements, shall be determined, . . . . . 694, 719

how and by whom such value shall be ascertained, . . . . . 694

if judgment is for demandant, he may offer, on record, to relinquish to tenant for such value, . . . . . 694

what time offer to be made, . . . . . 694

if demandant relinquishes, tenant shall hold estate on paying such value, . . . . . 694

how such payment shall be made, and demandants right, if not made, . . . . . 694, 695

provision for payment, and issuing of writ of seisin, in case of death of either party after judgment, . . . . . 695

remedy, and proceedings of tenant and his assigns, if subsequently evicted by force of any title better than that of the original demandant, . . . . . 695

when demandant claims a life estate only, and pays for improvements, provision for adjustment between him and reversioner, . . . . . 695, 696

above provisions, as to rents and profits, improvements, and estimating value of premises, not apply to actions on mortgages, . . . . . 696

**PETITIONS FOR SETTLEMENT OF TITLE.**

party in possession of land claiming freehold, on term of not less than ten years, may, on petition to supreme court, compel adverse claimant to bring action, or be barred of his title, . . . . . 696

proceedings therein, . . . . . 696

**OTHER REAL ACTIONS.**

Writ of dower, . . . . . 135

For partition of lands, . . . . . 698

Forcible entry and detainer, . . . . . 707

For foreclosure and redemption of mortgages, . . . . . 712

Informations for intrusions, . . . . . 717

**REAL ESTATE.**

how construed, . . . . . 51

what to include for purpose of taxation, . . . . . 74

when taxable, . . . . . 75

mortgage, to whom taxable, . . . . . 75

of religious society, held as ministerial fund, when and to whom taxed, . . . . . 76

conveyances of, by deed, how made, &c., . . . 465-467

record of, . . . . . 154, 155

general rules of descent of, . . . . . 474

subject to payment of debts of owner, . . . 474, 476, 489

may be taken, held, transmitted, and conveyed by aliens, . . . . . 473

**REAL ESTATE—continued.**

title to, not invalid on account of alienage of former owner, . . . . . 473

title to, conveyed by commonwealth, not affected by such provisions, . . . . . 473

when may be sold for payment of debts of deceased person, . . . . . 489

taken on execution by executor, &c., to be deemed personal assets, &c., . . . . . 490

held by executor, &c., on mortgage or execution, may be sold for payment of debts, &c., . . . . . 490

if not so sold, how distributed, . . . . . 490

executors, &c., chargeable with income of, if received, . . . . . 495

sale of, by executors, administrators, and guardians, how licensed, made, &c., . . . 510-515

what liable to be sold in such cases, . . . . . 511

including rights of entry, &c., may be taken on execution, . . . . . 516, 517

no action to be brought on contract for sale of, unless such contract is in writing, &c., . . . . . 527

may be held, &c., by married woman, to her separate use, &c., . . . . . 537, 538

of married woman, how conveyed, . . . . . 538

how conveyed, when she or her husband is under guardianship, . . . . . 539

if husband is out of state, &c., how conveyed, &c., . . . . . 542

when taken for railroad, &c., damages for, how disposed of, . . . . . 539

conveyance of encumbered, without disclosing the encumbrance, how punished, . . . . . 502

penalty for selling and conveying land attached on mesne process without notice, . . . . . 502, 503

how attached, . . . . . 626

proceedings in levy of execution on, . . . . . 517-521

mortgages on, provisions respecting redemption, foreclosure, &c., . . . . . 712-717

partition of, . . . . . 698-706

**REAL ESTATE LYING IN COMMON.**

how proprietors may become a corporation, . . . 379

justice of peace may call meeting, &c., . . . . . 379

notice of first meeting, how given, . . . . . 379

organization of proprietors, &c., . . . . . 379, 380

moderator's powers, &c., . . . . . 380

clerk, treasurer, collector, &c., may be chosen, . . . . . 379, 380

tenure of their office, . . . . . 380

**Clerk**, to be sworn, and to record all votes, &c., . . . . . 380

**Treasurer**, to receive and pay out moneys, &c., . . . . . 380

**Proprietors**, may sue and be sued, &c., . . . . . 380

not to sue individually, and also as corporation, for the same injury, . . . . . 380

may make by-laws, &c., . . . . . 380

by-laws, with penalties annexed, to be approved by county commissioners, in the county where the estate lies . . . . . 380

powers of, at legal meetings, . . . . . 380

to vote according to shares of each, . . . . . 380

may raise money by assessments, &c., . . . . . 380

shares of, may be sold to pay assessments, &c., . . . . . 380

notice of sale, how to be given, &c., . . . . . 380

how redeemed after sale, . . . . . 380, 381

when proprietors may sell, &c., . . . . . 381

may, after division, hold meetings, and do all acts necessary to close their business, . . . . . 381

**REAL ESTATE, &c. — continued.**

- how long after division they may act as a corporation. . . . . 381
- records of, after final division, where to be deposited, . . . . . 381

**RECEIVERS, &c.**

- may be appointed by supreme judicial court when charters of corporations expire, &c., . . . . . 388
- powers and duties of, in such cases, . . . . . 388, 389
- Of rents and profits,** may be appointed by supreme court in equity, in suits between copartners, joint tenants, and tenants in common, . . . . . 559
- Of goods, &c., known to be stolen, &c.,** how punished, . . . . . 801
- effect of restitution of stolen property, . . . . . 801
- receiver may be tried before the thief, . . . . . 801
- indictment need not aver conviction of thief, may be punished by police courts and trial justices, . . . . . 570, 609
- of embezzled property, knowing, &c., . . . . . 801
- second convictions, and three convictions at same term, . . . . . 801
- common receivers, who to be deemed, and how punished, . . . . . 801

**RECOGNIZANCES.**

- to pay costs, on petition for highways, town ways, &c., . . . . . 232, 241
- on appeal to jury in highway cases, . . . . . 235
- by town or city, how entered into, . . . . . 159
- by town, &c., need not be with sureties, . . . . . 159
- to prosecute an appeal in civil cases, . . . . . 607, 708
- of poor debtors, arrested on mesne process or execution, . . . . . 635, 636
- remedy on such recognizances, . . . . . 641
- surrender of debtor by sureties on, how made, . . . . . 641

**IN CRIMINAL CASES.**

- condition of, how to be framed, . . . . . 834, 835
- when may be taken by magistrate, at prisoner's request, without examination, . . . . . 831, 832
- on appeal, in cases of liquors adjudged forfeited, . . . . . 447
- by parties convicted of violation of liquor law, . . . . . 448
- on appeal from sentence as rogue, common drunkard, &c., commission of like offence before judgment on the appeal to be breach of recognizance, . . . . . 821
- rogues, common drunkards, &c., at any time after arrest, on recognizing with sureties for good behavior, may be discharged, . . . . . 821
- when prisoners to be held on their own, only, . . . . . 840
- to keep the peace and be of good behavior, provisions concerning, . . . . . 828, 829, 845
- upon breach of condition thereof, suits to be commenced by district-attorney, . . . . . 828
- to keep the peace, &c., penalty of, on suit after forfeiture of, may be remitted in whole or in part, . . . . . 820
- to prosecute exceptions, and where report is made, . . . . . 844
- when party may be discharged, on paying costs and recognizing to be of good behavior, . . . . . 821
- taken by magistrates, for a prisoner's appearance at a court, to be returned by them to clerk of court or district-attorney, . . . . . 835
- upon refusal or neglect, magistrate may be

**RECOGNIZANCES — continued.**

- compelled forthwith to return the same, . . . . . 855
- may be proceeded against by attachment, as for a contempt, . . . . . 835
- in what cases may be discharged, by magistrate who takes it, on satisfaction being made to the party injured, . . . . . 834
- order to discharge, in such case, to be filed in clerk's office before sitting of court, . . . . . 834
- default of appearance of person bound by, to be recorded, and process issued against him, . . . . . 835
- how surety in, may be discharged after default, by paying to clerk, &c., . . . . . 835
- in suit on, on behalf of commonwealth, court may remit part or whole of penalty, . . . . . 829, 835, 836
- action on, not to be defeated by certain irregularities and defects of form, . . . . . 836
- judgment on, where penalty is forfeited to state, may be reviewed for any sufficient cause, . . . . . 836
- what court to grant, and mode of proceeding, . . . . . 836
- petition to state grounds relied on, . . . . . 836
- what notice to be given thereon, . . . . . 836
- if, on review, judgment is reversed, or given for less sum than has been paid, difference is to be paid to petitioner by the state, . . . . . 836
- what officer to make payment, . . . . . 836
- if review not granted, nor judgment altered, state may have costs, . . . . . 836
- of witnesses, . . . . . 833
- to appear as a witness, binds a minor and married woman, . . . . . 833
- to keep the peace, . . . . . 827-829

**FOR DEBTS.**

- what debtors may bind themselves by, . . . . . 770
- before whom to be taken, and form of, . . . . . 770, 771
- before superior court, or the clerk, . . . . . 770
- before justice of the peace or police court, . . . . . 771
- recognizance to be attested and recorded, . . . . . 771
- not to be taken unless conusee is known, . . . . . 771
- execution to issue if debt is not paid, . . . . . 771
- proceedings for obtaining, . . . . . 771
- where to run, . . . . . 771
- not to issue after three years, . . . . . 771
- but, after that time, conusee, or his executors, &c., may have scire facias or action of contract, . . . . . 771
- creditor may have alias and other successive executions, . . . . . 771
- if execution issues, &c., wrongfully, person injured may have audita querela, or other remedy, as if execution issued upon a judgment, . . . . . 772
- proceedings when conusor or conusee dies, . . . . . 771
- where there are several conusees, and one of them dies, . . . . . 771
- fees for taking and recording a recognizance, . . . . . 772
- for other services, . . . . . 772
- writ of audita querela allowed to persons injured by wrongful suing out of execution, . . . . . 772

**RECOMPENSE.**

- may be allowed by court to prosecutor after conviction of burglary, larceny, &c., so when offender has forfeited his recognizance, or escaped, . . . . . 799
- to prosecutors of forgers and counterfeiters, . . . . . 811

**RECORD OF CONDUCT.**

- of prisoners in jails and houses of correction, . . . 864
- in state prison, . . . . . 875
- to be submitted to governor and council, &c., . . . . . 875
- effect of good conduct by such record, . . . . . 864

**RECORDS.**

- public, linen paper to be used for, . . . . . 197
- county commissioners, &c., to have books of, bound, . . . . . 197
- to cause records left incomplete by clerk, &c., to be made up, &c., by successor, . . . . . 197, 198
- to provide fire-proof rooms for, and for registries of deeds, . . . . . 144, 198
- selectmen, &c., to provide fire-proof safes for, . . . 198
- when county, city, or town, may be transcribed, 198
- transcripts of, made for towns, &c., to be compared and certified by clerks, &c., . . . 198
- such transcripts, certified under oath, to have force of originals, . . . . . 198
- not to be removed from offices, except, &c., . . . 198
- to be open to public inspection, &c., . . . . . 198
- penalties for neglect of duty concerning, and defacing, altering, &c., . . . . . 199
- of proprietors of townships and common lands, in whose custody to be, . . . . . 199
- of a religious society, &c., which has ceased to exist, in whose custody to be, . . . . . 199
- forgery, &c., of, how punished, . . . . . 867

**REDELIVERY.**

- of goods detained or secreted, suits for, may be brought in supreme court in equity, . . . 559

**REDEMPTION.**

- Of mortgages on real estate, . . . . . 713, 716
- Of mortgages of personal property, . . . 767
- (See *Mortgages*.)
- Of lands set off on execution, may be made by debtor within one year after levy, . . . 520
- what payments to be made or tendered, and what allowances to be made on redeeming, . . . . . 520
- amount due for, may be ascertained, at expense of debtor, by three justices, whose certificate shall be conclusive, . . . 520
- manner of choosing justices in such case, . . . 520
- debtor may make tender of sum adjudged to be due by such justices, though he has tendered a different sum, . . . . . 520
- may recover land by writ of entry, after tender of sum due, if creditor does not release, . . . . . 520
- suit in equity may be brought for, within one year after levy, . . . . . 520
- debtor to offer in his bill payment of sum due to creditor, . . . . . 520
- court to ascertain sum due, unless, &c., and require debtor to bring it into court, . . . . . 520, 521
- debtor, in complying with such order, to be entitled to judgment and execution for seisin, . . . . . 521
- costs in suit in equity for, how awarded, . . . 521
- of estates for life, when rents and profits are levied on, may be made at any time before debt is satisfied, on payment or tender of balance due, . . . . . 521
- proceedings in such case same as in redemption of other real estate, . . . . . 521
- Of mortgaged lands set off on execution, may be made by debtor within one year after levy, . . . . . 521

**REDEMPTION—continued.**

- proceedings in such case same as in redemption of other lands, . . . . . 521
  - if creditor pays the mortgage, debtor may redeem from him as from mortgagee if no levy had been made, . . . . . 521
  - if debtor does not redeem such mortgage, creditor to hold as assignee, free from right to redeem, . . . . . 521
  - if debtor does not redeem right taken in execution, creditor to hold premises though debtor has redeemed mortgage, . . . . . 521
  - Of rights of redeeming mortgage, when sold on execution, may be made by debtor within one year after sale, 522
  - payments to be made or tendered as in case of redemption of lands, &c., . . . . . 522
  - purchaser, on payment, to release to debtor, if purchaser pay mortgage, debtor may redeem it, and also the right of redemption sold under execution, . . . . . 522
  - right, how recovered by debtor, if purchaser does not release or tender, &c., . . . . . 522, 523
  - In special cases, of rights of redeeming from levy, when taken on second execution, may be made by debtor, as in case of rights to redeem mortgaged land, . . . . . 523
  - of land of deceased persons, taken on execution, may be made by executors, &c., . . . . . 523, 524
  - of land sold on execution in favor of state, may be made as in case of sale of right to redeem mortgaged land, . . . 524
  - of premises sold under execution on judgment for damages awarded for flowage, . . . . . 757
- REFEREES.**
- corruption of, how punished, . . . . . 813
  - acceptance of bribes by, how punished, . . . . . 813
  - may make award concerning costs, . . . . . 782
  - witnesses, how summoned before, &c., . . . 672, 673
  - may administer oaths to witnesses, . . . . . 673
  - (See *Arbitrators*.)
- REFORM SCHOOL, STATE.**
- government of, vested in seven trustees, . . . . . 418
  - Trustees of, how appointed, and tenure of office, . . . . . 418
  - to receive no compensation, but to be allowed expenses, . . . . . 418
  - to be a corporation to take and hold property of institution, &c., . . . . . 418
  - to have control of buildings, &c., at Westborough, . . . . . 418
  - general powers and duties of, . . . . . 418
  - to appoint superintendent and other officers, prescribe their duties, and fix their salaries, . . . . . 418
  - duties of, as to instruction, discipline, &c., of boys, . . . . . 419
  - may bind out boys till twenty-one years old, . . . . . 419
  - duties of, as to selection of master in such cases, . . . . . 419
  - one or more to visit school at least once in two weeks, &c., . . . . . 419
  - to make quarterly examinations, . . . . . 419
  - abstract of quarterly reports to be laid before governor and council annually, . . . 419
  - to make certain inventories annually, . . . . . 55



**REFORM SCHOOL, &c.—continued.**

to examine superintendent's books once in six months, . . . . . 419, 420

**Treasurer of,** to be appointed by governor and council for three years, . . . . . 420

to give bond, . . . . . 420

to submit detailed account of receipts, &c., to governor and council, . . . . . 419

**Superintendent of,** to be appointed by trustees, . . . . . 418

to give bond, . . . . . 419

to have custody of boys, . . . . . 419

to be constant resident at the institution, . . 419

to have charge of property, and keep books of account, . . . . . 419

books, &c., of, to be open at all times to inspection of trustees, . . . . . 419

to account to treasurer for all money received, &c., . . . . . 419

to keep a register of boys, &c., . . . . . 420

to make contracts for the institution, . . . 420

may sue and be sued on such contracts, . . 420

suit by or against, not to be abated by reason of vacancy in office, . . . . . 420

**Nautical branch of,** to be vested in five trustees, . . . . . 420

trustees, appointment, tenure of office, &c., . . . . . 420

to be a corporation for certain purposes, . . 420

to have control of school-ship and other vessels, . . . . . 420

to cause boys to be instructed in navigation and seamanship, . . . . . 420

may send boys to sea, &c., . . . . . 420

superintendent to be master of school-ship, &c., . . . . . 420, 421

**Commitments to,** by whom and how made, &c., . . . . . 421

proceedings on complaint, &c., . . . . . 421

form of warrant for, . . . . . 421

variance from form, when not material, . . 421

judge to certify age and residence of boy in warrant, . . . . . 421

service of warrant, . . . . . 421, 422

duties of trial justice, &c., before whom boy is brought for trial, &c., . . . . . 422

proceedings on second commitment, . . . . 422

unfit subjects for, may be held for trial in superior court, . . . . . 422

appeal on order for, to superior court, . . . 422

fees of judges, &c., . . . . . 422

may be ordered by superior court and supreme judicial court, when boys are convicted of certain offences, . . . . . 422

proceedings in such cases, . . . . . 422

term of, . . . . . 422

discharge of boy from, to release him from all disabilities of sentence, . . . . . 422

being sent to sea to operate as, . . . . . 420, 422

inmates may be transferred from one institution to the other, . . . . . 423

by whom to be transferred, . . . . . 423

support of, by towns, and liability of kindred, . . . . . 423

**REFORMED.**

certain convicts may be discharged when reformed, . . . . . 859

when discharged, and committing the offence anew, how punished, . . . . . 821, 859

**REGISTERS OF DEEDS.**

not to hold certain other offices, . . . . . 30, 33

how and when chosen, and term of office, . . 70, 71

**REGISTERS OF DEEDS—continued.**

in case of failure to elect, county commissioners to issue warrant for new election, . . 72

vacancies in office of, how filled, . . . . . 72, 153

to be sworn, and give bond, . . . . . 153

to be resident of county or registry district, . . 71

return of votes for, . . . . . 59-61

blanks to be furnished by county commissioners to towns, &c., . . . . . 147

special provisions for Suffolk county respecting the election of, . . . . . 59, 61

may be removed from office for incapacity, &c., 153, 154

papers of, on removal, to be delivered to clerks of courts, &c., . . . . . 154

to reside in place where office is kept, . . . . 154

to keep office open every day except Sundays and public holidays, . . . . . 154

form of book for noting receipt of instruments, 154

to enter all instruments left for record in order in which they are received, . . . . . 154

to note day, hour, and minute when received, 154

not to record deed without certificate of acknowledgment, &c., . . . . . 468

to record deeds legibly, and note interlineations and erasures, . . . . . 154

to certify on instrument recorded, time of receipt, number of book, &c., . . . . . 154

to keep two sets of indexes, . . . . . 154

forms of such indexes, . . . . . 154

to enter names of parties to instruments on indexes, within twenty-four hours of receipt, . . . . . 154, 155

how to enter name of grantor when conveyance is made by sheriff, &c., . . . . . 155

deeds of executors, &c., and partitions of land, how to be indexed, . . . . . 155

to make annual returns to secretary of number of instruments recorded, fees, &c., . . . 155

form of such returns, . . . . . 155

penalty for neglect to make such returns, . . 155

fees of for official service, . . . . . 787

exempt from serving as jurors, . . . . . 679

instruments required to be recorded in registry of deeds, to be recorded in registry of county or district where estate lies, . . 154

copies of indexes to be made annually, with names of grantors and grantees assorted alphabetically, &c., . . . . . 155

copies of indexes, or new indexes, may be made and printed for sale, &c., . . . . . 155, 156

**In Barnstable,** special provisions respecting former records, . . . . . 154

**In Berkshire,** three registers and registry districts, . . . . . 153

limits of district and location of offices, . . 153

**In Bristol,** two registers and registry districts, 153

limits of districts, and location of offices, . . 153

**In Middlesex,** two registers and registry districts, . . . . . 153

limits of districts, and location of offices, . . 153

**In other counties,** office of, to be kept in shire town, . . . . . 153

**REGISTERS OF PROBATE AND INSOLVENCY.**

when and how chosen, . . . . . 38, 70

return of votes for, . . . . . 59, 60

term of office, . . . . . 70, 71

in case of failure to elect, governor to order new election, . . . . . 71

vacancy, how filled by election, . . . . . 72

how filled until elections are held, . . . . . 603

not to hold certain other offices, . . . . . 30, 33

**REGISTERS OF PROBATE, &c. — continued.**  
 to give bond to treasurer of the commonwealth, 602  
 to take oaths prescribed by constitution, . 29, 33, 602  
     additional oath to be filed in probate office, . 602  
 to make return, annually, to secretary, of  
     money received by them, . . . . . 129  
 penalty for neglect to make such return, . . . . . 129  
 may be removed by supreme judicial court, . . 553  
 to receive and keep wills deposited in office, and  
     give certificate thereof, . . . . . 477  
 may authorize suits on bonds in which judge is  
     principal or surety, . . . . . 506  
 not to be of counsel in any matter pending in  
     either of his courts, . . . . . 602  
 not to hold certain trusts, nor to be interested  
     in the fees thereof, . . . . . 602  
 to have custody of records of probate courts,  
     courts of insolvency, and of prior pro-  
     ceedings in insolvency, . . . . . 602  
 to perform such duties as are required by law  
     or prescribed by judges, . . . . . 602  
 exempt from serving as jurors, . . . . . 679  
     from military duty, . . . . . 93  
 may, in certain cases, take depositions to per-  
     petuate testimony, . . . . . 676  
 not to receive fees except in cases expressly  
     provided for, . . . . . 604  
 to be registers of probate courts, and courts of  
     insolvency, . . . . . 574, 581  
**Assistant registers, to be appointed in coun-  
     ties of Essex, Middlesex, Norfolk,  
     Suffolk, and Worcester, . . . . . 603**  
     to be sworn and give bond, . . . . . 603  
     to perform duties under direction of regis-  
     ter, and in case of his disability, or of  
     a vacancy in office, to act as register, . 603  
**Temporary register, how appointed and  
     sworn, . . . . . 603**  
     to be paid by register, or if there is no regis-  
     ter, from the treasury of the common-  
     wealth, . . . . . 604  
**Salaries of registers and assistant registers in  
     the several counties, . . . . . 603**  
 (*See Insolvency, Probate Courts.*)  
**REGISTRARS.**  
 may be chosen in cities and towns of more than  
     ten thousand inhabitants, . . . . . 170  
 to be sworn, . . . . . 170  
 duties of, in relation to registry, &c., of births,  
     marriages, and deaths, same as those  
     of town clerks, . . . . . 170  
 to issue certificates of intention of marriage to  
     parties, . . . . . 529  
 penalty on, for issuing certificate to minors in  
     certain cases, . . . . . 529  
 may require affidavit of age of parties applying  
     for certificates, . . . . . 529  
**REGISTRY AND RETURNS.**  
 of births, marriages, and deaths, . . . . . 168-170  
 (*See Births, Marriages, Deaths.*)  
**RELEASE.** (*See Deed.*)  
 deed of, . . . . . 466  
**RELIGIOUS ASSOCIATIONS.**  
 seven or more persons to be bodies corporate  
     for religious purposes, &c., . . . . . 207  
 purpose and location, to be specified in articles, 207  
 to have usual corporate powers, . . . . . 207  
 may hold real and personal property not ex-  
     ceeding one hundred thousand dollars, 207  
 estate of, not exempted from taxation, when  
     used for other purposes, . . . . . 207  
 (*See Parishes and Religious Societies.*)

**RELIGIOUS FREEDOM.**  
 established, . . . . . 31  
**RELIGIOUS SOCIETIES.**  
 (*See Parishes and Religious Societies.*)  
**RELIGIOUS WORSHIP.**  
 disturbing, how punished, . . . . . 819  
**REMAINDERS AND REVERSIONS.**  
 expectant on estates tail, when and how barred, 466  
 contingent, when estate may be sold, &c., sub-  
     ject to, . . . . . 472, 473  
 provisions relating to cutting trees on wood-  
     land, subject to, . . . . . 473  
 owners of, liable to tenants for life for sums  
     paid for improvements, on recovery  
     of premises in real actions, . . . . . 695  
     how amount of such liability may be ascer-  
     tained if parties do not agree, . . . . . 696  
 rights and remedies of, in such case, after  
     termination of life estate, . . . . . 696  
 may maintain action for waste, . . . . . 709  
 not entitled to partition, except in certain  
     special cases, . . . . . 699, 705  
 may have partition notwithstanding exist-  
     ence of lease, . . . . . 705  
     how, when remainders are limited to per-  
     sons not in being, . . . . . 705  
 when right of entry or action for estate in, ac-  
     crues, . . . . . 775  
     limitations of such rights, . . . . . 775, 776  
 estates in, barred, when tenant's right of entry  
     or action is barred, . . . . . 776  
**REMOVAL OF ACTIONS.**  
 from superior to supreme court, by consent of  
     parties or upon affidavit, how, . . . 562  
 from justices of the peace, &c., to superior  
     court, where title to real estate is in  
     question, &c. . . . . 606, 731  
**REMOVAL FROM OFFICE.**  
 of judicial officers, on address of legislature, . . 27  
 of militia officers, . . . . . 32, 100  
 of executors, guardians, &c, for insanity, &c., . 503  
**REMOVAL OF PAUPERS.**  
 to town of their settlement, . . . . . 394  
**REMOVAL OF PRISONERS.**  
 when may be made by sheriff, from one jail to  
     another, . . . . . 857  
 when and how to lunatic hospital, . . . . . 412, 878  
 in case of pestilence, . . . . . 864  
**RENT.**  
 due from land demised for any estate of free-  
     hold, or for years, to be paid by person  
     in possession in proportion to land  
     held, . . . . . 471  
 tenants at sufferance, liable for, . . . . . 471  
 how recovered in such cases, &c., . . . . . 471  
 action for, may be brought by or against execu-  
     tors, &c., for arrears accrued in life-  
     time of deceased, . . . . . 471  
 provisions not to impair other legal remedies for  
     recovery of, by landlords, . . . . . 472  
 of dwelling-house occupied by debtor and his  
     family to be considered claim for nec-  
     essaries, . . . . . 472  
 accruing after levy on the reversion, to be paid  
     by lessee to judgment creditor, . . . 518  
 how apportioned, when part of reversion is  
     levied on, . . . . . 518  
**RENTS AND PROFITS.**  
 when may be sold on warrant of distress for  
     taxes, . . . . . 84  
 how execution may be levied on, . . . . . 518  
 how recovered in writs of entry, . . . . . 693

**RENTS AND PROFITS** — *continued.*

- when and how long tenant is liable for rents and profits, . . . . . 693
- how set off against improvements by respondent in petition and writs for partition, . . 703
- received by mortgagee or person under him, to be accounted for to owner of equity upon redeeming, . . . . . 713-715
- how allowed in informations for intrusion in favor of state, and writs of entry brought by persons not concluded by judgments therein, . . . . . 718, 719

**REPAIRS OF WAYS AND BRIDGES.**

- provisions respecting, . . . . . 245-248  
(*See Real Actions.*)

**REPEAL.**

- of acts by the General Statutes, . . . . . 881-906
- effect of such repeal, . . . . . 880, 881
- list of acts previously repealed, . . . . . 907, 908

**REPLEVIN.**

- Of beasts distrained or impounded,** . 730, 731
- action may be brought before justice of peace or police court in form heretofore established, . . . . . 605, 730
- writ to be sued out, served, returned, and the case tried as in other civil actions, . . 730
- to require bond, with sureties, to prosecute suit, &c., to be given in double value of property, without expressing amount, 730
- not to be served until bond is given, . . . 730
- if parties cannot agree upon value of property, three appraisers to be appointed and sworn to appraise same, . . . . . 730
- officer to return bond with writ, and to include in his return on writ a certificate of appointment of appraisers, the appraisal, and expense, . . . . . 730
- if, upon default, trial, or otherwise, it appears that the beasts were lawfully taken or distrained, defendant to have judgment for penalty, return, &c., . . . 731
- when beasts are returned, they shall be held as if they had not been replevied, . . 731
- if it appears that beasts were taken, &c., without sufficient cause, plaintiff to have judgment for damages and costs, . . . . . 731
- when sum demanded for penalty or damages exceeds one hundred dollars, or title to real estate is concerned, case may be removed to superior court, . . . 731
- Of other property,** may be brought before superior court, when goods of more than twenty dollars' value are unlawfully taken or detained from the owner, . . . . . 731
- or by owner of goods of that value, if attached or taken in execution for another's debt, &c., . . . . . 731
- when value of property does not exceed one hundred dollars, action may be brought before police court or justice of the peace, . . . . . 731
- form of writ of, and of writ of return, to be the same as heretofore established, 731, 732, 733
- writ to be sued out, served, and returned as in other actions, except where a different course is prescribed, . . . . . 731
- not to be served, unless plaintiff gives a bond, with sureties to prosecute suit, &c., in a penalty double the value of property, . . . . . 731

**REPEVIN** — *continued.*

- value of property to be ascertained, if parties do not agree, by three appraisers, . . . . 731
- bond to be returned with the writ, or filed in clerk's office if writ is returnable to superior court, . . . . . 731
- officer to state in his return on writ the appointment of appraisers, the appraisal, and expenses, . . . . . 730, 731
- if it appears that defendant is entitled to return, judgment therefor with damages and cost, . . . . . 731
- damages on judgment for return, when the goods replevied had been attached or taken on execution, to be not less than twelve per cent. a year on value of the goods, . . . . . 732
- how damages recovered by officers, or by their executors, &c., on account of goods attached, &c., shall be applied, 648, 651, 732
- damages or goods recovered against the executor, &c., of an attaching officer, to be paid or returned in full, though officer's estate be insolvent, . . . . . 648
- how goods, replevied from an attaching officer, may be further attached, . . . . . 624, 625
- if the goods were unlawfully taken or detained, plaintiff shall have judgment for damages caused thereby, . . . . . 732
- General provisions,** . . . . . 732, 733
- how long replevied goods, that had been attached or taken on execution, shall be held after judgment for return, . . 624, 732
- when judgment is for return of such goods, plaintiff and his sureties liable for whole, or their full value, although attachment was made after replevin, . 624
- damages shall be assessed by court or jury, as in other civil actions, . . . . . 732
- writ of return to be in same form as heretofore used, . . . . . 732, 733
- these proceedings not to preclude defendant from his remedy on replevin bond, or against the officer, . . . . . 733
- if officer to whom writ of return is committed cannot find the property, he shall return the fact on the writ, and defendant may have a writ of reprisal, . . . 733
- limitation against surety on replevin bond, . . 733
- action of, by or against attaching officer, not to abate by his death, . . . . . 648
- damages or goods recovered against executor or administrator of an attaching officer to be paid or returned in full, although estate is insolvent, . . . . . 648
- when judgment for return is rendered against an executor or administrator, the goods returned shall not be considered as assets for which he is accountable, . . . . . 651
- when such judgment is rendered for an executor or administrator of a trustee, carrier, depository, or other person having only a special property in the goods, such goods shall not be considered assets, &c., but how disposed of, . . . . . 651
- costs in action of, . . . . . 780, 781
- PERSONAL REPLEVIN.**
- writ, when to issue as of right, . . . . . 737
- issuing and return thereof, . . . . . 739



**REPLEVIN** — *continued.*

may be sued out in behalf of plaintiff without express authority, . . . . . 740

such person may be required to give security for payment of damages and costs that may be rendered against the plaintiff, 740

to whom to be directed, and by whom served, . 739

form of writ, . . . . . 739

shall not deliver from restraint unless bond be given, . . . . . 739

bond, how to be returned, . . . . . 739

officer serving the writ to be responsible for sufficiency of sureties on the bond, . . 739

if plaintiff is discharged, he may recover costs, defendant to recover costs and damages if plaintiff does not sustain action, . . . . . 739

when to have judgment for redelivery of plaintiff's body, . . . . . 739

if he has secreted plaintiff's body, *caus* to issue to take, . . . . . 740

may deny return charging him with secreting, &c., . . . . . 740

if guilty of secreting, to be committed, . . 740

term of commitment, . . . . . 740

proceedings, where plaintiff's body is produced by defendant after a return of secreting, &c., . . . . . 740

appeal lies to supreme judicial court by either party, as in civil actions, . . . . . 740

whole case carried up on appeal, . . . . . 740

parties to, may be described where their names are not known, . . . . . 740

**REPLICATION.** (*See Pleadings.*)

not required after answer, except by order of court on motion of defendant, . . . . 656

may be made to the answer by plaintiff, if he pleases, at any time before trial, . . . 656

to state specifically any facts in reply to new matter in answer, . . . . . 656

may raise an issue of law by demurrer, . . 656, 657

may allege facts occurring after suit brought, . 657

trial not to be delayed for want of, unless by order of court, . . . . . 661

supplemental may be made by leave of court, . 657

order allowing, may be made in or out of court, and in any county, . . . . . 660

form of, . . . . . 669

**REPORTER.**

of decisions of the supreme court to continue in office, . . . . . 616

to be appointed by governor and council, and removable at their pleasure, . . . . . 616

to attend personally all law terms, and terms for capital trials, of supreme court, and make report of decisions, . . . . . 617

to publish reports annually; and all cases argued before first day of September to be published in ninety days, . . . . . 617

to publish opinions contained in records and re-  
scripts, if no further opinions are written out within sixty days, . . . . . 554

to report cases more or less at large, according to his discretion, . . . . . 617

when cases are determined at any other time than at a law term, court to communicate opinion to reporter, . . . . . 617

when absent, some person to be deputed by him, or be appointed by court, . . . . . 617

compensation of, . . . . . 617

**REPORTS.**

books of, of cases adjudged in other states, ad-  
missible evidence of their laws, . . . 679

**REPORTS** — *continued.*

of auditor, to be prima facie evidence, . . . . 616

of masters in chancery and auditors, sums accorded by, to bear interest, . . . . 685

of questions of law by single judge of supreme court to full court, . . . . . 554

arising in equity cases, how made to full court, . . . . . 560

of evidence taken before single judge in equity cases, how required, &c., . . . . . 561

of questions of law, may, after verdict, be made to supreme court, . . . . . 566

in criminal cases, where important and doubtful questions of law arise, may be made by judge, if defendant after conviction desires or requests it, . . . . 843

further proceedings to be then stayed, . . . 843

defendant to recognize for his appearance at the supreme judicial court, . . . . . 844

proceedings, if he fails, to recognize, . . . 844

power and duty of the court to act on such reports, . . . . . 844

party may have his writ of error for defect of record, . . . . . 844

**Of public officers, boards, and institutions, except, &c., to include year ending September thirtieth, and be submitted to secretary on or before October fifteenth, annually, . . . . . 52**

and, with annual abstracts prepared by secretary, to be laid before legislature on first Wednesday of January, . . . . . 52

of certain public officers, may be put in type previous to first Wednesday in January, . . . . . 53

what to be styled "public series," . . . . . 52

special, to be made when public interest requires, . . . . . 52

of board of education, number to be printed, and distribution of, . . . . . 53

of board of agriculture, number to be printed, and distribution of, . . . . . 53

number of, may be increased by secretary, if public interest requires, . . . . . 53

of railroad corporations, to be filed in separate complete sets, . . . . . 53

to whom furnished, . . . . . 53

public series, only, to be furnished libraries, &c., . . . . . 53

to be furnished to towns, . . . . . 53

penalty for neglect in making, &c., . . . . 53

**REPRESENTATION.**

concerning character, &c., to furnish no cause of action, unless in writing, . . . . . 527

of credit, with intention to defraud, must be in writing, . . . . . 802

**REPRESENTATIVES.**

right of the people to instruct, . . . . . 16

in general court, by whom and when chosen, . . . . . 21, 34-36, 38, 62

travelling expenses of, paid from state treasury, 21

qualifications of, . . . . . 21, 38, 39

how far privileged from arrest, . . . . . 22

exempted from serving as jurors, . . . . . 679

oath of, . . . . . 29, 33

certain officers not to be, . . . . . 30, 33

number and apportionment of, . . . . . 38, 39, 64

districts for choice of, how constituted, . . . 38, 39

manner of conducting elections of, . . . . 64, 65

proceedings in case of failure to elect, . . . . 65

certificates of election, by whom made, . . . 65, 66

duplicates to be made, one transmitted to

**REPRESENTATIVES** — *continued.*

secretary, and one delivered by constable, &c., to person elected, . . . . . 65, 66  
 form of certificate, . . . . . 66  
 as members of committees, may administer oaths to witnesses, . . . . . 49  
 not eligible to office created during their term of service, except by vote of the people, . . . . . 49

**HOUSE OF.**

may impose fines on towns that neglect to return members, . . . . . 21  
 the grand inquest of the commonwealth, . . . 21  
 to originate all money bills, . . . . . 21  
 may adjourn, not exceeding two days, . . . . 21  
 one hundred members of, a quorum, . . . . . 22, 39  
 judge of returns, elections, and qualifications of its members, . . . . . 22  
 to choose speaker and appoint its own officers, . . 22  
 to establish rules of proceedings, . . . . . 22  
 may punish for contempt, and threatening or assaulting members, &c., . . . . . 22  
 cases where rights and privileges of, are concerned, how tried, . . . . . 22  
 when may require opinions of justices of supreme judicial court, . . . . . 27  
 organization of, . . . . . 47  
 secretary to make list of persons returned to, and deliver same to sergeant-at-arms, to transmit certificates of election and list of members to, . . . . . 47  
 those persons only whose names are on list to be admitted to seats, unless admitted by house, . . . . . 47  
 when and by whom to be called to order, . . . 47  
 compensation and mileage of members of, when and how paid, . . . . . 48  
 deduction to be made for absences, . . . . . 48  
 doorkeepers, messengers, and pages, how appointed, . . . . . 133, 134  
 compensation of doorkeepers, &c., . . . . . 48  
 books, &c., except, &c., not to be ordered for members of, at charge of state, . . . . . 48  
 not to sit for transaction of ordinary business on certain public holidays, . . . . . 49  
 proceedings in case of vacancy in, . . . . . 66  
**Speaker of,** compensation, . . . . . 48  
 to issue precept for new election in case of vacancy, . . . . . 66  
 to approve accounts of expenditures incurred by order of house, . . . . . 140  
**Clerk of,** to act as clerk of succeeding house till successor is chosen, . . . . . 47  
 may appoint deputy and assistant, . . . . . 47  
 oath of, and of deputy and assistant, . . . . 47  
 salary of, . . . . . 48  
 to make index and duplicate journal, . . . . . 48  
 to certify attendance on written statement of members, . . . . . 48  
 to have custody of journals, files, &c., of, . . 49  
 copies certified by, to be evidence, . . . . . 49

**REPRESENTATIVES IN CONGRESS.**

to be apportioned among the several states, . . 2  
 compensation, privileges, and disqualifications of, . . . . . 3, 5  
 districts for choice of, . . . . . 67, 68  
 when chosen, . . . . . 68  
 return of votes for, . . . . . 59, 60, 68  
 proceedings in case of failure to elect, . . . . 68  
 in case of vacancy, . . . . . 2, 68  
 (*See Constitution of the United States.*)

**RESCUE.**

of person arrested by order of senate or house of representatives, how punishable, . . . . . 22  
 of persons from custody, how punishable, . . 813, 876  
 of cattle distrained or impounded, action, &c., for, . . . . . 186

**RESERVOIRS.**

punishment for wilful, &c., injury to, . . . . . 804  
 wilful or malicious corrupting or injuring, . . 823  
 poisoning, how punished, . . . . . 794

**RESOLVES,** (*see Bills and Resolves, Laws,*)

17, 18, 32, 49

**RESPONDENTIA.**

recording not necessary to validity of contract of, . . . . . 767  
 how proved in insolvency proceedings, . . . 584

**RETAILERS.**

not to give credit to students, &c., under penalties, &c., . . . . . 457

**RETURNS.**

of writs, . . . . . 622  
 of executions, . . . . . 687  
 when issued for possession of real estate, to be first recorded, . . . . . 690  
 of bail bonds, . . . . . 643  
 of bonds taken when goods attached and delivered to defendant or part owner, . . . . . 629, 630  
 of bonds in action of replevin, . . . . . 730, 731

**REVENUE.**

provisions of United States constitution concerning, . . . . . 3-5

**REVIEW.**

writs of, may be sued out in cases wherein trial by jury is waived, as in other cases, . . . . . 661  
 of final judgments, allowed as of right, only in case of default of a defendant, who was out of the state, . . . . . 747  
 writ of, may be sued out, in such case, at any time within a year after judgment, . . . 747  
 may be granted, in such case, by supreme court, on petition, if filed within a year after defendant has notice of the judgment, . . . . . 565, 747  
 writs of, and petitions for, to be indorsed like original writs, . . . . . 748  
 may be granted by supreme court, of all its own judgments, and those of superior court, on such terms as may be deemed reasonable, . . . . . 747  
 by superior court, of its own judgments, and those of justices of the peace, . . . 747  
 within what time petition for shall be filed in different cases, . . . . . 747  
 where petition for, may be filed, and notice thereof made returnable, . . . . . 747  
 if petition for, be not granted, costs may be awarded to respondent, . . . . . 747  
 of judgment of superior court, to be tried in either court, when granted by supreme court, . . . . . 747  
 in what county to be tried, . . . . . 747  
 on petition for, or when sued as of right, court may stay or supersede execution; on what terms, . . . . . 747, 748  
 execution not to be stayed, &c., without order of court, . . . . . 748  
 may be had by one or more of several defendants, as if they were all, . . . . . 748  
 provisions, in such case, if damages recovered in the original suit be reduced or increased, . . . . . 748

**REVIEW—continued.**

writ of, how to be sued out, form of, and how  
be served, . . . . . 747

when sued out by original plaintiff, defend-  
ant's property may be attached, . . . 748

of the pleadings, trial, evidence, judgment, and  
costs, . . . . . 747, 748

when amount of former judgment is reduced,  
original defendant to have execution for  
the difference, with his costs, . . . . . 748

or, in such case, if former judgment be not sat-  
isfied, one judgment may be set off  
against the other, and execution issue  
for the balance, . . . . . 748

when amount of former judgment is increased,  
original plaintiff to have judgment  
and execution for the excess, . . . . . 748

in actions of replevin, and wherever a set-off  
is filed, original defendant to be re-  
garded, as to foregoing provisions,  
like a plaintiff in other actions, . . . 748

attachments and bail in original suit not held  
to satisfy judgments on review, . . . 748

of judgment on recognizance where penalty is  
forfeited, . . . . . 836

for what cause, and mode of procedure, . . 836

petition for, and notice thereof, . . . . . 836

if judgment is reversed, or for less sum,  
difference to be paid to petitioner, . . 836

by whom to be paid, . . . . . 836

if review not granted, nor judgment altered,  
court may award costs to common-  
wealth, . . . . . 836

**REVISED STATUTES.**

repeal of, . . . . . 881

**REWARDS.**

governor may offer and pay, not exceeding one  
thou and dollars, for the apprehen-  
sion, &c., of certain convicts, &c.,  
escaped from prison, or those charged  
with high crime, . . . . . 831

may draw warrant on treasury for such  
payment, . . . . . 831

mayor and aldermen, or selectmen, may offer,  
&c., not exceeding five hundred dol-  
lars, for arresting and securing, &c., 831

how such reward is to be paid, . . . . . 831

proceedings where more than one claimant  
appears, . . . . . 831

decision of, &c., to be final, . . . . . 831

**RIGHTS.**

declaration of, . . . . . 14

natural and essential, of all men, . . . . . 14

**RIOTS.**

and tumults, how to be suppressed, . . . . . 815

neglect or refusing aid to suppress, how  
punished, . . . . . 815

penalty for neglect of duty, . . . . . 815

may be suppressed by force, . . . . . 110, 111, 815

proceedings in calling out an armed force,  
815, 816

whose orders such force shall obey, . . . 816

persons aiding to suppress, held guiltless, . . 816

rioters responsible for injuries to those aiding  
to suppress, . . . . . 816

towns responsible for property destroyed or  
injured by persons riotously assem-  
bled, . . . . . 816

may recover the same from the offenders, . 816

**ROADS.**

persons meeting on, with carriages, &c., to turn  
to the right, . . . . . 423

**ROADS—continued.**

passing another carriage, travelling the  
same way, to turn to the left, . . . . 423

driver of leading carriage on, not to wilfully ob-  
struct, . . . . . 423

sleighs not to be used on, without bells, . . . . 423

penalties for violations of these provisions, . . 423

complaint for such violations to be made within  
three months, . . . . . 423

these provisions not to apply to horse rail-  
roads, . . . . . 423

To swamps, construction of, authorized, . . 752

petition for improvements to be filed with com-  
missioners, . . . . . 752

contents of, and bond for expenses, . . 752, 753

what notice to be given thereof, . . . . . 753

duties and powers of commissioners, . . . . . 753

appeal from the decisions of the commissioners, 753

where the premises are in one town or city, peti-  
tion may be made to selectmen, &c., 753

repairs of such improvements, how to be made, 753

selectmen to proceed as provided for commis-  
sioners, . . . . . 753

fees of selectmen, &c., . . . . . 753

appeal from selectmen to county commission-  
ers, . . . . . 753

proceedings on such appeal, . . . . . 753

punishment for opening, through burial grounds  
without consent, . . . . . 822

(See Highways.)

**ROBBERY.**

robber being armed with dangerous weapon,  
with intent, &c., how punished, . . . 793

by force and violence, not being so armed, . . 793

**ROCHESTER.**

land in, ceded to United States, . . . . . 45

**ROCKETS.**

penalty for selling without license, . . . . . 460

for firing without license, . . . . . 460

**ROGUES.**

how to be arrested, secured, and punished, . 820, 821

**RULE DAYS.**

to be established by supreme court for transac-  
tion of equity business, . . . . . 560

probate appeals to be entered at, . . . . . 577

**RULES.**

of court may be made by

Supreme court, for conducting business,  
and regulating practice in equity, . . 561

for reporting oral testimony before single  
judge in equity cases for use of full  
court on appeal, . . . . . 561

for settling the truth of exceptions alleged  
and not allowed, . . . . . 567

regulating changes in the forms of writs in  
all courts, . . . . . 622

Supreme and superior courts respec-  
tively, for regulating the practice,  
and conducting of the business of  
such courts, . . . . . 566

various purposes for which such rules may  
be made, . . . . . 566

respecting times and places of hearing moti-  
ons at chambers, notice, and other  
matters respecting interlocutory or-  
ders, &c., . . . . . 660

as to issuing commissions in term time or  
vacation, filing interrogatories, &c.,  
for taking depositions out of the state, 675

respecting time and manner of opening, fil-  
ing, and keeping, &c., of depositions, 675

Police courts, for the orderly and uniform



**RULES—continued.**

conducting of the business of the courts, . . . . . 571, 573  
 the justices of the police court of Boston may also make rules for arranging, equalizing, &c., business in their court. . . 573  
**Probate courts**, the several judges of, may make rules, and shall return a statement thereof to supreme court as soon as made, . . . . . 576  
 supreme court may alter and amend same, or make further rules to secure uniformity, &c., . . . . . 576

**RULES—continued.**

**Courts of insolvency**, judges of, or a majority, may make rules, which shall be submitted to supreme court for approval, amendment, &c., . . . . . 582  
 supreme court may in all cases make general rules for, to maintain regular and uniform proceedings, . . . . . 582  
**RUNAWAYS.**  
 how may be treated, . . . . . 820, 821  
**RYE.**  
 standard weight of bushel of, . . . . . 265

**S.**

**SABBATH**, (*see Lord's Day*), . . . . . 434, 435  
**SABBATH SCHOOL.**  
 may be maintained in state prison, . . . . . 875

**SALARIES.**  
 of public officers, when and how payable from the treasury, . . . . . 140  
 (*See titles of the several officers.*)

**SALE OF LANDS BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.**

**I. BY EXECUTORS AND ADMINISTRATORS.**

**For payment of debts**, may be made, if personal estate insufficient, . . . . . 489, 510  
 license for, may be granted by supreme judicial court, superior court, or probate court, . . . . . 510  
 petition for, by executor, &c., and what to contain, . . . . . 510  
 notice of petition for, to be given to all parties interested, . . . . . 510  
 notice may be dispensed with, if all parties interested assent to, . . . . . 510  
 not to be granted if persons interested give bond to pay the debts, . . . . . 510  
 to be in force one year only, except, &c., . . 515  
 of whole, or specific part, may be licensed, if sale of part only would injure residue, . . . . . 510  
 not to be made till executor, &c., give bond to account for proceeds after paying debts, . . . . . 510  
 petition for license, when presented to supreme judicial court, or superior court, to be accompanied by certificate from probate court, &c., . . . . . 510  
 when provision is made in will for payment of debts, such provision to be set forth in petition, and assets marshalled accordingly, . . . . . 510  
 when license for is given, executor, &c., authorized to convey by deed, . . . . . 511  
 liability to, extends to all estate of deceased, rights of entry, &c., . . . . . 511  
 and to lands fraudulently conveyed by deceased, &c., . . . . . 511  
 such lands first to be recovered by executor, &c., by action, . . . . . 511  
 oath to be taken by executor, &c., before fixing time, &c., of, . . . . . 511  
 notice of, how to be given, . . . . . 511

**SALE OF LANDS, &c.—continued.**

affidavit of, filed and recorded, to be evidence thereof, . . . . . 511  
 to be by public auction, and may be adjourned, . . . . . 511  
 notice of adjournment of, how given, . . . 511  
**For payment of legacies**, may be made when personal estate insufficient, . 511, 512  
**By foreign executor and administrator**, may be made in this state, on filing copy of appointment, &c., . . . . . 512  
 such executor, &c., if not bound in place where appointed, to give bond to account for proceeds, &c., . . . . . 512  
 to give further bond to account for surplus, after paying debts, &c., if more than sufficient is sold, . . . . . 512  
 to be sworn, and to give notice, &c., as other executors, &c., . . . . . 512  
 all proceedings by, to be had in court for county where copy of appointment is first filed, . . . . . 514

**II. BY GUARDIANS.**

**For payment of debts**, may be made, when personal estate of wards insufficient, . 512  
 license for, may be granted, as to executors, &c., . . . . . 512  
 of whole, or specific part, may be made when partial sale would injure the residue, . 512  
**For maintenance and investment**, may be made, when income of ward's estate is insufficient, to maintain him and his family, . . . . . 513  
 or when it would be for benefit of ward to invest proceeds in productive stock, . 513  
 license for may be granted on petition, and to specify purpose of sale, . . . . . 513  
 not to be made till guardian gives bond to sell according to law, and to account, &c., for proceeds, . . . . . 513  
 proceeds of, how to be applied, if sale is for maintenance, . . . . . 513  
 how to be applied if sale is for investment, may be made in certain cases, on petition of friend of minor, . . . . . 513  
 by guardian, or other person authorized by court, . . . . . 513  
 proceeds of, in such cases, how disposed of, . 513  
**By foreign guardian**, may be made, on filing a copy of appointment, &c., . 513, 514

**SALE OF LANDS, &c.—continued.**  
 such guardian, if not bound in place where appointed, to give bond before sale to account for proceeds, &c., . . . . . 514  
 to give further bond to account for surplus, after paying debts, &c., if more than sufficient is sold, . . . . . 514  
 to give additional bond, if sale is made for maintenance or investment, . . . . . 514  
 all proceedings by, to be had where copy of appointment is first filed, . . . . . 514  
 licenses for, may be granted by supreme judicial court, superior court, and probate courts, . . . . . 514  
 not to be granted, except to guardians of minors, without assent of overseers of poor, . . . . . 514  
 to continue in force for one year only, . . 515  
 not to be granted until notice to parties interested, . . . . . 514  
 who entitled to such notice, . . . . . 514  
 oath to be taken by guardian before fixing time of sale, &c., . . . . . 514

**III. PROVISIONS COMMON TO SALES BY EXECUTORS, &c., AND GUARDIANS.**  
 proceedings by foreign executor, &c., to be had in court for county where copy of appointment is first filed, . . . . . 514  
 licenses for, by whom and how granted, . . 514, 710  
 not to be in force more than one year, except, &c., . . . . . 515  
 surplus of proceeds of, after settlement of accounts, to be considered real estate, . 515  
 when objection is made to license for, how costs to be awarded, . . . . . 515  
 limitation of actions for recovery of lands sold by executor, &c., . . . . . 515  
 requisites of, as against heirs of deceased, and ward, and those claiming under him, as against persons claiming adversely to heir or ward, . . . . . 515  
 persons making, may be examined on oath as to sales, . . . . . 515  
 damages caused by neglect or misconduct of those making, how recovered, . . 515, 516

**SALEM.**  
 harbor of, penalty for boarding vessels in, without leave, except by pilot, &c., . . . . . 290  
 what to be deemed limits of, for certain purposes, . . . . . 290

**SALMON.**  
 provisions concerning, . . . . . 261, 262

**SALT.**  
 standard weight of bushel of, to be seventy pounds, . . . . . 278  
 mean weight, how to be ascertained, . . . . 278  
 penalty for selling without ascertaining weight, when these provisions not to apply, . . . . 278  
 special provisions concerning measures for, . . 286

**SANCOTY HEAD.**  
 land at, ceded to United States, . . . . . 45

**SAND.**  
 penalty for digging, &c., without license, . . . 805

**SANDWICH.**  
 land in, ceded to United States, . . . . . 45  
 provisions for regulation of fisheries in, . . . . 432

**SANDY NECK.**  
 land on, ceded to United States, . . . . . 44

**SANDY POINT.**  
 in Nantucket, lighthouse on, ceded to United States, . . . . . 44

**SAVINGS BANKS. (See Banks.)**  
 when charged as trustees, and there is doubt as to identity of defendant, may have bond of plaintiff, . . . . . 724  
 general provisions respecting, . . . . . 316-318

**SCHOLARSHIPS.**  
 state, forty-eight established, . . . . . 213  
 arrangement of sections and classes for, . . . . 214  
 candidates for, how recommended, and how and when selected, . . . . . 214  
 qualifications of, . . . . . 214  
 deficiency in number of, how supplied, . . . 214  
 college, how selected, . . . . . 214  
 vacancies in, how filled, . . . . . 214  
 scholar, after leaving college, may attend normal school, . . . . . 214  
 allowances to, at college and normal school, 214  
 to teach in public schools the same term of time he has received aid, or refund, 214, 215  
 appropriations for, . . . . . 215

**SCHOOLS.**  
 money raised for, by taxation, or appropriated by state, not to be applied to sectarian schools, . . . . . 38  
 money for support of, may be granted by towns, to be kept six months in each year in every town, . . . . . 215  
 all children within commonwealth may attend, in place of their residence, . . . . . 228  
 branches to be taught in, . . . . . 215  
 day or evening, may be established for persons over fifteen years of age, . . . . . 216  
 school committee to have superintendence of such schools, &c., . . . . . 216  
 female assistants to be employed in, when averaging fifty scholars, unless, &c., . 216  
 attendance at, to be encouraged by ministers of the gospel, town officers, &c., . . . . . 217  
 towns to raise money for, to be assessed, &c., like other town taxes, . . . . . 158, 217  
 funds of corporations for support of, to remain as heretofore, . . . . . 217  
 forfeiture by town for neglect to raise money or choose school committee, . . . . . 217  
 three fourths of, to be appropriated for schools in town, . . . . . 217  
 examination of, and visits to, by committee, . . 218  
 Bible to be read in, daily, . . . . . 218  
 sectarian books to be excluded from, . . . . . 218  
 provisions respecting, in towns, to apply to cities, unless, &c., . . . . . 220  
 wilful disturbance of, how punished, . . . . . 820

**High,** to be kept in towns of five hundred families, . . . . . 215  
 may be established in every town, . . . . . 215  
 school committees to have like powers, &c., concerning, as prudential committees in districts, . . . . . 219  
 admission to, how regulated, . . . . . 228  
 branches to be taught in, . . . . . 215, 216  
 number and qualifications of scholars to be admitted to, determined by committee, 228  
 to be kept ten months in each year, . . . . 216  
 location of, to be determined at annual town meeting, . . . . . 216  
 qualifications of teachers of, in towns of four thousand inhabitants, . . . . . 216  
 may be established by two adjacent towns having less than five hundred families each, . . . . . 216  
 committee, location, and apportionment of expenses of, in such case, . . . . . 216

**SCHOOLS—continued.**

**Teachers**, by whom to be employed, . . . . . 218  
 to be of good moral character, and to have literary, &c., qualifications, . . . . . 218  
 to be personally examined by committee, . . 218  
 to have certificates of qualifications from committee, . . . . . 218  
 to file one of such certificates with selectmen before payment, . . . . . 218  
 when and how paid, . . . . . 218  
 not entitled to payment until school register is completed and returned, . . . . . 228  
 may be dismissed by school committee, . . 218  
 not to receive compensation after dismissal, 218  
 to impress on youth principles of piety, temperance, &c., . . . . . 216  
**Books**, used in, to be determined by committee, . . . . . 218  
 changes in, how to be made, . . . . . 218, 219  
 if changes are made, to be supplied by town, . . . . . 218, 219  
 to be supplied to pupils, by committee, at cost, . . . . . 219  
 if not furnished to scholar by parent, to be supplied by town, . . . . . 219  
 expense of, so supplied, to be taxed to parents, &c., . . . . . 219  
 if parents unable to pay for, tax to be omitted, . . . . . 219  
 exempted from attachment and execution, 624, 688  
**Superintendent of**, appointment, duties, &c., of, . . . . . 219  
 in town where appointed, committee to receive no pay, . . . . . 219  
**Children**, between eight and fourteen years of age, to be sent to, twelve weeks each year, . . . . . 228  
 penalty on parents, &c., for neglect to send, when such penalty not to be incurred, . . 228  
 duties of truant officers, &c., in relation to non-attendance of, . . . . . 228  
 may attend, in place of their legal residence, living remote from school in their own town, may attend in adjoining town, 228, 229  
 instruction in such case to be paid for by town where child resides, . . . . . 229  
 under guardianship, whose father is dead, may attend where guardian resides, . . 229  
 may attend in other towns than those where parents, &c., reside, with consent of committee, . . . . . 229  
 parent or guardian of, liable to pay for tuition in such case, . . . . . 229  
 not to be permitted to attend until vaccinated, . . . . . 229  
 not to be excluded on account of color, or religious opinions, . . . . . 229  
 grounds of exclusion of, to be stated in writing by teacher, &c., on application, . . . . . 229  
 damages, how obtained, if unlawfully excluded, . . . . . 229  
 in action for damages in such case, plaintiff may examine school committee, &c., . . 229  
 habitually truant, towns, &c., may make by-laws concerning, and annex suitable penalties, . . . . . 230  
 may be committed to institution for instruction, house of reformation, &c., 230  
 truant officers, how appointed and duties of, employed in manufacturing establishments, attendance by, . . . . . 229, 230

**SCHOOL COMMITTEE.**

to be chosen annually, by ballot, . . . . . 217  
 to consist of a number divisible by three, . . 217  
 one third to be elected annually, . . . . . 217  
 to hold office for three years, . . . . . 217  
 to continue in office, for certain purposes, after election of successor, . . . . . 217, 218  
 number of, to be fixed by town, . . . . . 217  
 how increased or diminished, . . . . . 218  
 vacancies in, how filled, . . . . . 217  
 when whole committee decline, new committee, how elected, . . . . . 217  
 term of service of member filling vacancy, . . 217  
 forfeiture by town for not choosing, . . . . . 217  
 to appoint secretary and keep records, . . . . 218  
 to have charge of high schools, with powers, &c., of prudential committees in districts, . . . . . 219  
 to determine number and qualification of scholars to be admitted to high school, . . 228  
 in high school districts established by adjacent towns, how constituted, . . . . . 216  
 to have superintendence, &c., of schools for persons over fifteen years of age, . . . 216  
 to endeavor that youth regularly attend school, 217  
 to contract with teachers, unless town, at annual meeting, determines that prudential committee may, . . . . . 218  
 to examine teachers personally, . . . . . 218  
 may dismiss teachers whenever they think proper, . . . . . 218  
 to visit and examine schools, . . . . . 218  
 to require Bible to be read in schools, . . . . 218  
 to exclude sectarian books, . . . . . 218  
 to direct what books shall be used in schools, 218  
 how may make changes in books, . . . . . 218, 219  
 to provide books at expense of town, and supply pupils at cost, . . . . . 219  
 may procure apparatus, books of reference, &c., for use of schools, . . . . . 219  
 to supply certain scholars with books at expense of towns, . . . . . 219  
 to give notice to assessors in such case, with names of parents, &c., . . . . . 219  
 to have charge of school-houses, &c., in towns not districted, . . . . . 219, 220  
 to perform duties of prudential committee in districts where none is chosen, . . . . . 222  
 may establish school and employ teacher in district which refuses or neglects so to do, . . . . . 222  
 may provide school-houses in districts neglecting to organize, &c., . . . . . 224  
 powers and duties of, in union districts, . . . 225  
 powers and duties of, in union district, in adjoining towns, . . . . . 226  
 may recommend candidates for state scholarships, . . . . . 214  
 to appoint superintendent of schools, if required by vote of town, &c., . . . . . 219  
 compensation of, . . . . . 219  
 not to receive compensation, when superintendent is appointed, . . . . . 219  
 to notify secretary of board of education, if blanks for school returns are not received, . . . . . 226  
 to make returns annually, under oath, to secretary of board of education, . . . . . 226  
 form of certificate to returns, . . . . . 226  
 such returns to state the number of children between five and fifteen years of age, and sums appropriated for schools, . . 226



**SCHOOL COMMITTEE—continued.**

- and to specify appropriation of the town's share of income of a school fund, . . . 227
- to make a detailed report, annually, of the condition of schools, with suggestions, &c., . . . . . 227
- to cause such report to be printed for use of inhabitants of town, . . . . . 227
- to transmit two copies to secretary of board of education, . . . . . 227
- and deposit a copy with town clerk, . . . . . 227
- chairman and secretary of, in certain cases, may sign certificate of returns, &c., . . . . . 227
- to inquire into cases of neglect of parents, &c., to send children to school, . . . . . 228
- not to allow children to attend school until vaccinated, . . . . . 229
- to prosecute owners, &c., of manufacturing establishments for employing children who do not attend school according to law, . . . . . 230

**SCHOOL DISTRICTS.**

- towns may be divided into, . . . . . 221
- not to be changed oftener than once in ten years, . . . . . 221
- to be corporations, for certain purposes, . . . . . 221
- property of, exempt from taxation, . . . . . 74
- may be abolished by towns, . . . . . 221
- when abolished, houses, lands, &c., how disposed of, . . . . . 221
- towns to vote on abolition of, in 1863, and every third year thereafter, . . . . . 221
- secretary to notify selectmen when towns must vote on abolition of, . . . . . 221
- when abolished, corporate powers to continue, for certain purposes, . . . . . 221
- school committee may establish schools in, if districts neglect or refuse, . . . . . 222
- meetings in, how called and warned, . . . . . 222
- may prescribe mode of calling and warning meetings, . . . . . 222
- may fix site of school-houses, . . . . . 223
- such site to be determined by selectmen, if district cannot determine, . . . . . 223
- penalty on, for not providing school-house, . . . . . 223
- neglecting to organize, school committee may provide school-houses, &c., . . . . . 224
- may raise money for school-houses and land, and for necessary articles for use of schools, . . . . . 222, 223
- liable for illegality in proceedings in relation to raising money by tax, . . . . . 222
- taxes in, how, and on whom, &c., to be assessed, and how collected, . . . . . 223, 224
- money raised in, how to be applied, . . . . . 224
- if district refuse to raise, town may order it, and may empower selectmen, &c., to apply the same, . . . . . 224
- duties, compensation, &c., of assessors, treasurers, and collectors, in matters relating to, . . . . . 224
- actions by and against, where to be brought, . . . . . 621
- civil process against, how served, . . . . . 622, 623
- Prudential committee of, how to be chosen, . . . . . 221, 222
- general duties of, . . . . . 222
- may contract with teachers, when town so determines, . . . . . 218, 222
- may consist of three, when authorized to contract with teachers, . . . . . 222
- if not chosen, duties of, to be performed by school committee, . . . . . 222
- in union districts, . . . . . 225

**SCHOOL DISTRICTS—continued.**

- in districts formed by contiguous districts in adjoining towns, . . . . . 225
- Clerks of, to be chosen and sworn, . . . . . 222
- duties of, . . . . . 222
- to hold office till successors are qualified, . . . . . 222
- liable only for want of integrity, . . . . . 222

**UNION DISTRICTS.**

- Union districts may be formed by contiguous districts, by two thirds vote, for benefit of older children, . . . . . 224
- meetings of, how called, &c., . . . . . 224, 225
- location of school-house in, . . . . . 225
- clerk to be chosen by ballot and sworn, . . . . . 225
- to hold office until successor is qualified, . . . . . 225
- assessments in, how made, . . . . . 225
- prudential committees of, how constituted, . . . . . 225
- powers and duties of, . . . . . 225
- schools required by law to be maintained in districts composing, . . . . . 225
- powers and duties of school committee in, . . . . . 225

**CONTIGUOUS DISTRICTS IN ADJOINING TOWNS.**

- Contiguous districts in adjoining towns may unite, . . . . . 225
- terms of union, . . . . . 225
- meetings, how called, &c., . . . . . 225
- prudential committee to be chosen, &c., . . . . . 225
- powers of, . . . . . 225
- to determine proportion of money to be paid by inhabitants of each town, . . . . . 225, 226
- clerk to certify votes to raise money to assessors of each town, . . . . . 226
- taxes to be assessed as in other school districts, school committees of each town to officiate in turn, . . . . . 226

**SCHOOL FUNDS.**

- how to be invested, . . . . . 212
- income of, only, to be used, . . . . . 212
- how to be appropriated, . . . . . 212
- how and by whom apportioned, and distributed among towns for public schools, . . . . . 212
- not to be allowed to towns that neglect to make returns or raise certain sums for schools, . . . . . 212, 213
- how to be applied by towns when received, appropriations from, for schools among Indians, . . . . . 213
- account of such appropriations to be rendered annually to governor and council, appropriations from, for state scholarships, . . . . . 213
- Indian, income of, how to be applied, . . . . . 213
- Todd normal school fund, income how to be applied, . . . . . 213

**SCHOOL-HOUSES.**

- in towns not districted, to be maintained by towns, . . . . . 219
- to be kept in good order by school committee, unless towns otherwise direct, . . . . . 219
- use of, to be under charge of school committee in such towns, . . . . . 220
- location of, to be determined by towns, . . . . . 219
- land, not exceeding eighty square rods, may be taken by selectmen for, . . . . . 220
- proceedings in such case, . . . . . 220
- owner of land taken for, may have complaint tried by jury, . . . . . 220
- proceedings as in cases of damage by laying out highways, . . . . . 220
- damages and costs, in such cases, . . . . . 220

**SCHOOL-HOUSES—continued.**

- land to revert to owner upon discontinuance of school for one year, . . . . . 220
- location of, for high schools, to be determined by towns at annual meeting, . . . . . 216
- in union high school district, to be determined by committee, . . . . . 216
- districts may raise money for, fix site, &c., . . . . . 222, 223
- selectmen to determine site in certain cases, . . . . . 223
- may be provided by towns at common expense, . . . . . 223
- may be provided by school committee in districts neglecting to organize, . . . . . 224
- penalty on district for not providing, . . . . . 223
- and furniture, wilful, &c., injury to, how punished, . . . . . 803

**SCHOOL REGISTERS.**

- to be sent by secretary of board of education to town clerks, . . . . . 211
- to be delivered by town clerk to school committee, . . . . . 226
- to be kept in all public schools, . . . . . 227, 228
- to be returned by teachers to school committee, . . . . . 228
- if not properly kept, completed, and returned, teacher not entitled to payment, . . . . . 228

**SCHOOL RETURNS.**

- blanks for, to be sent by secretary of board of education to town clerks, . . . . . 211, 226
- number of children between five and fifteen years of age to be ascertained and returned to school committee by assessors, . . . . . 226
- number so returned, with sums appropriated for schools, to be certified under oath by school committee, . . . . . 226
- form of certificate, . . . . . 226
- to be transmitted to secretary of board of education, . . . . . 226, 227
- may be signed by chairman and secretary of committee in certain cases, . . . . . 227
- to contain statement of appropriation of town's share of income of school fund, . . . . . 227
- if not transmitted within time prescribed, secretary of board of education to notify committee or town clerk, . . . . . 227
- town clerk or committee in such case to transmit forthwith, . . . . . 227
- if informal, &c., to be returned by secretary to committee for further action, . . . . . 227
- may be received by secretary during month of May, when returned for informality, &c., . . . . . 227
- when so received, town to forfeit ten per cent. of share of school fund, . . . . . 227
- when not received before June, town to forfeit whole share of such fund, &c., . . . . . 227
- if mailed in season, town exempted from forfeiture, . . . . . 227

**SCIRE FACIAS.**

- writ of, may be issued on judgment for penalty of bond of executor, for new breach of condition, &c., and new execution be awarded, . . . . . 507
- may be issued on suggestion of waste against executors and administrators, upon return of execution against them unsatisfied, . . . . . 651
- when justices of the peace may issue scire facias in such cases, . . . . . 605
- may be brought against debtor escaped from arrest on execution, . . . . . 641
- may be brought by or against administrator de bonis non, on judgment recovered by

**SCIRE FACIAS—continued.**

- or against former executor or administrator, and proceedings therein, . . . . . 652
- to be indorsed before entry in certain cases, . . . . . 622
- may be brought on judgments recovered for penalty of a bond, covenant, or agreement, when there are subsequent breaches, . . . . . 686
- on recognizances given by respondents in actions of forcible entry and detainer, in certain cases, . . . . . 708
- upon judgments in trustee process, . . . . . 724-730
- upon a recognizance for debt after three years, . . . . . 771
- Against bail, how to issue, and what to be set out therein, . . . . . 643**
- may be issued by justices of the peace against bail in actions before them, although amount of debt and costs on judgment exceed their general jurisdiction, . . . . . 605, 644
- how writ served in such cases, . . . . . 605
- to be served within one year after time of rendering judgment, . . . . . 643
- defendants in, may plead jointly or severally, . . . . . 643
- costs on, to be paid by debtor before he can take poor debtor's oath, . . . . . 637
- costs on, to be paid upon surrender of principal by bail, . . . . . 643, 644
- in criminal cases, . . . . . 835
- May be brought to obtain an execution, after time for taking out execution has expired, . . . . . 686**
- when property sold on preceding execution was not liable therefor, &c., and damages have been recovered of officer or creditor, . . . . . 686
- when, after execution and levy are returned and recorded, it is ascertained that the property levied on cannot be held thereby, . . . . . 519
- when an execution against a corporation has been satisfied in part by service on a member, and the property or damages are recovered back of creditor or officer, . . . . . 686

**SCITUATE.**

- land in, for lighthouse, ceded to United States, . . . . . 44

**SEAL.**

- to include impression on paper as well as on wax, &c., . . . . . 51
- of the commonwealth to be in custody of secretary, . . . . . 128
- of court, may be established by supreme and superior courts respectively, . . . . . 568
- all warrants, assignments, processes, &c., of courts of insolvency, to be under, . . . . . 582
- of police courts, . . . . . 571

**SEALERS.**

- of weights and measures, . . . . . 161, 285
- (See *Weights and Measures.*)

**SEAMEN.**

- what, exempted from enrolment in militia, . . . . . 92
- secretary to give certificates for release of impressed, . . . . . 128
- how far ship owner liable for embezzlement, &c., by, . . . . . 289
- who have shipped, exempted from arrest on mesne process for debt due landlord, &c., . . . . . 290
- landlord, &c., not to have lien on wearing apparel, &c., of, . . . . . 290

**SEAMEN — continued.**

- penalty on landlord, &c., for hindering, &c., in performance of shipping contract, . . . 290
- penalties, how recovered in such cases, . . . 290
- at sea, may make nuncupative wills, . . . . . 477

**SEARCH WARRANT.**

- to be supported by oath and accompanied with a special designation of the object of search, . . . . . 9, 15
- not to be issued except as prescribed by law, . . 9, 16
- may be issued on complaint of fireward, &c., to search for gunpowder, gun cotton, &c., unlawfully deposited, . . . . . 461
- when to be issued for liquors unlawfully kept for sale, &c., . . . . . 44, 445
- may be issued, to search for property stolen, embezzled, &c., . . . . . 830
- to search for counterfeit coin, forged bank notes, &c., or tools, &c., . . . . . 830
- for obscene books, &c., intended to be sold or circulated, . . . . . 830
- for lottery tickets or materials for a lottery; and for gaming implements kept in gaming-houses, . . . . . 436, 437, 830
- shall designate the place and property, and direct the sheriff, &c., to search, in the day time, . . . . . 830
- shall direct officer to bring such property, if found, and the persons in whose possession found, before a magistrate, . . . 830
- when may be issued by two magistrates, or police court, authorizing search in the night time, . . . . . 830
- property seized on to be kept as long as is necessary, to be used as evidence on trial, if stolen, embezzled, &c., to be returned to the owner, . . . . . 830
- other property destroyed by direction of court, . . . . . 830, 831

**SEAWEED.**

- regulations concerning gathering, &c., of, . . . 433

**SECOND HAND ARTICLES.**

- dealers in, may be licensed by mayor and aldermen, or selectmen, . . . . . 457, 458
- license to specify place of business, restrictions, &c., and continue in force one year, 458
- penalty for dealing in, without license, or contrary to provisions of license . . . . . 458

**SECRETARY OF BOARD OF EDUCATION. (See Board of Education.)**

- appointment and duties of, . . . . . 210, 211

**SECRETARY OF THE COMMONWEALTH.**

- when and how chosen, . . . . . 37, 62
- return of votes for, . . . . . 59, 60
- to have custody of state seal, . . . . . 128
- records of commonwealth to be kept in office of, 27
- copies of records, &c., certified by, to be evidence, . . . . . 128
- may appoint deputies, . . . . . 27
- when deputy may act as, . . . . . 128
- to attend the governor and legislature when required, . . . . . 27
- oath of, . . . . . 33
- not to hold certain other offices, . . . . . 30, 33
- vacancy in office of, how filled, . . . . . 32, 37
- qualifications of, . . . . . 37
- salary of, . . . . . 128
- neglecting to qualify for ten days, office to be deemed vacant, . . . . . 37
- to receive and examine certificates of elections of representatives to general court, . . 47

**SECRETARY OF THE COMMONWEALTH — continued.**

- to deliver list of persons returned to sergeant-at-arms, and transmit certificates and list to house of representatives, . . . . . 47
- to approve newspaper in which notice of petition to general court is given, . . . . . 47
- to cause bills and resolves to be engrossed on parchment, and bound in separate volumes, . . . . . 49
- to publish, at close of each session, acts and resolves of legislature, &c., . . . . . 49, 50
- how to distribute the same, . . . . . 50
- to publish general laws and resolves in pamphlet form, and send to town clerks, for distribution, . . . . . 50
- to publish general laws and other official information in newspaper, . . . . . 50
- to lay annual reports of certain public officers, in printed form, before legislature, . . 52
- with consent of governor and council, may omit portions thereof, . . . . . 52
- may increase number of any document, if public interest requires, . . . . . 53
- and shall include in statement of expenses of his office a list thereof, . . . . . 53
- to furnish railroad reports to members of legislature and railroad corporations, 53, 369, 370
- public series to towns, . . . . . 53
- to provide self-sealing envelopes for use of voters, and furnish to clerks of cities and towns, . . . . . 58
- to furnish to town and city clerks blank forms and envelopes for return of votes, . . 60
- to notify returning officers, when returns are received unsealed, . . . . . 60
- to note date of reception, &c., of returns on envelopes, . . . . . 60
- to transmit returns sealed to governor and council, . . . . . 60
- to lay such returns, with certificate of governor, &c., before legislature, . . . . . 60
- to furnish blank forms for certificates, returns, &c., of representatives, . . . . . 66
- to make quarterly return of fees, under oath, and pay same into treasury, . . . . . 128
- may employ two permanent clerks, . . . . . 128
- may employ additional clerks and messengers, salaries of such clerks and messengers, . 128
- to give certificate, without charge, for release of impressed seamen, . . . . . 128
- to issue passports to citizens of any color, . . 128
- to furnish blanks for returns of certain officers accountable for fees, costs, &c., 128, 129, 152, 611
- to transmit such returns, when received, to auditor, . . . . . 129
- to prepare, annually, abstracts of criminal cases, and append the same to report of attorney-general, . . . . . 129
- to forward instructions and forms to commissioners to take depositions in other states, . . . . . 132
- to be commissioner on repairs, &c., of state house, . . . . . 134
- appointment of watchmen of state house subject to approval of, . . . . . 133, 134
- to transmit to auditor statement of amount of warrants drawn by governor, . . . . . 136
- duties of, when vacancy occurs in office of treasurer, . . . . . 138
- to make annual report to legislature of expenses of office, . . . . . 141



**SECRETARY OF THE COMMON-WEALTH—continued.**

to transmit manuscript county maps to county commissioners for corrections, &c., . . . 144

to lay before legislature estimates of county taxes, &c., . . . . . 146

penalty for neglect, . . . . . 146

to prepare annual abstract of returns of registers of deeds, and lay before legislature, . . . . . 155

to transmit to clerks of cities and towns blanks for census returns, . . . . . 168

and to annex to such blanks instructions as to time of making return, . . . . . 168

to furnish to town clerks blank books and forms of returns for recording, &c., births, marriages, and deaths, . . . . 170

to cause such returns to be bound and indexed, . . . . . 170

to prepare tabular abstract of returns, and report annually to legislature, . . . . . 170

to prosecute for penalties for violation of law concerning registration, . . . . . 170

with treasurer, to apportion income of school fund among towns, . . . . . 212

to notify selectmen when towns must vote on abolition of school districts, . . . . . 221

to publish returns of inspector-general of fish, . . . 264

may grant licenses to hawkers and pedlars on certificate of selectmen, &c., . . . . . 282, 283

to keep record of such licenses, &c., . . . . . 283

duty of, as to returns by banks, . . . . . 311, 312

by savings banks, . . . . . 318

by railroad corporations, . . . . . 369

to publish weekly and monthly abstracts of returns of banks in newspaper, . . . . . 311

to have regard to prices offered in selecting newspapers for publication, . . . . . 311

to furnish blank forms to banks, . . . . . 311, 312, 318

to cause abstracts of annual returns to be prepared and printed, . . . . . 312, 318

and to send one copy to each cashier, &c., . . . . 312

to prepare a separate abstract of the returns of banks organized under general laws, . . . 315

to give notice to attorney-general of violation of law by insurance companies, &c., . . . 321

to submit to legislature annually an abstract from certificates of certain corporations organized under general laws, . . . . . 342, 343

to prepare annual abstract of pauper returns by overseers of the poor, . . . . . 365

to notify district-attorney of neglect of overseers, &c., to make return, . . . . . 395

to print annual report of liquor commissioner, and lay before legislature, . . . . . 439

to furnish innholders, &c., with summary of laws relating to them, . . . . . 457

exempt from serving as juror, . . . . . 679

fees of, for copies of resolves to private persons, . . . 787

**SEDGE.**

punishment for wilfully cutting, &c., without license, . . . . . 805

**SEISIN.** (See *Disseisin*.)

to be deemed in commonwealth upon judgment in its favor on information of intrusion, . . . . . 718

how declared on in writ of entry, &c., . . . . . 692

in such action, actual entry need not be proved, . . . 692

what shall be deemed sufficient proof of, . . . . . 692

how delivered on levy of execution, . . . . . 518

In mortgage, to be so declared in real actions founded on mortgage titles, . . . . . 654

**SEIZING AND LIBELLING FORFEITED GOODS.**

by whom to be seized and kept, . . . . . 772

libel to be filed within fourteen days, . . . . . 772

in clerk's office of superior court, or before justice of peace or police court, according to value of goods seized, . . . . 772

form and substance of libel, . . . . . 772

duties of clerk, upon the filing of the libel, . . . . 772

to make advertisement and notice, . . . . . 772, 773

libellant to publish the same, . . . . . 773

libel to be entered, . . . . . 773

proceedings when claimant appears, . . . . . 773

where no claimant appears, . . . . . 773

all questions of fact to be tried by a jury, . . . . 773

Decree of forfeiture or restitution, . . . . . 773

disposition of proceeds of sale under decree, . . . . 773

claimant to have damages, with costs, if seizure was without probable cause, . . . . 773

Costs in other cases to go to prevailing party, . . . . 773

or may, in whole or in part, be paid out of proceeds of goods seized, . . . . . 773

Executions, and other process, may issue, . . . . . 773

Appeal, by either party, to supreme judicial court, . . . . . 773

proceedings on appeal as in other civil cases, . . . . 773

**PROCEEDINGS ON A LIBEL BEFORE A JUSTICE OF THE PEACE OR POLICE COURT.**

justice or court to make out advertisement or notice, . . . . . 773

notice where, and how long, to be posted, . . . . . 773

mode of trial, . . . . . 773

jury may be called in only as in other civil cases, . . . . . 773

Appeal allowed by either party to superior court, . . . . . 773

**GENERAL PROVISIONS.**

depositions may be used as in trials at common law, . . . . . 773

goods seized may be delivered to claimant on his giving bond, . . . . . 773

form and condition of the bond, . . . . . 773, 774

value of goods to be determined by appraisalment, . . . . . 774

how appraisalment shall be made, . . . . . 774

appraisers to be sworn, and to make return of inventory and appraisalment, . . . . . 774

appraisalment to be conclusive as to jurisdiction of the court, . . . . . 774

perishable goods may be sold, . . . . . 774

proceedings in such case, . . . . . 774

court may, at any time while the suit is pending, order the goods sold, . . . . . 774

**PROVISIONS CONCERNING SPECIFIC ARTICLES.**

butter and lard, shipped contrary to law, . . . . . 260

chocolate, . . . . . 260

pickled or smoked fish, . . . . . 264

pressed hay, . . . . . 266

hops, exported or shipped for exportation, . . . . 268

lime and casks of lime, . . . . . 271

nails or brads, wrought or cut, . . . . . 275

paper, not packed or stamped, . . . . . 276

charcoal and charcoal measures, . . . . . 280

goods and chattels unlawfully exposed for sale at auction, . . . . . 281

**SELECTMEN.**

to be chosen at annual town meeting, . . . . . 160

of what number to consist, . . . . . 160

to be chosen by ballot, . . . . . 161

**SELECTMEN — continued.**

to be sworn, . . . . . 161  
 penalty on, for entering on duties before taking  
 oath, . . . . . 162  
 to be overseers of poor where other persons are  
 not specially chosen, . . . . . 162  
 to be assessors of taxes where others are not  
 specially chosen, . . . . . 162  
 when acting as assessors, to take assessors'  
 oath, . . . . . 162  
 to make lists of voters, and post them ten days  
 before elections, . . . . . 56  
 when to be in session to receive evidence of  
 qualifications of voters, . . . . . 56  
 to give notice of meeting on posted lists, . . 56, 57  
 to correct lists, . . . . . 57  
 to require proof of naturalization before enter-  
 ing name of naturalized citizen on list,  
 when not answerable for omissions of names  
 of voters from list, . . . . . 57  
 penalty for giving false answer to, . . . . . 57  
 on, for neglect of duty, . . . . . 57  
 to call meetings for elections, &c., . . . . 58, 68, 69  
 to decide, in certain elections, whether officers  
 shall be voted for on one or more bal-  
 lots, . . . . . 58  
 to preside at national, state, &c., elections, and  
 have powers, &c., of moderators, 19, 22, 58  
 to provide, at polls, envelopes for use of voters, 58  
 not answerable for refusing vote of person not  
 on voting list, unless sufficient evi-  
 dence of his right to vote is furnished,  
 &c., . . . . . 58  
 to receive, sort, and count votes at national,  
 state, county, and district elections, 59, 69  
 duties of, at elections, in towns composing part  
 of a representative district, . . . . . 65  
 under precept to fill vacancy in house of  
 representatives, . . . . . 66  
 penalties for giving false certificate of election,  
 and neglect of duty, . . . . . 66  
 compensation of, for services at election of rep-  
 resentatives, . . . . . 66  
 penalty for neglect of duty at election of rep-  
 resentatives in congress, . . . . . 69  
 of district-attorney; &c., . . . . . 72  
 in what cases may remove collector of taxes and  
 appoint temporary collector, . . . . . 87  
 to notify and draft enrolled militia upon order  
 of commander-in-chief, . . . . . 92  
 duty of, in organization of companies of mil-  
 itia, . . . . . 94  
 to provide armories for military companies and  
 transmit certificates of rent, &c., to  
 adjutant-general, . . . . . 104  
 to provide carriages and camp equipage for mil-  
 itia drafted in case of invasion, &c., . . 110  
 duties of, respecting compensation of militia, . 111  
 respecting perambulation of town lines, 157, 158  
 penalties on, for neglect, . . . . . 157, 158  
 in absence of town clerk, to preside at election  
 of moderator of town meeting, . . . . 160  
 in certain cases, to receive votes for town clerk  
 pro tempore, . . . . . 162  
 to appoint certain town officers, . . 161, 265, 266, 270  
 may appoint town clerk in certain cases, . . . 162  
 to appoint officer of watch, &c., where watch is  
 established, . . . . . 173  
 and direct manner in which watchmen shall be  
 equipped, . . . . . 173  
 may order watch where none is established, . . 173  
 exempt from liability to watch, . . . . . 174

**SELECTMEN — continued.**

to call meeting for organization of watch dis-  
 tricts in villages, . . . . . 174  
 powers of, at fires when firewards are not pres-  
 ent, . . . . . 176  
 may appoint enginemen, &c., and discharge  
 them, where there is no fire depart-  
 ment, . . . . . 177, 178  
 may establish fire departments, and appoint en-  
 gineers, &c., . . . . . 178, 179  
 to call meetings for organization of fire dis-  
 tricts, upon application, &c., . . . . . 180  
 to act as board of health when none is chosen, . 188  
 may enforce vaccination of inhabitants when  
 public health requires, . . . . . 191  
 to give public notice, &c., when dangerous dis-  
 ease exists in town, . . . . . 193  
 to endeavor that youth regularly attend school,  
 may take land for school-houses, in certain  
 cases, . . . . . 220  
 penalty on, for neglect to insert article in war-  
 rant for annual meeting concerning  
 abolition of school districts, . . . . . 221  
 to determine site of school-houses in districts, if  
 district cannot agree, . . . . . 223  
 powers and duties of, in laying out town ways,  
 &c., . . . . . 239-241  
 powers of, in relation to ways dedicated to the  
 public, but not laid out and ac-  
 cepted, . . . . . 243  
 to ascertain correct location of highways, &c.,  
 in certain cases, . . . . . 243  
 to cause permanent stone bounds to be erected  
 to mark angles, &c., of ways laid out  
 by them, . . . . . 244  
 to assign limits to surveyors of highways, in  
 writing, before first of May, . . . . . 245  
 to regulate watercourses in roads, . . . . . 246  
 to determine compensation for damages occa-  
 sioned by repairs of highways, . . . . 247  
 to report at annual town meeting places where  
 guide posts are erected, and where  
 needed, . . . . . 249  
 penalty for neglect to make such report, . . 249  
 may establish and grade sidewalks, in certain  
 cases, . . . . . 250  
 powers and duties of, in relation to sewers and  
 drains, . . . . . 254, 255  
 may establish regulations for survey of marble, 274  
 may appoint inspectors of milk, . . . . . 274  
 may appoint weighers of coal, . . . . . 279  
 to appoint persons to seize illegal measures of  
 charcoal, &c., . . . . . 280  
 may license auctioneers, &c., . . . . . 280  
 when authorized by towns, may make rules  
 regulating hawking and peddling by  
 minors, . . . . . 281  
 to appoint weighers of vessels and lighters,  
 when such vessels are used to trans-  
 port stores, &c., . . . . . 290  
 powers, &c., of, in relation to sign-boards and  
 gates, &c., at railroad crossings, . . 360, 361  
 proceedings by, in relation to raising or lower-  
 ing highway, &c., crossed by railroad, 357  
 to apply to county commissioners before laying  
 out highways across railroads, . . . . 358  
 certain acts and doings of gas-light companies  
 to be under control of, . . . . . 343  
 to designate where posts of telegraph compa-  
 nies shall be located, . . . . . 373  
 to assess damages to land owners in such case, 373  
 compensation for services, &c., . . . . . 373

**SELECTMEN** — *continued.*

duties of, respecting unclaimed effects of passengers in possession of common carriers, 427

to enforce provisions of game laws, &c., . . . . 430

may grant permits to take oysters and other shell fish from beds, . . . . . 432

may grant licenses to plant and grow oysters, . 433

to appoint agents to sell intoxicating liquors for medicinal, &c., purposes, annually, . . 440

penalty on, for neglect to appoint such agents, . . . . . 440

to prosecute bond of such agents for breach thereof, . . . . . 441

powers of, to abate certain nuisances, . . . 453, 454

may give certificates to persons applying for innholder's license, . . . . . 456

may grant licenses to keepers of intelligence offices, dealers in second-hand articles, pawnbrokers, &c., . . . . . 457, 458

may grant licenses for, and regulate use of, steam engines, furnaces, &c., in certain places, . . . . . 458, 459

may examine steam engines and boilers, and suspend or prohibit use thereof, . 459, 460

may remove steam engines, &c., as nuisances in certain cases, . . . . . 460

to require unlicensed dogs to be destroyed, . . 462

when to order payment from town treasury for damages done by dogs to sheep, . . . 462

may grant licenses for billiard tables, &c., and for theatrical exhibitions, &c., . . . 463

when to certify approbation on indentures of apprentices, . . . . . 450

duty of, to inquire into treatment of apprentices bound by them, . . . . . 550

duties and liabilities of, as to jurors, . . . 680-682

may offer reward, not exceeding five hundred dollars, for arrest of certain offenders, 831

reward, how to be paid, where there is more than one claimant, . . . . . 831

**SELF-GOVERNMENT.**

exclusive right of, unless expressly delegated to United States, . . . . . 14

**SENATE.**

the first branch of the legislature, . . . . . 19

to be final judge of elections, &c., of its own members, . . . . . 20

vacancies in, how filled, . . . . . 20

may adjourn, not exceeding two days, . . . . 20

shall choose its own president, . . . . . 20

shall appoint its own officers, and make its own rules of proceeding, . . . . . 20

to try all impeachments made by house of representatives, . . . . . 20, 21

limitation of sentence by, . . . . . 20, 21

sixteen members of, a quorum, . . . . . 21, 39

may punish for contempt, &c., . . . . . 22

cases where rights and privileges of, are concerned, how tried, . . . . . 22

when may require opinion of justices of supreme judicial court, . . . . . 27

compensation and mileage of members of, when and how paid, . . . . . 48

deduction to be made for absences, . . . . 48

officers of, compensation of, . . . . . 48

doorkeepers, &c., how appointed, . . . . . 133, 134

compensation of doorkeepers, &c., . . . . . 48

books, &c., except, &c., not to be ordered for members of, at charge of state, . . . . 48

not to sit for transaction of ordinary business on certain holidays, . . . . . 49

Clerk of, salary of, . . . . . 48

**SENATE** — *continued.*

to make index and duplicate journal, . . . . 48

to certify attendance, on written statement of members, . . . . . 48

to have custody of journal, files, &c., of, . . 49

copies certified by, to be evidence, . . . . 49

**President of,** compensation, . . . . . 48

to approve accounts for expenditure, under order of senate, . . . . . 140

**SENATORS.**

number of, when and by whom elected, . . . . 18, 19, 35, 39, 62

districts for the choice of, . . . . . 19, 35, 39, 62-64

votes for, return of, . . . . . 19, 59, 60

by whom to be examined, &c., . . . . . 20

how to be summoned to take their seats, . . . 20

qualifications of, . . . . . 20, 36, 39

to be specially sworn for the trial of impeachments, . . . . . 20

oath of, . . . . . 29, 33

certain officers not to be, . . . . . 30, 33

number and apportionment of, . . . . . 39

as members of committees, may administer oaths to witnesses, . . . . . 49

not eligible to office created during their term of service, except by vote of people, . . . 49

together with board of education, to select candidates for state scholarships in their districts, . . . . . 214

exempted from serving as jurors, . . . . . 679

**SENTENCE.**

what to be, where no punishment is awarded by statute, . . . . . 844

may be for costs also, in cases of assault, &c., in addition to imprisonment, . . . . 844

persons convicted of violations of laws relating to sale of intoxicating liquors, to be sentenced to pay costs, . . . . . 844

if offence is punishable by imprisonment in jail, how sentence may be modified, . . . 844, 845

if punishable by fine or imprisonment, conditional sentence may be awarded, . . . 845

to pay fine, &c., in limited time, or in default thereof, to be imprisoned, . . . 845

if punishable by fine and imprisonment, court may award fine without imprisonment, or imprisonment without fine, except in cases respecting sale, &c., of intoxicating liquors, . . . . . 845

if person is committed for fine and costs, not exceeding twenty dollars, magistrates to inquire into ability of defendant to pay, and to certify his inability, . . . 845

of female convicts not to be in state prison, 845, 846

of female convicts with nursing infants, . . . 845

of boys under sixteen convicted of state prison offence, &c., . . . . . 845

of juvenile convicts, . . . . . 846

in all cases not capital or punishable in state prison, sureties of peace may be required, in addition to punishment prescribed by law, . . . . . 845

recognizance in such cases to be filed of record, . . . . . 845

proceedings on forfeiture of, . . . . . 828, 845

of solitary imprisonment and hard labor for not over three years, on a person not before sentenced to like punishment, . . 846

to state prison to be not less than for one year, 846

form of sentence to state prison, . . . . . 846

to be for confinement to hard labor and solitary imprisonment, . . . . . 846



**SENTENCE—continued.**

- the solitary to precede the hard labor, . . . 846
- convict, how removed to state prison, . . . 846, 872
- effect of sentence to state prison, . . . . . 846
  - when to begin to run, . . . . . 846
  - to work forfeiture of office, . . . . . 846
- reversal of sentence on writ of error, to restore to office, &c., . . . . . 846
- to pay fine and costs, or imprisonment in jail, &c., sheriff to execute, . . . . . 846
  - proceedings in such case, . . . . . 846
- of convict already in prison under sentence, . . . 846
  - proceedings in such case, . . . . . 846, 847
- of death, when and how to be executed, . . . . 847
  - when convict has become insane, . . . . . 847
  - when convict is a female quick with child, . . 847
  - who to be present at, and return of sheriff, . . 847
  - clerk of court to subjoin brief abstract of return to the record of conviction, . . . 847
- against corporations indicted, upon default, &c., . . . . . 847
- commutation of, provisions concerning, . . . 855, 856

**SERGEANT-AT-ARMS.**

- how and when chosen or appointed, . . . . . 133
- salary and bond of, . . . . . 133
- to serve processs, &c., ordered by legislature or either branch, . . . . . 133
- to have general charge of state house and apartments, . . . . . 133
- to keep chambers, &c., in state house in good order, &c., . . . . . 133
- to preserve order among spectators of the legislature, . . . . . 133
- to prevent trespasses on the state house, . . . 133
- to notify prosecuting officer of such trespasses, . 133
- to attend members and clerks when charged with messages, . . . . . 133
- to appoint door-keepers and assistants, subject to approval of presiding officers, . . . 133
- to appoint watchmen of the state house, for whose fidelity he shall be responsible, . . . . . 133, 134
- may appoint fireman, . . . . . 134
- to exercise strict superintendence over his subordinate officers, . . . . . 133
- to receive no fee for opening rooms for view of visitors, . . . . . 134
- to be commissioner on repairs, &c., of state house, . . . . . 134

**SERPENTS.**

- penalties for selling, firing, &c., without license, 460

**SERVANTS, (see Apprentices,) . . . . . 549-551**

**SERVICE.**

- of writs and subpoenas on defendants, . . . 622-624
- on defendants who are absent, or whose residence is unknown, . . . . . 623, 645-647
- on absent and unknown persons interested in petitions for partition of lands, . . . 699
- defective or insufficient, court may order further notice, . . . . . 646, 647, 699
- of trustee process, . . . . . 721

**SET-OFF.**

- of mutual demands between plaintiff and defendant in certain actions, . . . . . 609
- not to be made except in actions founded on demands which could themselves be set off, . . . . . 670
- no demand to be, unless founded on judgment, or contract express or implied, . . . 609
  - nor unless it is for price of property sold, money paid, had, or received, or services done, nor unless it is liquidat-

**SET-OFF—continued.**

- ed, or can be ascertained by calculation, . . . . . 669, 670
- nor unless it existed at time of commencement of suit, and then belonged to defendant in his own right, . . . . . 670
- of demands assigned to defendant with notice to plaintiff before suit brought, . . . 670
- of notes, drafts, and demands assigned within six months previous to insolvency proceedings to a person indebted to an insolvent debtor, not to be set off in action by assignee, . . . . . 587
- of demands founded on bonds or contracts having penalties, not to be for more than is equitably due, . . . . . 670
- where there are several plaintiffs or defendants, demand must be due from all jointly, except in case of dormant partners, . . . 670
- how and when may be made in case of dormant partners, . . . . . 670
- how allowed in actions against trustees, executors, and administrators, . . . . . 670
- allowed in action by and against executors and administrators, as if action were against deceased, except, &c., . . . 626, 670
- not allowed in such actions unless demands are in same right, . . . . . 670
- judgment in such cases, how entered, . . . . . 670
- of demands against a person for whose use an action is brought by a trustee, . . . . . 670
- declaration to be filed with answer of defendant when he relies upon a set-off, . . . 670
- subsequent allegations and pleadings in such case to be same as if action was brought thereon, . . . . . 670, 671
- plaintiff entitled to all legal defences, . . . . 671
  - not to discontinue after answer in set-off is filed, without consent of plaintiff, . . . 671
- statutes of limitation, how applicable to, . . 671, 779
- provision for costs, . . . . . 671, 781
- judgment to be rendered for balances found due to either party, . . . . . 671
  - not to be rendered against plaintiff if he had assigned his demand before action brought, nor for balance due to any other person, . . . . . 671
- defendant who files, how far regarded like a plaintiff in other actions, as to writs of review, . . . . . 748
- In action before justices of the peace and police courts, . . . . . 671
- defendant to file set-off at the time when action is entered, . . . . . 671
- other proceedings as in other courts, . . . . 671
- justice or court not to enter judgment for an amount exceeding the limit of their jurisdiction in other cases, . . . . . 671
- Of judgments, when a cross action is brought by a defendant, or one of several defendants, against a plaintiff out of state, . . . . . 645
  - when plaintiff in review reduces the original judgment, . . . . . 748
- Of executions between same parties may be made, . . . . . 687
  - in what cases not allowed, . . . . . 687
  - when not to extend to attorney's fees and disbursements, . . . . . 687
  - proceedings therefor, . . . . . 687
- Of improvements, against rents and profits recovered in writs of entry, . . . . . 694

**SET-OFF—continued.**

In case of persons summoned as trustees, . . . . . 723, 724

**SETTLEMENT.**

how acquired so as to oblige town to support person when poor, . . . . . 390, 391  
 provisions for persons who have begun to acquire under former laws, . . . . . 391  
 to continue till lost or defeated by acquiring new one, . . . . . 391  
 former, defeated by acquiring new one, . . . 391

**SETTLEMENT OF TITLE.**

proceedings by persons in possession of real estate to compel parties claiming adversely to bring action, . . . . . 696

**SEWERS AND DRAINS.**

provisions concerning, (*see Drains*), . . . . 253-255

**SEXTONS, &c.**

to make return to town clerk of certain facts concerning deaths, . . . . . 169  
 compensation for such return, . . . . . 169

**SHAKERS.**

how exempted from enrolment in militia, . . . 93

**SHARES.**

in corporations, how attached and taken on execution, . . . . . 627, 689, 690

**SHEEP.**

where taxable, . . . . . 76  
 less than six months old, exempted from taxation, . . . . . 75  
 to be impounded if found at large contrary to law, &c., . . . . . 185, 186  
 six, exempted from attachment and execution, . . . . . 624, 688

**SHELL FISH.**

other than oysters, penalty for taking unlawfully, &c., . . . . . 432  
 permits to take may be granted by selectmen, &c., may be taken by inhabitant of the town for family use without such permits, . . . 432  
 vessels, boats, &c., having on board, may be seized, . . . . . 433  
 to be discharged, if owner, &c., pays penalty before prosecution, . . . . . 433  
 prohibitions concerning, not to extend to Indians, . . . . . 433  
 regulations concerning, in Barnstable, Chatham, Marshpee, and Nantucket, . . . . . 433

**SHERIFFS.**

when and how elected, . . . . . 38, 70, 71  
 term of office, . . . . . 70  
 not to hold certain other offices, . . . . . 30, 33, 149  
 return of votes for, . . . . . 59, 60  
 to be sworn, . . . . . 150  
 in case of failure to elect, governor to order new election, . . . . . 71  
 vacancy in office of, how filled, . . . . . 72, 150  
 may appoint deputies, who shall be sworn, . . 150  
 bond to be given by, to treasurer of the commonwealth, . . . . . 150  
 with condition faithfully to perform his duties, and be responsible for his deputies, sufficiency of, to be examined annually by superior court, . . . . . 150  
 if insufficient, new to be given, . . . . . 150  
 how surety on, may be discharged, . . . . . 150  
 penalty for neglecting to give, . . . . . 150  
 proceedings in case of such neglect, . . . . . 150  
 proceedings when condition of, is broken, . . 150  
 copies of, to be furnished by treasurer, to any person applying, &c., . . . . . 151  
 such copy to be received as evidence, . . . . 151

**SHERIFFS—continued.**

if execution of is disputed, original to be produced, . . . . . 151  
 default of deputy after death, &c., of sheriff, to be adjudged breach of condition, . . 151  
 salaries of, in the several counties, . . . . . 152  
 actions for malfeasance of sheriff, &c., may be sued against executors, &c., . . . . . 151  
 when appointed to fill vacancy, to notify immediately coroners of the county, . . . . 150  
 not to be arrested in civil action, . . . . . 151  
 executions to run against property of, only, . . 151  
 if returned unsatisfied, &c., may be removed by governor, . . . . . 151  
 if removed, alias execution to run against body, may be removed by supreme judicial court, . . 553  
 to transmit returns of votes delivered to them within seven days, . . . . . 59, 69  
 to transmit precepts for election of members of congress, . . . . . 68  
 to transmit warrant of treasurer for state tax to assessors, . . . . . 77  
 to collect taxes in certain cases, . . . . . 79, 81, 83  
 duties of, when tax lists, &c., are committed to, fees in such case, . . . . . 86  
 may make requisition for militia in case of riot, &c., . . . . . 110  
 to serve all writs and processes within their counties lawfully issued to them, . . 145, 151, 618  
 may serve writs, &c., where their towns, &c., are parties, . . . . . 151  
 may summon juries for assessing damages caused by locating railroad, &c., when not members of corporation interested, . . . . . 151  
 may serve notices, &c., by attested copies, . . . 151  
 returns of service to be prima facie evidence, . . 151  
 may require aid in execution of official duty in criminal and certain other cases, . . . . . 151  
 penalty for refusing to aid, when required, . . . 813  
 not to act as counsel, &c., under penalty, . . . 151, 616  
 not to advise suit, &c., with intent to be employed to collect, under penalty, . . . 151, 613  
 may serve process in their hands at time of removal from office, . . . . . 151  
 to attend all courts in their counties, . . . . . 152  
 to attend meetings of county commissioners when ordered, . . . . . 152  
 to account annually with county treasurer, under oath, for all fees, &c., received, and pay over the same, . . . . . 152  
 to make annual return of moneys received, under oath, to secretary, . . . . . 152  
 return to specify fees in civil and criminal processes, and statement of attendance on courts, &c., . . . . . 152  
 penalty for neglect to make return, . . . . . 152  
 to transmit returns of census to secretary, under penalty, . . . . . 168  
 exempt from liability to watch, . . . . . 174  
 to abate nuisances, &c., under direction of board of health, . . . . . 190, 191  
 to preside at trials by jury in highway cases, if no other person is appointed, . . . . . 236  
 duties in such case, . . . . . 236  
 to inquire into violation of Lord's day, . . . . . 434  
 duties of, respecting violation of law in selling liquors, &c., . . . . . 444-447  
 penalty on, for neglect to serve process in liquor cases, . . . . . 443  
 protected from liability for service of such process, &c., . . . . . 443

**SHERIFFS—continued.**

how to give notice of special term of supreme court for trial of capital cases, . . . . 555

to adjourn court, and give notice thereof in absence of judge, . . . . . 568

penalty on, for not paying money collected on execution on demand, . . . . . 691

to perform duties of criers without compensation, . . . . . 618

exempt from serving as jurors, . . . . . 679

when liable if they take a bail bond with one surety only, . . . . . 642

when to deliver up body of person executed to college professors of surgery, . . . . 791

when to friends for interment, . . . . . 791

when to any surgeon, . . . . . 791

to seize forged and counterfeit bills, notes, tools, &c., . . . . . 811

to have care, rule, &c., of jails, except in Suffolk, compensation therefor, . . . . . 860

to oversee infliction of sentence of solitary imprisonment in jail, . . . . . 862

not to charge rent to jailers, &c., for houses provided for them by the county, . . . . 860

when may petition superior court to fix the salaries of certain officers, . . . . . 860

shall keep and deliver to successor all warrants, &c., . . . . . 860, 861

penalty for neglect, . . . . . 861

shall surrender to successor all prisoners, &c., shall deliver bodies of deceased prisoners to friends, . . . . . 861

shall not furnish liquors to prisoners, unless prescribed, . . . . . 863

penalty therefor, . . . . . 863

shall remove officers appointed by them in jails, &c., who use intoxicating liquors as a beverage, . . . . . 863, 864

may remove prisoners in case of pestilence or fire, . . . . . 864

duty of, in regard to making returns of jails and houses of correction, . . . . . 868

form of such returns, . . . . . 868

duty of, in execution of sentences of death, . . 847

to request the attendance of certain persons, . . . . . 847

to permit others to be present, . . . . . 847

to make return of doings to secretary's office, to file copy of warrant and return in clerk's office, . . . . . 847

fees of, for official duties, . . . . . 785

for serving process to be indorsed on the writ, . . . . . 788

when not entitled to witness fees in criminal cases, . . . . . 786

not to have interest in certificates for witness fees, . . . . . 788

to make complaint for injury to property, &c., of Humane Society, . . . . . 806

duty of, in suppressing riotous and unlawful assemblies, . . . . . 815

may remove prisoners from one jail to another in same county, at his discretion, . . 857

may furnish employment to prisoners, . . . . 858

those confined in jails not required to labor, . . . . . 858

to be reimbursed by county for damages caused by insufficiency of jail, . . . . . 858

falsely assuming to be, how punished, . . . . 814

suffering escape of person under sentence for fines, costs, &c., to be liable to pay the same, . . . . . 852

alone to receive fines, forfeitures, and costs, . . 852

**SHERIFFS—continued.**

payment to deputy or jailer to be same as payment to sheriff, . . . . . 852

to pay them over to county treasurer in thirty days, . . . . . 852

remedy against, for neglect, . . . . . 852

to render semiannual account to county treasurer, . . . . . 852

penalty for neglect, . . . . . 852

penalty on, for arresting fugitives from labor, . 741

actions against, for default of deputies, to be brought within four years, . . . . . 777

**Deputies of,** to be appointed by, and sworn, . 150

to collect taxes in certain cases, . . . . 79, 81, 83

duties and fees, when tax lists are committed to, . . . . . 86

to serve process directed to them by county commissioners, . . . . . 145

to serve all processes legally issued to them, . . . . . 151, 618

may serve processes though their town, &c., is a party, &c., . . . . . 151

may serve processes, &c., in their hands when vacancy occurs in office of sheriff, . . . . . 151, 152

duties of, respecting violation of law in selling liquors, &c., . . . . . 444, 447

protected from liability for service of process in liquor cases, . . . . . 448

penalty on, for neglect to serve such process, . . . . . 448

for arresting fugitives from labor, . . . . 741

penalty for refusing to assist, when required, . . . . . 813

penalty for falsely assuming to be, . . . . 814

exempt from serving as jurors, . . . . . 679

**SHIPS AND VESSELS.**

where, and to whom taxable, . . . . . 74, 75, 77

pilotage of, . . . . . 287-289

penalty for boarding, in certain harbors, without leave, except by pilot, &c., . . . . 290

for not leaving, when ordered, in such case, . 290

for enticing away crew of, . . . . . 290

how recovered in such cases, . . . . . 290

what to be deemed limits of certain harbors in such cases, . . . . . 290

record not necessary to validity of mortgage of, 767

lien on, . . . . . 768, 769

(*See Liens.*)

wilfully casting away, &c., to injure owner or insurer, how punished, . . . . . 804, 805

fitting out with intent to destroy, &c., to injure owner, &c., . . . . . 805

owner, &c., making false invoices, . . . . . 805

master, &c., making false protest, . . . . . 805

**SHIP OWNERS.**

how far liable for embezzlement, &c., by master and mariners, . . . . . 289

how to be sued by several freighters, &c., when ship and property are not sufficient to pay each in full, . . . . . 289

when charterers to be deemed, . . . . . 289

liability of, not to affect remedy against master or mariners, in case of embezzlement, &c., . . . . . 289

**SHIP TIMBER.** (*see Lumber.*) . . . . . 271

**SHOES,** (*see Boots, &c.*) . . . . . 270

**SHOP BILLS.**

punishment for engraving, &c., or circulating, in similitude of bank bills, . . . . . 811

**SHORE LINE BETWEEN HEADLANDS.**

how described, . . . . . 43



**SIDEWALKS.**

- may be constructed by persons owning or occupying land adjoining highway, in towns, . . . . . 249, 250
- width of, how indicated, . . . . . 249, 250
- penalty for riding or driving upon, how recovered, &c., . . . . . 250
- liability of persons for obstructing highways not diminished, &c., . . . . . 250
- authority of surveyor of highways, &c., not limited by these provisions, . . . . . 250
- provisions not to apply to cities, . . . . . 250
- In cities and towns** adopting provisions of law therefor, may be established and graded by mayor and aldermen and selectmen, . . . . . 250
- one half the expense of, may be assessed on abutters, . . . . . 250
- assessments for such part of expense to be a lien on real estate, . . . . . 250
- not to be dug up or obstructed without consent of mayor and aldermen or selectmen, . . . . . 250
- city councils may provide by ordinance for removal of snow and ice from, . . . . . 250
- and affix penalties for violation of such ordinances, . . . . . 250

**SIGN-BOARDS.**

- when to be erected at railroad crossings, . . . . . 360

**SISTERS.**

- when to inherit property of brothers or sisters, . . . . . 474

**SLANDER.**

- evidence of truth of matter may be given in evidence as justification, in civil actions for, . . . . . 662
- justification in actions for, not proof of malice, . . . . . 662
- form of declaration for, . . . . . 666
- actions for damages for, to be brought in two years, . . . . . 777

**SLEIGHS, &c.**

- not to be used in roads without bells, . . . . . 423

**SLUNG SHOT.**

- penalty for being armed with, &c., . . . . . 816
- for manufacturing, . . . . . 816

**SMALL POX.**

- provisions relating to persons sick with, . . . . . 193

**SNOW AND ICE.**

- city councils may provide by ordinance for removal of, from sidewalks, and affix penalties, . . . . . 250

**SOCIAL LIBRARIES. (See Libraries.)**

- provisions concerning, . . . . . 208, 209

**SOLDIER.**

- not to be quartered in any house, in time of peace, without the owner's consent, . . . . . 16
- how so quartered in time of war, . . . . . 16
- in actual service, may make uncupative will, . . . . . 477

**SODOMY.**

- how punished, . . . . . 819

**SOLE CORPORATION.**

- disseisin of, provisions respecting, . . . . . 775

**SOLE LEATHER. (see Leather.)**

- provisions respecting, . . . . . 269

**SOLITARY IMPRISONMENT.**

- sentence of, in houses of correction, how to be served out, . . . . . 862
- refractory convict may be punished by, . . . . . 862
- sentences to, in state prison, how served out, . . . . . 874

**SPEAKER.**

- of house of representatives, how chosen, . . . . . 22

**SPECIAL ADMINISTRATOR, . . . . . 70, 72, 145**

- provisions respecting appointment of, . . . . . 484

**SPECIAL COMMISSIONERS, (see County Commissioners.)**

- provisions respecting, . . . . . 70, 72, 145

**SPECIAL PLEADING.**

- abolished, . . . . . 656
- (See Pleading.)

**SPECIE.**

- banks to keep an amount of, equal to fifteen per cent. of circulation and deposits, . . . . . 302
- deposited by Boston banks in clearing house to be deemed specie, . . . . . 303
- certain balances, &c., to be deemed, . . . . . 303

**SPECIFIC PERFORMANCE.**

- of written contracts, suits for, may be brought in supreme court in equity, . . . . . 559
- for the conveyance of land, may be enforced by superior court or probate courts, when party thereto dies, or is put under guardianship, . . . . . 575
- conveyance, how ordered by probate court, and made in such case, . . . . . 575

**SPECIFICATION OF PARTICULARS.**

- may be required by court of either party to actius, . . . . . 660

**SPENDTHRIFT.**

- word, how construed, . . . . . 51
- guardian of, how appointed, . . . . . 544
- powers and duties of, . . . . . 544
- contracts by, when void, . . . . . 544
- living out of state, real estate of, how sold by guardian, . . . . . 513, 514
- common, how punished, . . . . . 820, 821

**SPIRITUOUS LIQUORS.**

- provisions respecting manufacture and sale of, . . . . . 438-453
- (See Liquors.)

**SPRINGFIELD.**

- land in, ceded to United States, . . . . . 44

**SPRINGS.**

- poisoning, how punished, . . . . . 794
- wilful or malicious corrupting, &c., . . . . . 823

**SQUIBS.**

- penalties for selling, firing, &c., without license, . . . . . 460

**STABLES.**

- penalty for erecting or using, for more than four horses, except when directed by selectmen, &c., . . . . . 458
- use, &c., of, may be restrained by injunction by supreme judicial court, . . . . . 458
- livery, in maritime towns, not to be used except when selectmen direct, under penalty, . . . . . 458
- keepers of, not to give credit to students, under penalties, . . . . . 457

**STAGE COACHES.**

- (See Drivers, Public Conveyances, Vehicles.)

**STANDARD WEIGHTS.**

- measures, and balances, . . . . . 284
- (See Weights and Measures.)

**STATE.**

- applied to different parts of the United States, how construed, . . . . . 51

**STATE ALMSHOUSES. (See Almshouses.)**

- provisions respecting, . . . . . 400-403

**STATE HOUSE.**

- and appurtenances, who to have care of, . . . . . 133, 134
- joint standing committee on, to report upon repairs, &c., . . . . . 54
- penalty for defacing, &c., . . . . . 55
- commissioners on repairs, &c., of, who to be, . . . . . 134
- powers and duties of commissioners of, . . . . . 134
- fireman of, how and by whom appointed, . . . . . 134
- duties and salary of, . . . . . 134

**STATE INDUSTRIAL SCHOOL FOR GIRLS. (See Industrial School.)**

- provisions respecting, . . . . . 413-417

STATE LIBRARY, (see *Library*.) . . . . . 54  
 STATE LUNATIC HOSPITAL, (see *Lunatic Hospitals*.) . . . . . 406-411  
 STATE MAP.  
 provisions for correcting, . . . . . 144  
 STATE PRISON.

GENERAL PROVISIONS.

to be the general penitentiary and prison, . . . 869  
 prisoners sentenced thereto by United States courts, except under fugitive slave law, may be confined, . . . . . 869, 870  
 jurisdiction of offences therein, to be in Suffolk and Middlesex courts, . . . . . 870  
 process to be served therein, to be directed to warden, . . . . . 870  
 and to be served and returned by him, . . . 870  
 governor and council may cause additional cells or buildings to be made, . . . . . 870  
 and additional accommodations for officer, . . 870  
 shall visit the prison annually, . . . . . 870  
 shall inquire into alleged abuses, . . . . . 870  
 may alter general discipline, . . . . . 870  
 shall draw warrants for money appropriated for, . . . . . 870  
 officers and assistants in, exempted from military duty, . . . . . 93

OFFICERS AND SALARIES.

Officers, of whom to consist, . . . . . 870  
 Inspectors, how appointed, tenure and term of office, . . . . . 870  
 Warden, chaplain, physician and surgeon, how appointed and tenure of office, . . . . . 870  
 Deputy warden, and other officers, except assistant watchmen, . . . . . 870  
 Assistant watchmen, how appointed, &c., 870, 871  
 warden to report his appointments to inspector, 871  
 no officer of prison to have any other business, . 871  
 Salaries of the various officers, . . . . . 871

INSPECTORS.

appointment, tenure, term of office, and salary, . . . . . 870, 871  
 duty and authority of, . . . . . 871  
 to establish rules and regulations, . . . . . 871  
 subject to approval of governor and council, 871  
 when approved, copy to be delivered warden, 871  
 to visit the prison monthly, or oftener, . . . 871  
 single inspector to make weekly visit, . . . 871  
 to examine prison books and documents, . . . 871  
 must approve warden's bill of purchases, before payment, . . . . . 871  
 to report to governor violations of law and omissions of duty by officers, . . . . . 871  
 to remove forthwith unfaithful, &c., officers, and those using intoxicating liquors as a beverage, . . . . . 871  
 to make annual detailed report to governor, . . 871  
 subject matters of the report, . . . . . 871, 872

CHAPLAIN.

appointment, &c., salary and duty of, . 870, 871, 872

PHYSICIAN AND SURGEON.

appointment, &c., of, . . . . . 870, 871  
 general duty, . . . . . 872  
 all orders for hospital supplies to be in writing, 872  
 care and treatment of the sick and insane, . . . 872

WARDEN AND DEPUTY WARDEN.

Warden, appointment, tenure, and salary, 870, 871

STATE PRISON — continued.

to give bond with sureties, to be filed in treasurer's office, . . . . . 872  
 shall execute warrant for removal of convicts from jail to prison, . . . . . 872  
 proceedings on such warrant, . . . . . 872  
 sheriffs and others to aid in executing the warrant, . . . . . 872  
 shall reside constantly within the prison precincts, . . . . . 872  
 shall report his appointments to inspectors, 871  
 to have no other business, . . . . . 871  
 to propose in writing alterations in regulations, . . . . . 873  
 to have charge, custody, and government of convicts, . . . . . 873  
 of the prison and property, and to be treasurer thereof, . . . . . 873  
 regular accounts thereof to be kept, . . . 873  
 accounts to be made in detail, to September 30, each year, . . . . . 873  
 to be filed in treasurer's office for inspection of the legislature, . . . . . 873  
 duty of, in regard to all bills for supplies, &c., . . . . . 871, 874  
 duty and power as regards discipline and care of convicts, . . . . . 874, 875  
 may cause Sabbath school to be kept, . . . 875  
 and evening schools for one hour, except on Sundays, . . . . . 875  
 to regulate visits and communications between convicts and their friends, . . . 875  
 may make rules as to introduction of newspapers and visitors, . . . . . 875  
 visitors must have permit, . . . . . 875  
 to keep register of visitors, . . . . . 875  
 may refuse admission to person having permit, . . . . . 875  
 to report such refusal to inspectors, . . . 875  
 to keep record of conduct of convicts, . . . 875  
 duty as to regulations for the rations, clothing, &c., of convicts, . . . . . 876, 877  
 as to discharged convicts and their agent, 877  
 vacancy in office of, how filled, . . . . . 873  
 warden pro tempore, where and how appointed, . . . . . 873  
 Deputy warden, appointment, &c., and salary, . . . . . 870, 871  
 duty of, in absence or disability of warden, . 873  
 to act, and be liable, as warden, . . . . . 873  
 if governor and council are not in session, inspectors may require him to give bond, . . . . . 873  
 to have salary of warden from time of giving bond, . . . . . 873  
 if does not give bond, inspectors may remove him, and appoint warden pro tempore, . . . . . 873  
 bond, and duties and liabilities of warden pro tempore, . . . . . 873

CONTRACTS.

to be made by warden in writing and approved by the inspectors, . . . . . 873  
 warden may sue or be sued thereon, . . . . . 873  
 suit not to abate, by office of warden becoming vacant, . . . . . 873  
 proceedings in such case, . . . . . 873  
 controversies in regard to, warden may submit to arbitration, . . . . . 873, 874  
 inspectors to approve the arbitrators, . . . 874  
 principal articles to be purchased by the year, . 874

STATE PRISON—*continued.*

- proposals therefor, and proceedings thereon, . . . 874  
 no officer to be concerned in contracts, &c.,  
   about the prison, . . . . . 874  
 bills to be taken of all purchases and supplies,  
   &c., . . . . . 874  
 examination as to their correctness, . . . . 874
- DISCIPLINE, &c., OF CONVICTS.
- treatment to be kind, . . . . . 874  
 order and obedience to be enforced and escapes  
   prevented, . . . . . 874  
 warden may require aid of all officers there-  
   for, except, &c., . . . . . 874  
 convicts sentenced to hard labor to be employed,  
   not to be employed in printing or engraving, 874  
 the refractory may be confined to solitary labor,  
   by warden, if one or more inspectors  
   consent, . . . . . 874  
 sentence by court of solitary imprisonment, how  
   executed, . . . . . 874  
 Sabbath school may be maintained, . . . . 875  
 suitable instruction in reading and writing, . . 875  
 Convicts to be kept separate, and have no in-  
   tercourse with each other, . . . . . 875  
   interviews of with friends, . . . . . 875  
   communication between, and friends, . . . 875  
 regulations as to newspapers and visitors, . . 875  
 visitors not admitted without a permit from an  
   inspector or the warden, . . . . . 875  
 names and residences of visitors to be registered,  
   register to be kept by warden and open to in-  
   spectors, . . . . . 875  
 admission may be refused to persons having a  
   permit, . . . . . 875  
   warden to report such refusal to inspectors, 875
- RECORD OF CONDUCT.
- to be kept by warden and submitted to governor  
 and council, . . . . . 875  
 what deductions to be made from term of  
 sentence, for good behavior, by the  
 record, . . . . . 875
- Escapes, &c.
- escapes, or attempts by violence to escape, how  
 punished, . . . . . 876  
 assaults on warden, inspector, or other officer,  
 punishment, when done by one under life sen-  
 tence, . . . . . 876  
 punishment of officer suffering an escape, . . . 876  
 leaving convict at large, or other unlawful in-  
 dulgence, . . . . . 876  
 aiding convict to escape, how punished, . . . 876  
 forcibly or fraudulently rescuing or attempting  
 to rescue, . . . . . 876  
 unlawful conveyance of articles into the prison  
 for any convict, how punished, . . . . . 876  
   receiving articles from convict to carry out  
   of prison, . . . . . 876
- RATIONS, CLOTHING, &c., OF CONVICTS.
- warden and inspectors to make regulations, . . 876  
 subject to approval of governor and council, 876  
 all rations, clothing, &c., to be of good quality,  
   may be changed from time to time, . . . . 877  
 no intoxicating liquors to be furnished the con-  
   victs, . . . . . 876  
 subsistence, &c., in hospital to be directed by  
   physician, . . . . . 876  
 articles of comfort and indulgence, how  
   ordered, and for what time, . . . . . 876  
 prison to be sufficiently ventilated, . . . . 877  
 prisoners to have baths weekly, unless, &c., . 877

STATE PRISON—*continued.*

- INSANE CONVICTS.
- provisions concerning, . . . . . 878  
 who to be commissioners to examine, . . . . 878  
 warden to notify of apparent insanity of convict,  
 commissioners to investigate the case, . . . . 878  
   proceedings if majority find that the convict  
   has become insane, . . . . . 878  
 convict to be removed to lunatic hospital, . . . 878  
 on restoration to health to be returned to prison,  
 confinement in hospital to be computed as part  
   of term of imprisonment, . . . . . 878
- DISCHARGED CONVICTS.
- convicts when discharged to be decently clothed,  
 warden may pay, not over five dollars, to each  
   deserving, . . . . . 877  
   or to the agent, who shall account therefor, 877  
 Agent for, appointment, term of office, duties,  
   and salary of, . . . . . 877  
 office to be in Charlestown or Boston, . . . 877  
 to keep account of expenditures, . . . . . 877  
 expenditures not to exceed five hundred dol-  
   lars in any one year, . . . . . 877  
 to make annual return to the governor and  
   council, . . . . . 877
- STATE REFORM SCHOOL FOR BOYS,  
 (see *Reform School*), . . . . . 418, 423
- STATE SCHOLARSHIPS, (see *Scholar-*  
*ships*), . . . . . 213, 214
- STATE TAX, (see *Taxes*), . . . . . 77
- STATUTE OF FRAUDS, (see *Frauds*), . . . 527
- STATUTE OF LIMITATIONS.
- provisions of, . . . . . 775-779, 839  
 (See *Limitations*.)
- STATUTES.
- enacting style of, . . . . . 31  
 a general statute may be referred to in pleading  
   by chapter, or other general designa-  
   tion, . . . . . 654  
 and laws of this and other states and foreign  
   countries, how proved, . . . . . 678, 679  
 (See *Laws*.)
- STAY OF PROCEEDINGS.
- in insolvency, how may be made, . . . . . 600
- STAVES.
- provisions concerning, . . . . . 267  
 (See *Hoops and Staves*.)
- STEALING.
- in a building, ship, or vessel, how punished, . . 797  
 in a building on fire, . . . . . 797  
 of property removed because of alarm of fire, . 797  
 (See *Larceny*.)
- STEAMBOATS.
- proprietors to publish list of unclaimed effects  
 of passengers, . . . . . 426  
 to give notice to selectmen, &c., of town or city  
   where articles are, . . . . . 426, 427  
 penalty on, for neglect to advertise, &c., . . . 427  
 (See *Passengers*.)
- STEAM BOILERS.
- may be examined by mayor and aldermen, &c.,  
   and use of, suspended or prohibited, 450, 460  
 may be removed as nuisances by mayor and al-  
   dermen, &c., . . . . . 460  
 not to be made or used without safety plugs, . . 460  
 penalty for making, without safety plug, . . . 460  
   for removing safety plug, &c., . . . . . 460
- STEAM ENGINES, FURNACES, &c.
- erection and use of, may be licensed and regu-  
 lated, in certain cases, by selectmen,  
 &c., . . . . . 458, 459



**STEAM ENGINES, &c. — continued.**  
 owner aggrieved may have jury as in case of highway, . . . . . 459  
 use of, may be restrained in mean time, by superior court or justice thereof, . . . . . 459  
 verdict of jury, and costs in such cases, . . . . . 459  
 erected and used contrary to law, &c., to be deemed common nuisances, . . . . . 459, 460  
 may be examined by mayor and aldermen, &c., and use of, suspended or prohibited, 459, 460  
 may be removed by mayor and aldermen, &c., as nuisances, . . . . . 460

**STEELYARDS.**  
 vibrating, may be used in weighing, if sealed &c., annually, . . . . . 285

**STOCKS.**  
 fraudulent over issues of, how punished, . . . . . 801, 802  
 false entries as to transfer of, in books of corporation, how punished, . . . . . 802  
 omitting to make true entry of transfer, . . . . . 802  
 in trial of such case, the books to be evidence, . . . . . 802  
 public, and in moneyed corporations, &c., taxable to owner, . . . . . 74  
 stock for carrying on trade or business, when exempt from attachment and execution, . . . . . 624, 688

**STOVE.**  
 one iron, used for warming dwelling-house, exempt from attachment and execution, 688

**STRAITSMOUTH ISLAND.**  
 ceded to United States, . . . . . 45

**STRAY BEASTS.**  
 when taken up, notice of, to be entered with town clerk, . . . . . 425  
 notice of, to be entered by clerk in book kept for that purpose, . . . . . 425  
 how to describe them, . . . . . 425  
 how to be cried, and what notification to be posted, . . . . . 425  
 of ten dollars value, how to be appraised, . . . . . 425  
 appraisers of, by whom appointed and sworn, . . . . . 425  
 owner of, to have restitution if he appears within three months, . . . . . 426  
 to pay charges before restitution, . . . . . 426  
 charges for keeping, &c., how determined, . . . . . 425  
 finder of, may sell at public auction, if owner does not appear within three months, 426  
 how to give notice of sale, . . . . . 426  
 penalty on, for not giving notice, . . . . . 426  
 to deposit net amount of sale in town treasury, 426  
 if not sold, owner may have restitution within one year, on paying charges, . . . . . 426  
 if sold, to have proceeds if he appears within one year, . . . . . 426  
 if owner does not appear, proceeds to be divided between town and finder, . . . . . 426  
 penalty for taking away, without paying charges, . . . . . 426  
 to whose use, and how recovered, . . . . . 426  
 if taken up within ten miles of Agricultural Hall in Brighton, finder, how to proceed, . . . . . 425

**STREETS.** (*See Highways.*)  
 repairs of, &c., . . . . . 245-248

**STUBBORN CHILDREN.**  
 how punished, . . . . . 820, 821

**SUBORNATION OF PERJURY,** (*see Perjury.*) . . . . . 812

**SUBPCENA.**  
 On bills in equity, how signed and issued, . . . . . 559, 622  
 how served, . . . . . 624

**SUBPCENA — continued.**  
 To witnesses, may be issued by a clerk of a court of record or any justice of the peace, . . . . . 672  
 how and by whom served, . . . . . 672  
 may be issued by police courts, to run into any county for witnesses in criminal cases, . . . . . 571  
 (*See Summons.*)

**SUFFOLK COUNTY.**  
 jurisdiction of, in common with Middlesex, on part of Charles River, . . . . . 144, 145  
 county property in, to belong to Boston, . . . . . 144  
 court house, jail, &c., in, to be provided by Boston, . . . . . 144  
 county charges in, to be paid by Boston, . . . . . 144  
 in Boston, aldermen to act as county commissioners for, . . . . . 148  
 to have powers of commissioners in laying out ways, &c., . . . . . 242  
 treasurer of city of Boston to be county treasurer of, . . . . . 149  
**Board of accounts in,** of whom to consist, . . . . . 149  
 quorum of, . . . . . 149  
 to meet quarterly, and examine and allow criminal costs, expenses of jail, &c., 149, 150  
 compensation of, . . . . . 150

**SUMMONS.**  
 to witnesses in criminal cases, may be issued by police courts, to run into any county, . . . . . 571  
 in criminal cases, may be granted by justices of the peace, on request of attorney-general or party accused, . . . . . 610  
**On defendant in civil actions,** . . . . . 622, 623  
 separate to be served where property is attached, . . . . . 621  
 to be served by copy in other cases, . . . . . 623  
 to be served personally, or left at last and usual place of abode of defendant, . . . . . 623  
 how served on absent defendants, . . . . . 623  
 in real actions, . . . . . 623  
 how served on counties, cities, towns, parishes, and other corporations, . . . . . 623  
 in equity cases, . . . . . 624

**SUNDAY.**  
 provisions concerning the observance of, . . . . . 434, 435  
 (*See Lord's Day*)

**SUNKEN ROCKS.**  
 buoy on, ceded to United States, . . . . . 44

**SUPERIOR COURT.**  
 to have one chief, and nine associate justices, . . . . . 562  
 appointment of justices and tenure of office, . . . . . 24, 27, 565  
 if chief is absent, senior justice to perform his duties, . . . . . 565  
 held by one justice, to have powers given to the court, . . . . . 562  
 justices of, to be conservators of the peace, throughout the commonwealth, 565, 827, 831  
 to make arrangements among themselves for holding terms, . . . . . 567, 568  
 may award judgments, frame writs, and have necessary powers, . . . . . 565, 566  
 make rules, . . . . . 566  
 actions not to be commenced in, where ad damnum is less than twenty dollars, . . . . . 563  
 parties may agree that judgments of, shall be final, . . . . . 563  
 action in, may, in certain cases, be removed to supreme court, upon affidavit or consent of parties, . . . . . 565, 566  
 judge of, not to charge juries in matters of fact, . . . . . 566

**SUPERIOR COURT—continued.**

may set aside verdicts and order new trials, 566  
 may, after verdict, report case to supreme court, . . . . . 566  
 decision of single judge on pleas in abatement, and motions to dismiss for defect in form, to be final, . . . . . 566  
 to enter orders and rescripts of supreme court, and judgment according thereto, . . . 563  
 may enter judgment as of any day of a former term, . . . . . 567  
 may be adjourned, . . . . . 618  
 how adjourned in absence of judge, and notice given, . . . . . 568  
 may establish seal, . . . . . 568  
 may appoint necessary officers, . . . . . 568  
 expenses incident to, how audited and paid, . . 567  
 cases in, of habeas corpus and personal liberty, of nuisance, and violations of liquor law, to have precedence, . . . . . 565  
 records of other courts transferred to, how kept and certified, . . . . . 565  
 Salaries of judges, . . . . . 565

**APPEALS AND EXCEPTIONS.**

appeals from, to supreme court, in matters of law apparent on record, . . . . . 563  
 exceptions, how taken, allowed, and certified, and restored to files, . . . . . 566  
 trial not to be delayed by allowance of, . . 567  
 if frivolous, judgment may be entered, . . 567  
 if disallowed or altered, may be proved, . . 567  
 questions on appeals, exceptions, &c., entered in supreme court, not to transfer case, . . 567  
 nor to discharge security in the action, . . . 567  
 copies of papers in such cases to be transmitted by clerk, . . . . . 563, 567  
 expenses of such copies, how taxed, . . . . 563  
 original papers may, in certain cases, be transmitted, . . . . . 563  
 (See *Appeals, Exceptions.*)

**TERMS.**

times of holding in the several counties, . . . . 564  
 civil and criminal business to be transacted at different terms in certain counties, . . 564  
 not more than four for criminal business only, to be held by same judge in one year, . . . . . 565  
 suits in recognizances in criminal cases to be brought in terms for criminal business, . . . . . 564  
 established to be held at one place, may be adjourned to any other shire town in same county, . . . . . 568  
 two or more sessions of, may be held at same time, and business divided, . . . 567  
 first day of, how designated, . . . . . 567

**JURISDICTION.**

*Criminal.*

**Original**, of all crimes, offences, and misdemeanors, . . . . . 562  
 to be final, except in cases expressly provided for, . . . . . 562  
**Appellate**, of all offences tried before justices of the peace and police courts, . . . . 562

*Civil.*

**Original**, of all civil actions except those of which supreme court, police courts, and justices of the peace have original and concurrent, . . . . . 562

**SUPERIOR COURT—continued.**

**Exclusive original**, of complaints for flowing land, . . . . . 562  
 of information for intrusion on Indian lands, 719  
**Original and concurrent with supreme court** of petitions for partition, writs of entry to foreclose mortgages, civil actions where damages or property claimed exceed four thousand dollars in Suffolk, or one thousand dollars in other counties, . . . . . 562  
 suits for redemption of mortgages, . . . . 714  
**Original and concurrent with police courts and justices of the peace**, of civil actions wherein damages demanded exceed twenty dollars, and do not exceed one hundred dollars, or with the police court of Boston, three hundred dollars, . . . . . 503  
**Appellate from justices of the peace and police courts**, . . . . . 562, 572, 607, 609  
 when appeal or complaint for non-entry thereof is not duly entered, how it may be entered afterwards on leave, . . 563  
 security discharged by non-entry of appeal in due season, not revived by entry on leave, . . . . . 563  
 from courts of insolvency, . . . . . 562  
 on allowance or disallowance of claims offered for proof in that court, . . . . 585  
 of discharge to debtor, . . . . . 592  
 from commissioners of insolvency on insolvent estates of deceased persons, . . . 562  
 when claim does not exceed three thousand dollars in Suffolk, or one thousand dollars in any other county, . . 497  
 entry and trial of such appeals, . . . . . 947  
 from board of health relative to offensive trades and closing tombs, . . . . . 194, 196  
 from magistrates on charges of fraud in cases of poor debtors, . . . . . 638, 639

**MISCELLANEOUS POWERS.**

court may appoint person to act as attorney-general or district attorney in certain cases, . . . . . 130  
 to examine bonds of sheriffs and coroners annually, . . . . . 150, 152  
 may discharge surety on sheriffs bonds, . . . 150  
 to certify to governor and council, &c., if sheriff neglects to give bond, . . . . . 150  
 may remove register of deeds in Suffolk in certain cases, . . . . . 153, 154  
 to approve by-laws of towns, . . . . . 158, 230  
 of engineers of fire districts, . . . . . 181  
 of law library associations, . . . . . 208  
 to receive verdicts of juries in highway cases, . . 237  
 may assess kindred of paupers for their support, &c., in certain cases, . . . . . 392, 393  
**Jurisdiction respecting ways in Suffolk**, . . . 242  
 of cases for damages by officers of United States coast survey, . . . . . 46  
 in bastardy cases, . . . . . 404, 405  
 in cases of liquor seized on search warrants, . . . . . 447  
 respecting nuisances and waste, . . . . . 189, 190, 453, 710, 711  
 steam engines, . . . . . 459  
 of naturalization of aliens, . . . . . 618  
 of cases from justices of the peace and police courts when title to real estate is brought in question, &c., . . . . 606, 731

**SUPERSEDEAS OF EXECUTION.**

(See *Execution, Review, Evidence.*)

**SUPPORT.**

of persons committed as rogues, common drunkards, &c., . . . . . 820

Of paupers. (See *Paupers.*)

**SUPREME JUDICIAL COURT.**

**JUSTICES.**

one chief, and five associate justices, . . . . . 553  
 how appointed, and tenure of office, . . . 17, 27, 565  
 not to hold certain other offices, . . . . . 30, 33  
 if chief is absent, senior justice to perform his duties, . . . . . 565  
 to be conservators of the peace throughout the commonwealth, . . . . . 565, 827, 831  
 four to constitute quorum for full court, or court of law, . . . . . 553  
 one at law term to have same powers as at jury term, and four at jury term to have powers of full court, . . . . . 555  
 opinions of, may be required by each branch of legislature, and governor and council, . . . 27  
 majority of, may remove from office clerks of the courts, commissioners of insolvency, sheriffs, registers of probate and insolvency, and district-attorneys, . . . . . 553  
 not to charge juries on matters of fact, . . . . 566  
 to arrange among themselves for holding terms of the court, . . . . . 567, 568  
 one to be designated to attend at all times in Boston to hear equity cases, . . . . . 561  
 Salaries of, . . . . . 25, 558  
 to be paid without specific appropriation, . . 139  
 Single judge may arraign prisoners indicted for capital crimes, . . . . . 553  
 may pass sentence if prisoner pleads guilty, . . 553  
 may assign counsel and prepare for trial, if he does not plead guilty, . . . . . 553  
 after decision upon exceptions in capital cases, may pass sentence or make arrangements for new trial, . . . . . 554  
 may reserve questions of law for, and report cases to, full court, . . . . . 554  
 may, after verdict, report case to full court, . . 566  
 powers of, in equity cases, . . . . . 559, 560  
 decision of, on pleas in abatement and motions to dismiss for defect of form, final, . . . . . 566

**GENERAL PROVISIONS.**

to have general superintendence of courts of inferior jurisdiction, . . . . . 553  
 to issue certain writs to courts, corporations, and individuals for furtherance of justice and the execution of the laws; . . . 553  
 to frame writs, award judgments, and have all other necessary powers, . . . . . 565, 566  
 may appoint persons to perform duties of attorney-general or district-attorney in case of absence, . . . . . 130  
 may make rules for various purposes, . . . . . 566  
 concerning changes in forms of writs, . . . 622  
 for settling truth of exceptions in certain cases, . . . . . 567  
 may approve or alter rules of courts of insolvency, . . . . . 582  
 may set aside verdicts and order new trials, . . 566  
 may enter judgment as of any day of a former term, . . . . . 567  
 may allow amendments, pass interlocutory orders out of court, &c., . . . . . 660  
 may appoint all necessary officers, . . . . . 563

**SUPREME JUDICIAL COURT—continued.**

officers attending, payment of, . . . . . 553  
 accounts for expenses of, how audited and paid, . . . . . 567  
 may establish seal, . . . . . 568  
 may be adjourned by order of judge, . . . . . 618  
 how adjourned in absence of judge, and notice thereof given, . . . . . 568  
 exceptions, how taken, examined, allowed, and entered, . . . . . 566, 567  
 sitting in Barnstable county to have jurisdiction in Dukes county, . . . . . 556, 557  
 writs and processes of, may be entered at adjourned terms, . . . . . 622  
 orders and decrees respecting cases in superior court, how entered, . . . . . 563  
 the words "the court" may mean full court, or court held by single justice, according to context and subject matter, 557, 558

**JURISDICTION.**

**IN CIVIL MATTERS.**

**Exclusive**, of suits for divorce and nullity of marriage, . . . . . 533, 553  
 of suits on probate bonds, . . . . . 506  
 informations of intrusion in certain cases, . . 717  
**Concurrent** with superior court, of petitions for partition, writs of entry to foreclose mortgages, and certain other civil actions, . . . . . 553  
 suits for redemption of mortgages, . . . . . 714  
**Of cases removed from superior court by affidavit or consent of parties**, . . . . . 553, 562  
 how such cases are to be entered, . . . . . 562  
**Appellate**, of cases from superior court in matters of law apparent on record in all cases, . . . . . 553, 566  
 from commissioners on insolvent estates of deceased persons, . . . . . 498  
**Of cases in equity**, (see *Equity*), . . . . . 558  
**Of cases from probate courts**, . . . . . 575

**IN CRIMINAL CASES.**

of trial for all capital crimes, by full court, four justices, . . . . . 553, 554  
 at law terms or special terms to be held therefor, . . . . . 555  
 in Dukes county to be had in Barnstable county, . . . . . 555  
 exceptions may be taken in such cases, . . . 554  
 if frivolous, may be forthwith overruled, and judgment entered, . . . . . 554  
 if prisoner pleads guilty, single judge may sentence, . . . . . 553  
 if he does not plead guilty, may assign counsel and prepare for trial, . . . . . 553  
 after decision upon exceptions, single judge may pass sentence or take measures for new trial, . . . . . 554  
**Appellate** of cases from superior court on matters of law apparent upon the record, . . . . . 553, 563  
 questions on appeals and exceptions in, from superior court, how taken, examined, allowed, and entered, . . . . . 563, 566, 567  
 to be entered on separate docket, . . . . . 557  
 to be in order for argument each month when court is in session, on some day designated, . . . . . 557

**TERMS.**

first day of term, how designated, . . . . . 567, 617



SUPREME JUDICIAL COURT—*continued.*

JURY TERMS.	
times of holding in the several counties, . . .	556
to be held by one justice, . . . . .	556
at these terms the court to have and exercise all the powers not expressly reserved to full court, . . . . .	556
law terms to be taken to be jury terms in some counties and for certain purposes, . . . . .	556
in Barnstable to have jurisdiction in Dukes county, . . . . .	556, 557
two or more sessions may be held at same term, . . . . .	567
writs and processes may be entered at adjourned term, . . . . .	622

## LAW TERMS.

when to be held, in counties of Berkshire, Franklin, Hampden, Hampshire, and Worcester, . . . . .	556
these terms to be taken to be jury terms for certain purposes, . . . . .	556
Court for the commonwealth, for all other counties, at Boston, on first Wednesday in January, and to be adjourned from time to time throughout the year, by order of judge or agreement of parties, questions of law from any county may be entered at this term, . . . . .	567
question of law, how entered, heard, &c., at such terms, . . . . .	557
expenses of, to be audited by court and paid by commonwealth, . . . . .	558

## FULL COURT, OR COURT OF LAW.

four justices to constitute a quorum, . . . . .	553
four justices at jury term to have power of, . . . . .	555
writs and processes cognizable by, how sued out and returnable, . . . . .	556
to try all capital cases, questions of law on exceptions, appeals from superior courts, cases stated by parties, on special verdicts, and other questions of law, . . . . .	553, 554
questions of law reserved by single judge, . . . . .	554
reported by superior court, . . . . .	554
questions on exception, appeals, and in other cases for determination of, how entered, . . . . .	556, 557, 567
case not transferred by such entry, but only the question, . . . . .	567
proper papers in such cases to be prepared by clerks, . . . . .	557
questions when to be in order for argument, . . . . .	557
may hear questions ex parte in certain cases, . . . . .	557
or postpone hearings under certain circumstances, . . . . .	557
when questions are not duly entered, adverse party may complain and have judgment affirmed, . . . . .	554, 555
when by mistake questions or complaint for non-entry thereof are not duly entered, court may, within one year, allow entry thereof, . . . . .	555
in such cases, security discharged by omission, not revived, . . . . .	555
upon decision of questions of law, may affirm former judgment with interest, reverse the same in whole or in part, or make other order, . . . . .	554
court may award double cost and twelve per	

SUPREME JUDICIAL COURT—*continued*

cent. interest when questions are frivolous, . . . . .	554
may vacate judgments in cases in which exceptions are allowed, . . . . .	554
judgment, how entered of a former term in cases continued nisi, . . . . .	557
time of receiving order for such entry to be noted by clerk, . . . . .	587
security, not discharged thereby, how long held, . . . . .	557
questions in criminal cases to be entered on separate docket, and proceedings thereon, . . . . .	557
to be held specially for trial of capital cases where no law term is established, . . . . .	555
except that cases in Dukes county are to be tried in Barnstable county, . . . . .	555
to be specially convened when no law term is to be held within six months after indictment found, . . . . .	555
chief justice to take measures to convene session in such cases, . . . . .	555
notice of such special term, how given, . . . . .	555
powers of court at such terms, . . . . .	555
to determine equity cases on appeal from single judge, . . . . .	560
upon interlocutory cases, reported by single judge, . . . . .	560
may, within one year, allow entry of appeals from final decrees of single judge in equity, omitted to be duly entered, . . . . .	560
questions of law in the counties of Berkshire, Franklin, Hampden, Hampshire, and Worcester, how entered, and heard in law terms for those counties, . . . . .	556
how entered at Boston in court for commonwealth, by consent of parties, or by order of judge, . . . . .	567
in all other counties, to be entered and heard in court for commonwealth at Boston; proceedings therein, . . . . .	557

## SURETIES.

on bonds given to judge of probate court, to be inhabitants of this state, &c., . . . . .	505
may be discharged by probate court, or supreme judicial court, upon petition, . . . . .	505
to be liable until new bond is given, . . . . .	505
may have process against principal in certain cases, . . . . .	506

## SURETIES OF THE PEACE.

what officers authorized to keep the peace and require sureties for good behavior, . . . . .	827
in what case may be required, in addition to punishment prescribed by law, . . . . .	845
proceedings, in such cases, on breach of recognizance, . . . . .	845
may be required, without process, of persons who make an affray, threaten, &c., in presence of courts or magistrates, . . . . .	828
may be required of such as go armed with a dangerous weapon, having no cause to fear violence, &c., . . . . .	829
may be required, on complaint, &c., of those who threaten to commit an offence against person or property, . . . . .	827
have the same authority to surrender their principal as if they were his bail in a civil action, . . . . .	829
shall be discharged, upon such surrender, from liability for subsequent acts of the principal, . . . . .	829
person so surrendered may recognize anew. . . . .	829

**SURETIES OF THE PEACE**—*continued.*

complaint to be made on oath and subscribed, before a warrant shall issue, . . . . . 827

warrant for arresting party complained of, what to recite, &c., . . . . . 827

defendant, when brought before a magistrate, to be heard in his defence, . . . . . 827

shall be discharged, if there be no just cause of fear, . . . . . 828

may be required to enter into recognizance, with sureties, to keep the peace for a term not more than six months, . . . . . 828

shall not be bound over to the next court, unless he be charged with some other offence, &c., . . . . . 828

shall be discharged on complying with order to recognize, . . . . . 828

shall be committed to jail or house of correction, &c., if he do not recognize, . . . 828

may be discharged from jail, &c., on giving the security that was required, . . . . 828

may recognize anew, before any justice, when surrendered by his sureties, . . . 829

may be ordered to pay costs of prosecution, or part thereof, and be committed, until, &c., . . . . . 828

where no order is made about costs, how they are to be paid, . . . . . 828

may appeal from magistrate's order to superior court, on recognizing as required, . . . . . 828

witnesses may be required to recognize to appear at appellate court, . . . . . 828

authority of appellate court, in such cases, . . 828

if appeal be not prosecuted, recognizance to remain in force, and stand as security for costs, . . . . . 828

penalty of recognizance may be remitted in part by court, &c., . . . . . 829

complainant to pay costs if complaint is frivolous, malicious, &c., . . . . . 828

in such case, to be answerable therefor, as for his own debt, . . . . . 828

**SURGEONS.** (*See Physicians and Surgeons.*)

duties, exemptions, &c., of, 169, 193, 195, 680, 850, 870

**SURRENDER.**

of principal by bail, . . . . . 643, 644

by sureties in recognizances for poor debtors arrested, &c., . . . . . 641

**SURVEY OF COAST,** (*see Coast Survey*), . 45, 46

**SURVEYORS OF HIGHWAYS.**

to be chosen at annual town meeting, . . . . 160

to be sworn, . . . . . 161

penalty for refusing to serve, . . . . . 165

not obliged to serve oftener than once in three years, . . . . . 165

penalty on, for neglect of duty, . . . . . 165

liable to indictment for defective highways, . 165

to town for amount of fines, &c., imposed for defective ways, . . . . . 165

limits of, to be assigned by selectmen, . . . . 245

list of highway taxes to be given to, by assessors, . . . . . 245

to give notice to persons taxed, . . . . . 245

to expend in repairs money received for highway taxes, . . . . . 245

may remove obstructions in highways, . . 245, 246

not to remove fences, &c., set up to prevent spread of contagious disease, . . . . 246

not to turn watercourses without approbation of selectmen, . . . . . 246

**SURVEYORS OF HIGHWAYS**—*continued.*

may make contracts for making or repairing ways, by vote of town, . . . . . 246

may be empowered by towns to collect highway taxes, . . . . . 246

may employ persons to make repairs to amount of ten dollars, in case of deficiency, . . 246

if towns neglect to raise money, may repair highways at town's expense, with consent of selectmen, . . . . . 246

to expend taxes in succeeding years, in certain cases, . . . . . 246

to exhibit tax bills, and render accounts to selectmen, under penalty, . . . . . 246, 247

to render to assessors, at expiration of term, list of persons who have not paid highway tax, . . . . . 247

to pay over surplus of money to town treasurer, under penalty, . . . . . 247

of private ways and bridges, how chosen, power and duties, . . . . . 248

penalty for refusal to serve, &c., . . . . . 248

to collect taxes, &c., . . . . . 248

penalty on, for neglect to pay over money, . . . 248

**SURVEYORS OF LUMBER.**

one or more to be elected at annual town meeting, . . . . . 160

to be sworn, . . . . . 161

**SURVIVING OF ACTIONS AND DEATH OF PARTIES.**

actions which survive, and proceedings upon death and disabilities of parties, . . 648-652

what survive by statute, in addition to those by common law, . . . . . 444, 648

when sole plaintiff or defendant dies, may be prosecuted or defended by executor or administrator, . . . . . 648

may be entered in such case after decease of party, . . . . . 648

executor or administrator may appear voluntarily, or may be cited in, . . . . . 648

citation, how issued, served, and returned, . . 648

if executor or administrator does not appear, how judgment shall be rendered, . . . . 648

when one of several plaintiffs dies, action may proceed by or against the survivor, . . 649

when all the plaintiffs or all the defendants die, action may proceed by or against the executor or administrator of last survivor, . . . . . 649

**Trustee process,** effect of death of parties in, . . . . . 725, 726

**Real actions,** if demandant dies, heir or devisee may prosecute, . . . . . 649

in case of devisee, if first estate is not a freehold, the devisee of the first freehold estate in possession may prosecute, . . . . . 649

if there are several demandants, and one dies, heir or devisee may be admitted, on motion, to prosecute with survivor, . . . . . 649

if the estate of the deceased passes to surviving demandants, or no motion is made by heir or devisee to come in, action may proceed, . . . . . 649

if the tenant dies, the heir or devisee may appear, or may be cited in, . . . . . 649

action then to be conducted as if commenced against heir or devisee, . . . 649

if there are several tenants, and one dies, action may proceed against survivor, 649

**SURVIVING OF ACTIONS, &c.—continued.**  
 Petition for partition to survive, and heir or devisee may appear as in real actions, . . . . . 649, 650  
 if the estate passes to those who are already parties, suit may proceed, . . . 650  
 when the estate passes to a person who is not admitted as a party thereto, such party may be made a defendant by order of court, . . . . . 649, 650  
**By and against executors and administrators,** . . . . . 651  
 all actions which survive may be commenced and prosecuted by and against executors and administrators, . . . . . 651  
 they may voluntarily take upon themselves the prosecution or defence of actions commenced by their deceased, 648, 649, 651, 652  
 or may be cited in, . . . . . 648, 652  
 judgment, how entered when they do not appear, . . . . . 648  
 they may apply to county commissioners in cases where deceased had a right

**SURVIVING OF ACTIONS, &c.—continued.**  
 of application, and did not apply before his decease, . . . . . 650  
 actual damages only to be recovered against executors and administrators for torts committed by deceased, . . . . . 651  
 proceedings in actions by and against executors and administrators, . . . 648, 649, 651, 652  
*(See Executors and Administrators.)*  
**SWAMPS.**  
 construction of roads to, . . . . . 752, 753  
**SWEARING.** *(See Profane Swearing.)*  
 punishment for, . . . . . 819  
**SWINE.**  
 when taxable, . . . . . 76  
 less than six months old, exempted from taxation, . . . . . 75  
 found going at large, contrary to law, &c., to be impounded, . . . . . 185, 186  
 one exempted from attachment and execution, . . . . . 624, 628  
**SWORN.**  
 word, how construed, . . . . . 52

**T.**

**TALESMEN.**  
 how returned, and placed on juries for trials, . . 682  
 not more than five to be on such jury, . . . 682  
 how returned on coroner's inquest, . . . . . 848  
 in cases respecting highways, . . . . . 236  
**TARPAULIN COVE.**  
 on Nashau Island, land at, ceded to United States, . . . . . 44  
**TAUTOG AND BASS.**  
 not to be taken in certain places, by persons living out of state, &c., . . . . . 431, 432  
**TAVERNS.** *(See Innholders.)*  
 keepers of, to give names of persons taxable and liable to enrolment, to assessors, under penalty, . . . . . 77, 91  
 not to give credit to students, &c., under penalties, . . . . . 457  
**TAXATION.**  
 to be by consent of the people, or their representatives, . . . . . 16  
 of polls, . . . . . 74, 75  
 all property not expressly exempted, subject to, . . . . . 74  
 of real estate to include buildings, &c., . . . . 74  
 of personal estate, what to include, . . . . . 74  
 property exempted from, . . . . . 74, 75  
 of ships and vessels, at home or abroad, . . . 74, 77  
 of money at interest, &c., more than the owner pays interest for, . . . . . 74  
 of public stocks, . . . . . 74  
 of stocks in corporations, &c., in and out of state, . . . . . 74  
 of debts due to, more than are owed by persons taxed, . . . . . 74  
**TAXATION OF COSTS.** *(See Costs.)*  
 provisions respecting, . . . . . 782  
 by whom, and notice to adverse party, . . . . 782  
 appeal from taxation by clerk, . . . . . 782  
 when appellee may have costs, before appeal is settled, . . . . . 782  
**TAXES.**  
 United States, may be laid by Congress, . . . 4  
 how to be apportioned, &c., . . . . . 2, 5

**TAXES—continued.**  
 State, may be imposed by general court, . . . 18  
 treasurer to transmit warrants for, to assessors, . . . . . 77  
 how to be assessed, . . . . . 77  
 when towns liable for, if not assessed, . . . 77  
 deficiency in, without fault of collector, how supplied, . . . . . 86  
 towns liable for, if collector neglects to pay over, . . . . . 86  
**County,** estimates for, to be made by county commissioners, . . . . . 145, 146  
 to be apportioned by commissioners according to last state valuation, . . . . . 146  
 not to be assessed till treasurer has rendered his accounts, &c., . . . . . 149  
 how to be assessed, . . . . . 77  
 when towns liable for, if not assessed, . . . 77  
 deficiency in, without fault of collector, how supplied, . . . . . 86  
 towns liable for, if collector neglects to pay over, . . . . . 86  
**Town,** may be voted for certain purposes, . . 158  
**School district,** may be voted by district, and certified to assessors, . . . . . 222  
**Parish,** may be voted by qualified voters, . . 202  
**Watch and fire district,** may be voted by district and certified to assessors, 175, 181  
**Bank,** how and where to be paid, . . . . . 310  
 treasurer of commonwealth to sue banks neglecting to pay, . . . . . 310  
 1. WHERE AND TO WHOM TO BE ASSESSED.  
 to be assessed on person where he designates his place of residence to be, . . . . . 75  
 person refusing to designate, to be assessed where he is on first day of May, . . . . . 75  
 not exempted from paying tax in place of legal domicile, . . . . . 75  
 may be assessed on person, applying seven days before election, . . . . . 80



**TAXES—continued.**

**On polls, to be assessed on every male inhabitant above age of twenty years, . . .** 74  
 persons exempted from, . . . . . 75  
 to be assessed where an inhabitant first day of May, except, &c., . . . . . 75  
 of minors, where parents, &c., reside, . . . 75  
 of minors without parents, &c., in state, as if of age, . . . . . 75  
 of adults under guardianship, assessed to guardian where taxed for his own poll, to be one sixth part of sum to be raised, . . not to exceed one dollar and fifty cents, on one person, exclusive of highway taxes, . . . . . 78  
**On real estate, in place where it lies, to owner &c., on first of May, . . . . .** 75  
 mortgagor deemed owner till mortgagee takes possession, . . . . . 75  
 if paid by tenant, may be recovered of landlord, unless, &c., . . . . . 75  
 undivided, of person deceased, to heirs, &c., without designating names, . . . . . 75  
 each heir, &c., liable for whole tax, with right to contribution, . . . . . 75  
 of person deceased, title to which is in dispute, to estate of such person, . . . . . 75  
 held as ministerial fund, to treasurer of society in place where it lies, . . . . . 76  
**On personal estate, to owner in place where an inhabitant on first day of May, . . .** 75  
*except*  
 1st, goods and stock in trade (except vessels owned by copartnership) in places other than where owners reside, . . . . . 75, 76  
 2d, machinery for manufacturing, . . . . . 76  
 value of real estate and machinery to be deducted before assessing stockholders for shares in corporation, . . . . . 76  
 3d, horses, neat cattle, &c., kept throughout the year in places other than where owners reside, and horses in stages, . . . 76  
 4th, property of persons under guardianship, . . 76  
 5th, property held in trust, . . . . . 76  
 6th, property deposited to accumulate, . . . 76  
 7th, property of deceased persons, . . . . . 76  
 held as a ministerial fund, to be assessed to treasurer of society, in place where its meetings are held, . . . . . 76  
 mortgaged or pledged, to the party in possession, . . . . . 76  
 of copartners, to be taxed jointly where their business is, and each partner liable for whole tax, . . . . . 76, 77  
 ships, &c., of copartners to the several partners, in their places of residence, . . . . 77  
**School taxes, on personal estate and on all lands, if occupied by owner, in district where he lives, . . . . .** 223  
 on land, not improved by owner, in district where it lies, . . . . . 223  
 on real estate of manufacturing corporations, in district where situated, . . . 223  
 on land of non-residents, in districts where assessors determine, . . . . . 223  
 all land of a non-resident, in the same district, 223  
**Parish taxes, in owner's parish, wherever estate may be, . . . . .** 202  
**Highway taxes, on polls and estates as other town taxes, . . . . .** 245  
**Watch and fire district taxes, on property within the districts, . . . . .** 175, 181

**TAXES—continued.**

**2. HOW TO BE ASSESSED.**  
 state, county, &c., to be assessed by assessors, . 77  
 penalty on assessors for neglect in assessing, . 77  
 if assessors neglect, county commissioners to appoint persons to assess, . . . . . 77  
 such persons to be sworn, and liable to same penalty as assessors, . . . . . 77  
 state and county, when towns liable for, if not assessed, . . . . . 77  
 keepers of boarding-houses, &c., to give names of persons taxable to assessors, under penalty, . . . . . 77  
 assessors to give notice to inhabitants to bring in lists of polls and property, . . . . . 77  
 such lists to be under oath, and to be received as true, unless, &c., . . . . . 77  
 to make fair cash valuation of all taxable property, . . . . . 77  
 penalties for agreeing to assessment on limited amount, &c., with view to residence, 77, 78  
 assessors to estimate value of property, when lists are not brought in, . . . . . 78  
 such estimate to be entered in valuation, and be conclusive, unless, &c., . . . . . 78  
 state, county, and town may be included in one assessment, . . . . . 78  
 city and county, in Boston, . . . . . 78  
 one sixth to be assessed on polls, and remainder on property, . . . . . 78  
 five per cent. may be added for convenience of apportionment, . . . . . 78  
 list of valuation and assessment to be deposited in assessors' office for public inspection, . . . . . 78  
 contents of such list, . . . . . 78  
 to be sworn to by assessors, under penalty, 79  
 form of tax list for collectors, . . . . . 79  
 list to be committed with warrant for collection, to collector, constable, or sheriff, . . . . 79  
 contents and form of warrant, . . . . . 79  
 if warrant lost, new to be issued, . . . . . 79  
 assessors responsible only for fidelity in the assessment of certain taxes, . . . . . 80  
**In watch and fire districts, how assessed,** 175, 181  
**In parishes, &c., how assessed, . . . . .** 202  
**In school districts, how assessed, . . . . .** 223  
**Highway taxes, how assessed, . . . . .** 245  
**3. DISCOUNT AND ABATEMENT OF.**  
 towns, &c., may allow discount on, for punctual payment, . . . . . 79  
 rates of discount allowed to be posted up by assessors, . . . . . 79  
 abatement may be made by assessors, to parties overtaxed, upon application, . . . . . 79  
 costs accruing before abatement to be paid by person applying, . . . . . 79  
 if assessors refuse, party may make complaint to county commissioners, . . . . . 79  
 no abatement, unless party has filed with assessors a list, under oath, of his taxable estate, . . . . . 79, 80  
 nor unless he makes application within six months after date of tax bill, . . . . . 80  
 if tax has been paid, amount of abatement to be paid out of town treasury, &c., . . . . . 80  
 persons, whose taxes are abated, entitled to certificate thereof, . . . . . 80  
 certificate to be exhibited to collector, &c., . 81  
**Abatement, &c., of parish taxes, . . . . .** 202

TAXES — continued.

Abatement of school district taxes, . . . 224  
 Of watch and fire district taxes, . 175, 181

4. COLLECTION OF.

taxes to be collected by collector, &c., according to warrant, . . . . . 81  
 collection to be completed by collector though his term of office expires, unless removed, . . . . . 81  
 in cases of doubtful credit, taxes may be collected forthwith, &c., . . . . . 81  
 person claiming abatement, to exhibit to collector certificate thereof, . . . . . 81  
 and to pay costs accruing before exhibiting certificate, . . . . . 81  
 errors in names not to defeat collection, . . . . 82  
 payment to be demanded before distraining goods, . . . . . 81  
 if payment is refused, taxes may be levied by distress and sale of goods, . . . . . 82  
 what property exempted from distress, . . . . 82  
 goods distrained, to be kept four days, and sold by auction within seven days, . . . . . 82  
 notice to be posted at least forty-eight hours before sale, . . . . . 82  
 sale may be adjourned once, not exceeding three days, . . . . . 82  
 seizure and sale of shares in corporations, how to be made, . . . . . 82  
 surplus of sale to be returned to owner, . . . . 82  
 person refusing payment fourteen days, may be committed to prison, if sufficient goods are not found, . . . . . 82  
 collector to give jailer a copy of warrant and statement of taxes, &c., . . . . . 82  
 persons committed, if unable to pay, may be discharged as if committed on execution, . . . . 82  
 notice, in such case, to be given to assessors or collector, &c., . . . . . 82  
 if discharged, collector to be liable for tax and charges, unless, &c., . . . . . 82, 83  
 collectors may demand aid if resisted, . . . . . 83  
 proceedings against person removing from collector's precinct, without paying, . . . . . 83  
 in what cases collector may sue for taxes, . . . . 83  
**Real estate**, taxes on, a lien for two years, . . . 83  
 may be sold fourteen days after demand, . . . 83  
 and after two years, if it has not been alienated, . . . . . 83  
 taxes reassessed on, to be a lien, unless estate is sold between first and second assessments, . . . . . 83  
 if occupant of, who is not owner, is taxed therefor, tax may be levied within nine months on produce, &c., of such estate, . . . . . 83  
 when demand in such case need not be made, when tax must be demanded of resident mortgagee, before sale, . . . . . 83  
 when to be demanded of attorney of mortgagee or non-resident owner, . . . 83, 84  
 sale not to be advertised till two months after such demand, . . . . . 84  
 affidavit of collector, &c., to be evidence of demand, . . . . . 84  
 sale of, to be advertised in newspaper, and posted three weeks, . . . . . 84  
 advertisement to state names of owners, amount of taxes, &c., . . . . . 84  
 and to give old and new name of town, when changed within three years, . . . 84

TAXES — continued.

affidavit by disinterested person to be evidence of advertisement, &c., if recorded, . . . . . 84  
 sale to be made by auction of so much as will pay taxes, &c., of rents and profits for a limited time, or of whole estate, . . . 84  
 sale may be adjourned from day to day, not exceeding seven days, . . . . . 84  
 notice of such adjournment, how given, . . . 84  
 collector to give deed to buyer, of rents &c., or of estate, . . . . . 84  
 deed, what to contain, and when to be recorded, . . . . . 84, 85  
 owner and heirs, &c., when may redeem, . . . 85  
 terms of redemption, . . . . . 85  
 any person having lawful title may redeem within two years after actual notice of sale, in certain cases, . . . . . 85  
 may be redeemed, when purchaser, cannot be found, upon payment to town treasurer, &c., . . . . . 85  
 evidence of search for purchaser, how perpetuated, . . . . . 85  
 certificate of payment to be given by treasurer and recorded, . . . . . 85  
 mortgagee may pay taxes on, before sale, in certain cases, . . . . . 85  
 shall pay, upon taking possession under his mortgage, &c., . . . . . 85  
 entitled to receipt for such taxes paid, &c., in cases of sale of, for taxes, supreme court to have equity powers, &c., . . . 85  
**Sheriff, &c.**, when tax list and warrant are committed to him, to post notice, &c., to make no distress till after thirty days from such notice, . . . . . 86  
 fees for collecting, &c., . . . . . 86  
**Town treasurer**, when appointed collector, may issue warrant for collection to sheriff, &c., . . . . . 86  
**Collector**, to exhibit accounts to selectmen, &c., every two months, if required, under penalty, . . . . . 86  
 to be credited with abatements, &c., . . . . 86  
 deficiency in state or county tax, without default of collector, how supplied, . . . 86  
 if collector neglects to pay state and county tax, town liable therefor, . . . . . 86  
 remedy of town in such case, . . . . . 87  
 may be removed by selectmen for insanity, &c., . . . . . 87  
 if collector dies, or is removed, selectmen may appoint temporary collector, . . . 87  
 in case of death of collector, tax list to be delivered to selectmen, . . . . . 87  
 compensation of collectors, . . . . . 87  
**Highway taxes**, collected like other town taxes, . . . . . 245  
 may be paid in labor, &c., . . . . . 245  
**In watch and fire districts**, collected like town taxes, . . . . . 175, 181  
**In school districts**, . . . . . 223, 224

5. RE-ASSESSMENT.

taxes, if invalid by reason of error, &c., except poll tax, may be re-assessed, . . . . . 80

6. ILLEGAL ASSESSMENT.

if illegally assessed, to be void only to extent of illegal assessment, . . . . . 80, 87  
 no sale, contract, or levy to be avoided by irregularity, . . . . . 87

**TAXES—continued.**

7. RECOVERY OF TAXES.

not to be recovered back, unless paid after arrest or levy, or under protest, . . . 87

**TEACHERS.**

in public schools, selection, qualifications, &c., of, . . . . . 218  
(See Schools.)

**TEACHERS' ASSOCIATIONS.**

in counties, when entitled to receive money from state, . . . . . 212  
money to be paid on certificate, under oath, of president and secretary of, . . . . . 212

**TEACHERS' INSTITUTES.**

to be established by board of education, on application of fifty teachers, . . . . . 211  
length of sessions of, to be determined by board of education, . . . . . 211  
expenses of, how paid, &c., . . . . . 211, 212

**TELEGRAPH COMPANIES.**

subject to provisions of General Statutes, . . . 372  
lines of, may be constructed on roads, and across waters, but not so as to incommodate the public use, . . . . . 372, 373  
place, height, &c., of, to be regulated by mayor and aldermen, or selectmen, &c., . . . 373  
specifications and decisions of mayor, &c., to be recorded in city or town records, . . 373  
owners of land injured by, may have damages assessed by mayor and aldermen, or selectmen, &c., . . . . . 373  
any person aggrieved by such assessment may have his damages assessed by a jury, . . . . . 373  
costs on assessment of such damages, . . . . 373  
compensation of mayor and aldermen, and selectmen, for services, . . . . . 373  
not to commence construction of line, until three fourths of stock subscribed for, and certificate filed with secretary, . . 373  
debts of, not to exceed one half of capital stock, &c., . . . . . 373  
president and treasurer liable, in case of wilful non-compliance with act concerning, . . 373  
to transmit despatches for any company or individual, on payment of charges, under penalty, . . . . . 373  
responsible for injury to person or property by means of their posts, wires, &c., . . . 373  
if erected on highway or town way, damages paid by city or town to be reimbursed by company, . . . . . 373  
to make annual returns to secretary of commonwealth, . . . . . 373, 374  
unincorporated companies subject to the liabilities and governed by same provisions of law as corporations, . . . . . 374  
no easement obtained by having telegraph posts, &c., . . . . . 374  
penalty for injuring lines, wires, posts, &c., of, 374

**TEN POUND ISLAND.**

ceded to United States for lighthouse, . . . . 44

**TENANTS.**

joint and in common, may join in suit for recovery of premises, or may sue separately, . . . . . 692  
under written lease, how estate of may be terminated by notice to quit for non-payment of rent, . . . . . 472  
forfeit their leases and tenancy, by using premises for certain nuisances and unlawful purposes, . . . . . 454

**TENANTS—continued.**

remedies against by action, . . . . . 707, 708  
(See Forcible Entry and Detainer.)  
liable for three times actual damages, if they commit waste, knowing that an action is pending for recovery of the lands, 709  
in dower, by the curtesy, for life, or years, or in common, how liable for waste, 708-710  
paying rent for real estate, if taxed therefor, may recover of landlord, . . . . . 75  
At will, how estate of may be terminated, . . 472  
At sufferance, liable for rent, . . . . . 471  
such rent, how recovered, . . . . . 471  
For years or for life, not to forfeit their estates by conveyance purporting to grant greater estate, . . . . . 466  
In tail, . . . . . 466  
(See Estate Tail.)

**TENANTS IN COMMON.**

how constituted by conveyance or devise, . . 466, 467  
lands of, how taken on execution, and with what effect, . . . . . 517, 518  
upon dissolution of corporation owning real estate, shareholders to be, . . . . . 375  
suits between, may be brought in supreme court in equity, and receiver appointed, . . 559  
may sue severally, or all join in actions for land, 692  
for years, when may have partition of lands, . 690  
penalty on, for committing waste while proceedings for partition are pending, . . . 709  
liable to each other for injury to estate in their alternate occupancy, after partition, . . 701

**TENDER.**

only gold and silver coin to be made a, . . . . 5  
Of payment may be made after money is due and payable, . . . . . 671  
may be made with the costs, to plaintiff or his attorney after action brought, and within four days before return day, . . 671  
if accepted, plaintiff or attorney to certify fact to officer, . . . . . 671  
not valid unless defendant pays officer all further costs of service after tender and before notice, . . . . . 671  
if not accepted, defendant may avail himself thereof upon bringing money into court, . . . . . 677  
may be alleged in answer, . . . . . 671  
may be made for damages by United States coast survey, . . . . . 46  
of gold by banks, not legal unless it is weighed with weights sealed by state treasurer, &c., . . . . . 310  
respondent in complaint for flowage may tender damages he thinks due, &c., . . 758  
if not accepted, and no greater sum recovered, respondent to have costs, . . . . 758  
if accepted, complainant to have judgment thereon, . . . . . 758  
Of judgment, (see Offer of Judgment,) . . . 660  
In case of casual and involuntary trespass, . . . . . 709, 710  
By mortgagor, or those claiming under him of amount due on mortgage, before or after entry, . . . . . 713-715

**TERM FEES.**

in supreme judicial court, and superior court, . 783  
when only one to be allowed, . . . . . 783

**TERMS FOR YEARS.**

for one hundred years while fifty remain unexpired, to be regarded as real estate for certain purposes, . . . . . 471



**TERMS FOR YEARS — continued.**

- to be levied on in such case as real estate, . . . 600
- other terms to be levied on as personal estate, except that debtor shall have fourteen days' notice of sale, . . . . . 600
- widow having dower in, liable for part of rent, devises of, before June 1, 1834, not subject to these provisions, . . . . . 471
- tenant of part of land liable for proportion of rent, &c., . . . . . 471
- rent for, how recovered, &c., . . . . . 471
- held by tenants in common, how partitioned, . . . 699

**TERRITORIAL LIMITS OF THE COMMONWEALTH.**

- how far to extend from sea shore, . . . . . 43

**TESTAMENTARY GUARDIAN, (see Guardian.) . . . . . 543****TESTAMENTARY TRUSTEE, (see Trustee.) . . . . . 501****TESTIMONY.**

(See Evidence, Depositions, Witnesses.)

**TEACHER'S ISLAND.**

- in Essex county, lighthouse on, ceded to United States, . . . . . 44

**THANKSGIVING DAY.**

- legislature not to sit for ordinary business, and public offices to be closed, . . . . . 49
- courts not to be opened except, &c., . . . . . 617, 618
- bills of exchange, &c., maturing on, when payable, &c., . . . . . 293

**THEATRICAL EXHIBITIONS.**

- public shows, &c., may be licensed by selectmen, &c., . . . . . 463
- penalty for setting up, &c., without license, . . . 463
- for setting up, &c., without license, at which intoxicating liquors are sold, . . . . . 464
- license for sale of intoxicating liquors at, prohibited, . . . . . 464
- persons setting up, contrary to law, to be bound over to superior court, and furnish sureties of the peace, &c., . . . . . 464

**THREATENING.**

- harm to members of legislature for official acts, &c., how punishable, . . . . . 22
- in presence of court, &c., to kill or beat, &c., a cause for ordering party to recognize to keep the peace, . . . . . 828
- speeches, utterers of, may be stayed, and arrested, by order of justice, . . . . . 608
- with intent to extort money, . . . . . 793
- or to compel one to do an act against his will, . . . . . 793

**THREE CARD MONTE.**

- fraudulently obtaining property by, how punished, . . . . . 570, 600, 802

**TIMBER.**

- carried away by floods, may be taken by owner on paying, &c., . . . . . 424
- when to be property of owner of land of, where found, . . . . . 424
- floating logs, &c., penalty and liability for destroying owner's marks on, . . . . . 424
- possession of, with marks cut out, presumptive evidence of guilt, . . . . . 424
- penalty for unlawful conversion of, in rivers, &c., . . . . . 424
- special provisions respecting, in Connecticut River, . . . . . 424

**TINKER'S ISLAND.**

- part of, ceded to United States, . . . . . 44

**TISBURY.**

- land in, ceded to United States, . . . . . 45

**TITLES.**

- to real estate, provisions for compelling persons interested adversely to parties in possession to bring action, . . . . . 696

**TODD SCHOOL FUND.**

- how applied, &c., . . . . . 213

**TOLL.**

- for grinding grain, not to exceed one sixteenth part, . . . . . 761
- punishment for evading or attempting to evade, 804

**TOLL BRIDGE.**

- punishment for wilful, &c., injury to, . . . . . 804

**TOOLS.**

- for forging and counterfeiting to be seized and destroyed, . . . . . 811
- when exempt from attachment, and levy on execution, . . . . . 624, 688

**TOMBS, MONUMENTS, &c.**

- wilfully defacing, or removing, how punished, 820, 821
- maliciously disturbing contents of, . . . . . 822
- exempted from taxation, attachment, and execution, . . . . . 74, 688
- when exempt from attachment and levy on execution, . . . . . 624, 688

**TONGUES AND SOUNDS.**

- provisions for inspecting, . . . . . 261

**TORT.**

- action of, one of three divisions of personal actions, . . . . . 653
- includes trespass, trespass on the case, trover, and action for penalties, . . . . . 653
- forms of declarations in, . . . . . 666
- suits in equity may be brought by action of, . . . 559

**TORTURING.**

- horses, oxen, and other animals, how punished, . . . . . 822

**TOWN.**

- word, how construed, . . . . . 51

**TOWNS.**

- to continue bodies corporate, . . . . . 157
- Boundary lines of, to remain as established, . . . 157
- to be perambulated every five years by selectmen, &c., of each town, . . . . . 157
- marks of, to be renewed, and proceedings recorded, . . . . . 157
- notice of meeting to perambulate, how to be given, . . . . . 157
- penalty for neglect to give notice or to attend, . . . . . 157
- monuments to be erected at every angle except, &c., . . . . . 158
- monuments to be of stone, at least four feet high, &c., . . . . . 158
- perambulation of, in towns adjoining other states, . . . . . 158
- penalty on selectmen for not erecting monuments, &c., . . . . . 158
- may sue and be sued, &c., . . . . . 158
- actions by and against, in what county to be brought, . . . . . 621
- in actions against, process how served, and how long before return day, . . . . . 622, 623
- certain fines, &c., imposed on, how and to whose use recovered, . . . . . 165
- may hold and convey real estate, . . . . . 158
- may hold and dispose of personal property, for public uses, . . . . . 158
- may make orders for disposal of property, . . . . . 158
- may make certain contracts, . . . . . 158
- may grant money for schools, support of poor, highways, town histories, burial-

TOWNS — *continued.*

grounds, and all other necessary town charges, . . . . . 153

may appropriate money for support, &c., of public libraries, . . . . . 208

how restrained from illegal appropriations of money, &c., . . . . . 105

may make by-laws, and annex penalties thereto, how such penalties recovered, and jurisdiction in such cases, . . . . . 153, 608

by-laws to be approved by the superior court, . . . . . 159

duties imposed in, how to be performed, . . 159

binding on all persons coming within limits of town, . . . . . 159

to be published in newspaper in county, . . 159

to provide book-case for books, &c., received from state, . . . . . 159

penalty for neglect, . . . . . 159

to provide fire-proof safes for preservation of records, &c., . . . . . 198

recognizances by, how to be entered into, . . 159

when liable for state and county taxes not assessed, . . . . . 77

may, at annual meeting, allow discount on taxes, . . . . . 79

liability of, if collector neglects to pay state or county taxes, . . . . . 86

remedy of, in such case, . . . . . 87

to furnish ammunition, &c., for militia, under penalty, when required by commander-in-chief, . . . . . 92

may retain possession of certain field-pieces, . . 102

penalty on, for false certificate of selectmen concerning armories, . . . . . 104

for neglect of selectmen in providing carriages, &c., for militia in case of war, &c., . . . . . 110

officers of, what and how to be chosen at annual meeting, . . . . . 160, 161, 217

penalty for neglect to choose selectmen or assessors, . . . . . 161

may give collectors certain powers of treasurer, when collectors of taxes, . . . . . 165

may make rules concerning the registration of births, marriages, and deaths, . . . . 170

containing more than ten thousand inhabitants, may appoint registrars to record births, &c., . . . . . 170

to establish schools, . . . . . 215, 216

two adjacent, having less than five hundred families each, may establish high school, . . . . . 216

may establish, &c., schools for persons over fifteen years of age, . . . . . 216

to raise money for schools, under penalty, . . . 217

may hold property in trust for support of schools, . . . . . 158

to choose school committee, &c., under penalty, 217

may increase or diminish number of committee, 218

to supply books to scholars when change is made, . . . . . 218, 219

may require school committee to appoint superintendent of schools, . . . . . 219

not districted, to maintain school-houses, . . 219

may determine location of school-houses, . . 219, 220

may establish school districts, . . . . . 221

but not to be districted anew oftener than once in ten years, . . . . . 221

may abolish school districts, . . . . . 221

to vote once in three years upon question of abolishing districts, . . . . . 221

TOWNS — *continued.*

to choose prudential committee for each district, or authorize district to choose, . . 221, 222

may determine that prudential committees contract with teachers, . . . . . 218, 222

may provide school-houses in district at common expense, . . . . . 223

may raise money in school districts if districts refuse, . . . . . 224

may empower selectmen, &c., to take charge of such money, . . . . . 224

penalties on, for neglect of school committee to transmit returns and report to secretary of board of education, . . . . . 227

may withhold compensation from school committee in such cases, . . . . . 227, 223

liable to damages for unlawful exclusion of child from school, . . . . . 229

may make by-laws, &c., respecting truancy, subject to approval of superior court, 230

may appoint truant officers, . . . . . 230

may provide or discontinue almshouses and workhouses, . . . . . 170, 171, 173

not to erect them in other places without consent of such places, . . . . . 171

may choose directors of almshouse, . . . . . 171

any number of, may provide and maintain almshouse jointly, . . . . . 171, 172

directors of such joint almshouses, how chosen, . . . . . 171

may establish a watch, . . . . . 173

to maintain pounds, and appoint pound-keepers, 185

may choose boards of health, or health officer, . 188

liability of, for imprisonment of houses, &c., for securing infected articles, &c., . . . . 191

to provide means of vaccination to those unable to pay, &c., . . . . . 191, 192

may establish quarantine grounds, . . . . . 192

two or more may establish same jointly, . . . 192

may establish hospitals for persons having disease dangerous to public health, . . 192, 193

fines under laws relating to health to inure to use of town, . . . . . 193

to provide suitable places for burial-grounds, . 196

burial-grounds not to be established in, without their consent, . . . . . 196

liable to make specific repairs of highways ordered by county commissioners, . . . . . 233

neglecting to make, &c., highway located, &c., by county commissioners, to pay expense of making to county, . . . . . 238

warrant may be issued against, in such cases, by county commissioners, . . . 238

may discontinue town or private ways, at meeting called for that purpose, . . . . . 239

to pay damages occasioned by laying out town way, . . . . . 240

liability of, for neglect to complete town or private way laid out by commissioners, 240, 241

not to discontinue town ways, &c., laid out by commissioners, within two years, . . 241

not to lay out again within two years town ways, &c., discontinued by commissioners, . . . . . 241

not to contest legality of way laid out, accepted and recorded, . . . . . 242

liability of, if selectmen neglect to fix permanent stone bounds at angles of ways in certain cases, . . . . . 244

to keep in repair public ways and bridges, . . . 245

to vote sums to be paid in labor and materials for repair of highways, &c., . . . . . 245

TOWNS—*continued.*

may raise money necessary for repair of high-ways, &c., . . . . .	245
may authorize surveyors of highways to contract for repair of ways, &c., . . . . .	246
liable to compensate abutters on highways, &c., for damages occasioned by repairs, . . . . .	247
when liable for damages occasioned by defects in highways, . . . . .	247
penalty on, for loss of life by defect in highway, . . . . .	247
for neglect to keep ways in repair, &c., . . . . .	247
to erect and maintain guide posts on highways, &c., . . . . .	249
to determine places for, and maintain guide posts, under penalty, . . . . .	249
when may construct sidewalks, . . . . .	250
may make by-laws to prevent pasturing of cattle, &c., in highways, &c., . . . . .	250
such by-laws not to affect rights of abutters on way adjoining their land, . . . . .	250
may make by-laws to regulate driving over bridges within their limits, . . . . .	250
may plant shade trees in highways, &c., and appropriate money therefor, . . . . .	252
to maintain ferries in certain cases, . . . . .	253
penalty on, for neglect in such case, . . . . .	253
may regulate sale and measurement of wood, &c., . . . . .	278
may authorize selectmen to regulate hawking, &c., of certain articles by minors, . . . . .	281
may establish by-laws, with penalties, regulating the weighing of lighters, &c., employed in transporting stone, &c., . . . . .	291, 292
may use water of aqueduct corporations, for extinguishment of fires, . . . . .	375, 376
to relieve and support the poor having legal settlement therein, . . . . .	390, 392
liability of, when paupers are relieved, &c., by other places or by individuals, . . . . .	393
may send state paupers to state almshouses, &c., . . . . .	401
to provide for state paupers, when state almshouses are full, at expense of state, . . . . .	402
liable for support of paupers in state almshouses, who have a legal settlement in such towns, . . . . .	402, 403
not to send lunatics, who are dangerous, to state almshouses, . . . . .	401
may regulate the storage and sale of gunpowder, &c., . . . . .	460, 461
may regulate the storage and sale of camphene, &c., . . . . .	461
liability of, for damages done by dogs to sheep, &c., . . . . .	462
may recover of owners of dogs in such cases, . . . . .	462
may make by-laws for regulation of licensing and restraining dogs, . . . . .	463
<b>TOWN CLERK.</b>	
to be chosen at annual meeting, . . . . .	160
to be chosen by ballot, . . . . .	161
to be sworn forthwith, if present, . . . . .	160
to record all votes at town meetings, . . . . .	162
to administer oaths to town officers, and make record thereof, . . . . .	162
to record oaths of office of which certificates are filed, . . . . .	162
when not present at town meeting, clerk pro tempore to be chosen, . . . . .	162
such clerk to be sworn, and liable to same penalties as clerks, for neglect of duty, . . . . .	162
when may be appointed by selectmen, . . . . .	162
to obtain from secretary envelopes for use of	

TOWN CLERK—*continued.*

voters, and keep them subject to order of selectmen, . . . . .	58
to record number of votes, persons voted for, &c., at elections, . . . . .	59
to make return of votes sealed up for national, state, district, and certain county officers, within ten days, to secretary, . . . . .	59, 60
for county treasurer and register of deeds to county commissioners, . . . . .	59
for county commissioners, within seven days, to clerks of courts, . . . . .	59
or to deliver such returns, within three days, to sheriff, . . . . .	59
penalty on, for failure to make return of votes, . . . . .	61
duties of, at elections in towns composing part of a representative district, . . . . .	65, 66
clerks in such district to meet and ascertain result of election, record votes, &c., . . . . .	65
place of meeting, by whom designated, . . . . .	65
penalties for neglect, and signing false certificates of election, . . . . .	66
vacancy in office of, at election of representatives, how filled, . . . . .	66
compensation for services at election of representatives, . . . . .	66
duty of, respecting return of votes for representatives in congress, . . . . .	68
penalty for neglect, . . . . .	69
to transmit returns of enrolled militia to adjutant-general, . . . . .	91
to preside at election of moderator of town meeting, . . . . .	160
to give notice to town officers elected, &c., to be sworn, . . . . .	161
to note time of filing bonds by constables, . . . . .	164
to record and index facts concerning births, marriages, and deaths, . . . . .	168
form of record, . . . . .	168, 169
to give certificate of record of death to undertaker, &c., . . . . .	169
to transmit certified copy of record of births, &c., to secretary, annually, . . . . .	169
record of, concerning births, &c., to be prima facie evidence in legal proceedings, . . . . .	169
certificate of, to be evidence of such record, . . . . .	169
fees for services in making record of births, &c., . . . . .	160
penalties on, for neglect, &c., in regard to registration, . . . . .	169
to record proceedings at organization of proprietors of meeting-houses, . . . . .	203
to deliver school registers, &c., to school committees, . . . . .	226
to transmit returns and report of school committee to secretary of board of education, in certain cases, . . . . .	227
to distribute reports of board of education, &c., to school committee, &c., . . . . .	227
to record description of location of highway or town way by county commissioners or selectmen, . . . . .	234, 241
to record notice of lost goods and stray beasts, in book kept for that purpose, . . . . .	425
to keep record of appointment, &c., of agents to sell intoxicating liquor, . . . . .	441
to issue licenses for dogs, . . . . .	461
to post list of dogs licensed, and furnish copy thereof to police, &c., . . . . .	461
to issue certificates of intentions of marriage, to parties, . . . . .	529



**TOWN CLERK—continued.**

- penalty on, for issuing such certificates to minors in certain cases, . . . . . 529
- may require affidavit of age of parties applying for certificate, . . . . . 559
- may administer oaths required in probate matters, . . . . . 577
- duty and fees of, as to entering attachments of certain personal property, . . . . . 627
- duty and liability as to drawing jurors, . . . 681-683
- fees of, for certain official services, . . . . . 787

**TOWN MEETINGS.**

- annual, to be held in February, March, or April, 159
- other, when selectmen order, . . . . . 159
- may be adjourned from time to time, . . . . . 159
- qualifications of voters at, in town affairs, . . . 159
- to be held in pursuance of warrant under selectmen's hands, . . . . . 159
- warrant for, how to be directed, . . . . . 159, 160
  - to express time, place, and purposes of meeting, . . . . . 159
  - to contain subjects which ten or more voters in writing request, . . . . . 159
  - may include two or more distinct meetings, 159
  - when may be signed by one selectman, &c., 161
- how to be notified, . . . . . 159, 160
- may be called by minority of selectmen, if majority are dead, &c., . . . . . 160
- may be called by justice if selectmen unreasonably refuse, . . . . . 159, 160
- nothing to be done at, unless subject is inserted in the warrant, . . . . . 159
- disorderly conduct at, how punished, . . . . . 160
- no person to speak at, without leave of moderator, . . . . . 160
- how called, if town fails to elect full board of selectmen, &c., . . . . . 161
- when may be called for drawing jurors, . . . . 681

**TOWN OFFICERS.**

- what, to be chosen at annual meeting, . . . 160, 161
- what, to be sworn, . . . . . 160, 161
  - if not sworn by moderator, to be summoned for that purpose by town clerk, . . . 161
- what, to be chosen by ballot, . . . . . 161
- what, to be appointed by selectmen, . . . . . 161
- penalty on, for not taking oath of office, . . 161, 162
  - for neglect of duty respecting qualification of voters, . . . . . 57
  - at elections, . . . . . 61, 66, 69
- duties of, at election of electors of president, &c., 69
- removing from town, vacate their offices, . . 162
- vacancy in office of, may be filled at any legal meeting, . . . . . 162
- not obliged to serve in same office two years successively, . . . . . 162
- certain persons not obliged to serve as constable, . . . . . 162
- certain fines, &c., imposed on, how and to whose use recovered, . . . . . 165
- embezzlement by, how punished, . . . . . 800

**TOWN TREASURER.**

- to be chosen at annual town meeting, . . . . . 160
- to be chosen by ballot, . . . . . 161
- to be sworn, . . . . . 161
- to give bond with sureties satisfactory to selectmen, . . . . . 163
- vacancy in office of, how filled, . . . . . 162
- to have charge of money belonging to town, . . 163
- to pay over and account for money according to order of town, &c., . . . . . 163
- may sue on bonds, &c., given to him or his predecessors, . . . . . 163

**TOWN TREASURER—continued.**

- to prosecute for forfeitures which inure to town, &c., . . . . . 163
  - for trespasses on town property, . . . . . 163
- may prosecute for trespasses on building owned by town and county, . . . . . 163
- may be appointed collector of taxes, . . . . 86, 163
- may appoint deputy collectors, . . . . . 163
- may issue warrant to sheriff, &c., in such case, . . . . . 86, 163
- duty of, respecting redemption of real estate sold for non-payment of taxes, . . . . . 85
- to prosecute persons refusing to take oath and serve as constable, . . . . . 163
- to render account of receipts and payments annually to town, . . . . . 163
- compensation of, . . . . . 163
- duties of, &c., concerning money raised in watch districts, . . . . . 175
  - concerning money raised in fire districts, . . 181
  - concerning money raised in school districts, 224
- on notice from school committee, &c., to prosecute parents, &c., for neglect to send children to school, . . . . . 228
  - penalty for neglect to prosecute, . . . . . 228
- may sue for surplus money in hands of surveyors of highways, . . . . . 247
- duties of, in regard to standard weights, measures, and balances, . . . . . 284, 285
- to keep separate account of sums received for dog licenses, . . . . . 461
- duties of, in regard to payment of damages occasioned by dogs, &c., . . . . . 462
- may commence suits on liabilities made with predecessor, or prosecute those commenced by predecessor, . . . . . 650

**TOWN WAYS AND PRIVATE WAYS.**

- provisions concerning laying out, &c., . . . 239-241
- (See *Highways.*)

**TRADE MARKS.**

- of another not to be used without consent, under penalty, . . . . . 298
- supreme judicial court may restrain use of, in violation of law, . . . . . 298
- forging or counterfeiting, how punished, . . . 602
  - selling goods knowingly with such marks, and not informing purchaser, . . . . 802

**TRADES, OFFENSIVE.**

- provisions respecting, . . . . . 193, 194
- (See *Offensive Trades.*)

**TRAINING FIELD.**

- when fences, buildings, &c., to be deemed boundaries of, . . . . . 251

**TRANSITORY ACTIONS.**

- where to be brought, &c., . . . . . 620, 621
- (See *Actions.*)

**TRAVEL.**

- of members of the general court to be paid from state treasury, . . . . . 21
- of commissioners, &c., expenses of, not to exceed three and a half cents a mile, . . . 411
- costs allowed for, in any court, . . . . . 783
  - but for not over eighty miles out and back, unless party actually travels more than forty miles to attend the court, . . . . 783
  - for what distance to be allowed to corporations, . . . . . 783
- of justices of the peace, . . . . . 784
- of sheriffs and constables, . . . . . 785, 786
- of jurors, witnesses, &c., . . . . . 786
- commonwealth to tax no costs for, on scire facias against bail, . . . . . 835

**TREASON.**

- no man to be declared guilty of, by the legislature, . . . . . 16
- not a bailable offence, . . . . . 836
- how defined and punished, . . . . . 7, 790
- penalty for concealing, . . . . . 790
- misprision of, . . . . . 790
- two witnesses required to convict of, &c., . . . 791
- attainder of, not to work forfeiture, &c., . . . 7
- Petit**, distinction between and murder abolished, 791
- how prosecuted and punished, . . . . . 791

**TREASURER AND RECEIVER GENERAL.**

- when, and how chosen, . . . . . 37, 62
- return of votes for, . . . . . 59, 60
- limitation of tenure of office, . . . . . 27
- not to hold certain other offices, . . . . . 30, 33
- vacancy in office of, how filled, . . . . . 32, 37
- qualifications of, . . . . . 37
- neglecting to qualify for ten days, office to be deemed vacant, . . . . . 37
- bond to, &c., given by, . . . . . 136
- condition of, . . . . . 136, 137
- to be deposited in secretary's office, . . . . 137
- to be put in suit when ordered by governor or legislature, . . . . . 137
- may be removed by governor, &c., on complaint of sureties, if he absconds, &c., . . . 137
- salary of, . . . . . 137
- may employ two permanent clerks, . . . . . 137
- salaries of permanent clerks, . . . . . 137
- may employ additional clerks, . . . . . 137
- salary of such clerks, . . . . . 137
- to deduct from pay of members of legislature for unexcused absence, . . . . . 48
- clerk to certify attendance of members from their written statements, . . . . . 48
- such statements to be preserved in treasurer's office, . . . . . 48
- annual report of, to be made to legislature, . . 138
- contents of, . . . . . 138
- may be made in print, . . . . . 53
- to transmit, by sheriffs, warrants for state tax, to assessors, . . . . . 77
- may recover of town for state tax not assessed, to be commissioner on repairs, &c., of state house, 134
- appointment of watchman of state house subject to approval of, . . . . . 133
- when may assign mortgages held by state, . . 137
- may sell real estate held by state under mortgage foreclosed, with approval of governor, &c., . . . . . 137
- to stamp all bonds and securities belonging to the state, . . . . . 137
- not to transfer securities, &c., without written approval of governor, . . . . . 137
- may assign mortgages, &c., made to predecessors, with approval of governor, . . . 137
- to transmit, annually, to prosecuting officer, account of securities, &c., due, for collection, . . . . . 137
- to have custody of money, &c., received for lands in Maine, . . . . . 137
- to keep separate account of money, &c., so received, . . . . . 137, 138
- how to invest such money, . . . . . 138
- on death, or other vacancy in office of, secretary, &c., to secure property of state, . . . 138
- when elected, to give duplicate receipts of property, &c., to predecessor, . . . . . 138
- to sign notes for money borrowed in anticipation of revenue, . . . . . 139, 140

**TREASURER AND RECEIVER-GENERAL—continued.**

- to make annual report to legislature of expenses of office, . . . . . 141
- to furnish copies of sheriffs' bond to persons applying, &c., . . . . . 151
- to invest school fund, with approbation of governor, &c., . . . . . 212
- with secretary, to apportion income of school fund among towns, . . . . . 212
- to have custody of standard weights, measures, &c., . . . . . 284
- to appoint a deputy sealer of weights, &c., . . . 284
- to furnish newly incorporated towns with complete sets of standard weights, &c., . . . 284
- form of seals to be used by, and by deputy, in sealing weights, &c., . . . . . 285
- when authorized, by act or resolve, to borrow money, to give notice to president or cashier of banks of amount required, 309
- to equalize amount of demand among the several banks, having reference to amount of obligation of bank to loan and to amount previously borrowed, . . 309, 310
- penalty for refusing to loan, for thirty days after notice, . . . . . 310
- suits to be instituted by treasurer for recovery of penalty, . . . . . 310
- banks to furnish statement of amount of capital and of stock paid in to, . . . . . 310
- tax to be paid to, annually in April and October, 310
- to commence action if bank neglects to pay, . . 310
- to seal weights for banks, . . . . . 310
- to hold on deposit, securities deposited by life insurance companies in certain cases, 330
- duties of, concerning agents of foreign insurance companies, . . . . . 332
- concerning property of deceased persons deposited in treasury by public administrators, . . . . . 487, 488
- when commonwealth takes possession of railroad, . . . . . 367
- power and duty of, respecting mortgages to the state, . . . . . 717
- may receive money due on mortgages, and discharge same, . . . . . 717
- may make entry or bring action to foreclose, . . 717
- may commence suits on liabilities made with predecessors, or prosecute suits already commenced by predecessors, . . 650

**TREASURERS.**

- of corporations, county, city, &c., may commence suits on liabilities to predecessors, and prosecute suits commenced by predecessors, . . . . . 650

**TREASURY OF THE COMMONWEALTH. (See Finance.)**

- money to be paid from, only on governor's warrant, except, &c., . . . . . 24, 139
- cash on hand from ordinary revenue, to be carried to account of ordinary revenue at beginning of year, . . . . . 139
- embezzlement by clerks, &c., in, how punished, . . . . . 790, 800
- of United States, money how to be drawn from, 5

**TREATIES.**

- how may be made, . . . . . 6
- individual states not to make, . . . . . 5

**TREATING.**

- with intoxicating liquors, forbidden at military elections, . . . . . 99
- jurors, when cause for new trial, . . . . . 683

**TREBLE COSTS.**

how taxed, . . . . . 781

**TREES.**

on land of tenant for life, with remainder, &c., may be ordered to be cut and sold by supreme judicial court, . . . . . 473

commissioners to be appointed to superintend the cutting and sale of, . . . . . 479

proceeds of such sale, how to be invested, and put in care of trustees, . . . . . 473

income of, to be paid to tenant for life while entitled to profits of land, . . . . . 473

principal, to belong to remainder-man, when tenancy for life is terminated, . . 473

trustees of such funds may be appointed and removed by supreme judicial court, . . 473

to give bond, . . . . . 473

on land taken for highways and town ways, owner to be allowed time for removal of, 234, 241

if not removed within time allowed, right to be deemed relinquished, . . . . . 234, 241, 242

time for removing may be extended by jury, 237, 342

and by commissioners after verdict of jury, &c., . . . . . 237, 238

**Shade and ornamental, may be planted in highways with consent of selectmen, &c., . . . . . 251, 252**

may be planted at public expense in certain cases, . . . . . 252

how to be removed, . . . . . 252

penalty for injuring, . . . . . 252

liability of owner of beast damaging, . . . 252

associations for planting, how formed, powers and privileges of, . . . . . 378

**TRESPASS.**

**Actions of tort for, substituted for action of, 653**

forms in actions for, . . . . . 667

for breaking and entering plaintiff's close, to designate place, &c., . . . . . 654, 655

may be brought, instead of action of waste, to recover damages suffered for waste by tenant, . . . . . 709

in such case how action may be maintained, may be commenced, or if commenced, may be prosecuted against executors and administrators, . . . . . 709

by one joint tenant or tenant in common for cutting trees or committing waste, without notice, or pending petition for partition, . . . . . 709

damages in such case, how recovered and appropriated, . . . . . 709

by committing waste by tenant, knowing that an action is pending for recovery of land, renders party liable to three times actual damages, . . . . . 709

by cutting down and injuring trees, and by other injury to real estate without license, three times actual damages to be recovered, unless defendant believed he had a right, . . . . . 709

**Casual and involuntary, trespasser may tender amends therefor, . . . . . 709**

in such case, if in an action he disclaims title, and sets forth the tender, and brings the money into court, he may, on proof of facts, have judgment for costs, . . . . . 709

if such tender was not made before action brought, he may disclaim in the action, and bring money into court, and proceedings thereon, . . . . . 709

**TRIALS.**

**IN CIVIL CASES.**

by jury, may be waived in civil cases, and trial had before court, . . . . . 661

exceptions may be taken, new trial granted, and review had as in other cases, . . . . . 661

by jury in actions before justices of peace, how had, . . . . . 666

not to be delayed for want of reply to defendant's answer, . . . . . 661

nor by reason of filing interrogatories, . . 661

in complaints for flowing land, trial may be had in court as in other civil cases, if parties so agree, . . . . . 756

**IN CRIMINAL CASES.**

**In examinations before magistrates, 827, 828, 832**

may be adjourned not over ten days at one time, . . . . . 832

to take place as soon as may be, . . . . . 832, 833

mode of conducting, . . . . . 833

rights of the prisoner as respects witnesses and counsel, . . . . . 833

magistrate may examine witnesses separately, . . . . . 833

testimony may be reduced to writing, . . . 833

witness shall sign his testimony when required by magistrate, . . . . . 833

duty of magistrate in discharging prisoner or holding him to answer, . . . . . 833

as to recognizing witnesses, with or without surety, . . . . . 833, 834

magistrate may associate other magistrates of the same county, . . . . . 834

no fees to be taxed for such associates, . . 834

when magistrate may supersede commitment, or discharge recognizance of parties and witnesses, . . . . . 834

**On indictments, &c., every party indicted may defend himself, and be heard by counsel, . . . . . 790, 833**

shall have a right to produce witnesses, &c., and meet witnesses against him face to face, . . . . . 9, 15, 790, 833

issues of fact, how to be tried, . . . . . 840

no grand juror to be on trial jury, . . . . . 841

prosecuting officers and defendants entitled to challenge jurors as in civil cases, . . 841

peremptory challenges, in what cases, and how many, allowed, . . . . . 841

what opinions disqualify jurors in capital cases, . . . . . 841

form of oath of jurors, . . . . . 841

what jurors may affirm, . . . . . 841

when defendants must be present at trial, . 841

when and how they may be tried in their absence, . . . . . 841

court may order a view, . . . . . 841

defendant relying upon a written license must prove it, . . . . . 841

what may be shown in defence in case of libel, proof as to ownership of property, in prosecutions affecting real or personal estate, 841

what time is included in "night time," . . 841

proceedings, when person indicted is at the time of trial found insane, . . . . . 841

jurors may decide the law and fact, . . . . . 842

duty of the court in such cases, . . . . . 842

if person indicted for felony is convicted of part of charge and acquitted of residue, he may be sentenced, . . . . . 842



**TRIALS**—*continued.*

- proceedings, where defendant is acquitted by reason of insanity, . . . . . 842
- persons acquitted not liable for fees or subsistence, . . . . . 842
- indictments not vitiated by certain defects of form, . . . . . 842
- prosecutions under by-laws of a city or town, who may discontinue, . . . . . 842
- persons held in prison shall, if they desire, be tried at next term after six months from time of imprisonment, unless, &c., . . . . . 840
- or shall be bailed on their own recognizance, . . . . . 840
- Of capital cases in supreme court, . . . . . 555
- exceptions in, may be taken as in other cases, 554

**TRIAL JUSTICES.**

- appointment, jurisdiction, and powers of, in criminal cases, . . . . . 508-511
- (*See Justices of the Peace.*)
- to make annual returns to secretary of money received by them, and of criminal cases, . . . . . 129
- penalty for neglect to make such returns, . . . 129
- when may authorize arrest and discharge of poor debtors on mesne process and execution, . . . . . 633, 635
- (*See Poor Debtors.*)

**TRICKS WITH CARDS, &c.**

- obtaining property by, how punished, . 570, 609, 802

**TROTting PARKS.**

- location and regulation of, . . . . . 825
- (*See Race Grounds.*)

**TROVER.**

- action of tort substituted for, . . . . . 653
- form of declaration, and answers in, . . . . 666-668

**TRUANT CHILDREN.**

- towns and cities may make regulations and by-laws with penalties concerning, . . . 230
- such by-laws to be approved by superior court, 230
- convicts under such by-laws may be fined or committed to house of reformation, &c., . . . . . 230
- may be committed in default of payment of fine, . . . . . 230
- how discharged if unable to pay fine, . . . . 230
- warrants in such cases, where returnable, . . 230
- compensation of justice, &c., in such case, . . 230
- Truant officers, to be appointed, . . . . . 230
- duties of, . . . . . 278, 230

**TRURO.**

- land in, ceded to United States, . . . . . 45

**TRUSTS.**

- provisions concerning, . . . . . 500-503
- property held by, when and to whom taxable, . 76
- not to be taxed for parochial purposes, . . 202
- appraisers of, when appointed, &c., . . . . 501
- when may be sold, &c., under authority of probate court and supreme judicial court, . . . . . 501, 502
- equity jurisdiction of probate court and supreme judicial court concerning, under wills, . . . . . 503
- concerning land, not to be created or declared, except by written instrument signed, or by implication of law, . . . . . 502
- not to defeat purchaser or attaching creditor without notice, . . . . . 502
- recording declaration of, in registry of deeds, to be equivalent to actual notice, . . . . . 502, 503

**TRUSTS**—*continued.*

- suits for enforcement of, to be brought in supreme court in equity, . . . . . 558
- proceedings for termination of, when held for benefit of creditors, . . . . . 502

**TRUSTEES.**

- for holding trust fund of parishes, &c., how appointed and governed, . . . . . 203
- of funds given to towns, &c., and for charitable and religious purposes, to make annual report to selectmen, . . . . . 206
- may be removed by probate court, &c., . . 206
- to receive damages allowed for taking land, &c., for highways, how appointed, &c., . . . 234
- to give bond, &c., . . . . . 234, 235
- may be appointed by supreme judicial court, when charters of corporations expire, &c., . . . . . 388
- powers and duties of, in such cases, . . . 388, 389
- when may be appointed to hold proceeds of sale of trust on land held for life, &c., 473
- of property awarded to wife upon divorce, may be appointed by supreme court, 535
- of separate property of married women, . . 538
- General provisions, . . . . . 500-503
- joint, accounts of, may be allowed on oath of one, . . . . . 504
- final discharge of, when to be given and recorded, and effect of, . . . . . 504
- how to dispose of money not claimed within six months after decree of payment, . 504
- may be authorized by probate court to adjust claims, &c., by compromise, . . . . . 504
- and to release, &c., rights or interests of estates represented by them, . . . . . 505
- when may be exempted from giving bond for proceeds of sale of real estate, . . . . . 505
- provisions respecting new bonds of . . . . . 505
- suits between, may be brought in supreme court in equity, . . . . . 559
- may prosecute actions commenced by, and bring actions on liabilities to their predecessors, in certain cases, . . . . . 650
- in actions against, in their representative capacity, how demands against those they represent may be set off, . . . . . 670
- may effect insurance of trust property in mutual fire insurance companies, &c., . . 329
- not liable in individual capacity on such insurance contract, . . . . . 329
- may release damages to land, &c., taken for use of railroad, . . . . . 352
- Under deeds, &c., how appointed in case of vacancy, &c., . . . . . 501
- Under wills, to give bond; condition thereof, . . . . . 500
- bonds of, may be joint or several, . . . . 505
- to be approved by judge of probate court, &c., . . . . . 505
- when exempted from giving bond, . . . . . 500, 505
- when new bond may be required of, . . . . 505
- provisions concerning suits on bonds of, 501, 505
- neglecting to give bond to be considered as declining trust, . . . . . 501
- neglecting to give new bond when required, to be removed from trust, . . . . . 505
- may resign trust, . . . . . 501
- executors, &c., of, not bound to accept trust, . . . . . 501
- may be appointed by probate court, if testator omits, &c., . . . . . 501

**TRUSTEES — continued.**

powers, rights, and duties in such cases, . . . 501  
 may be removed by probate court, and others appointed, on application of parties, . . . . . 501  
 may be removed for insanity, &c., . . . . . 501  
 may be appointed by probate court or supreme judicial court, when trustee declines, dies, &c., . . . . . 501  
 new, to give bond, . . . . . 501  
 inventory by, may be dispensed with, . . . 501  
 court may order conveyances to, by former trustee, &c., . . . . . 501  
 when inventory is required of, appraisers to be appointed, sworn, &c., . . . . . 501  
 bonds of, may be put in suit by order of probate court, . . . . . 501  
 may be required to sell trust property and make investments, &c., . . . . . 501, 502  
 probate court and supreme judicial court to have concurrent jurisdiction in equity in matters concerning, . . . . . 503  
**When minors, married women, &c.,** supreme judicial court may order sale of trust property, in certain cases, and appoint trustee to sell and convey, . . . 502

**TRUSTEE PROCESS.**

commencement and service of process, . . . 720, 729  
 all personal actions, except replevin, may be commenced by, . . . . . 721, 729  
 for the recovery of taxes in certain cases, . . . 83  
 any person or corporation may be summoned as trustee in, . . . . . 721  
 in what counties actions to be brought, . . . . 721  
 writ in, to be signed, bear teste, issued, &c., like other writs in civil cases, . . . . . 721  
 additional trustees may be inserted in writ at any time, . . . . . 721  
 writ, how served; may be served several times, 721  
 if service is made on trustee after service on defendant, writ to be again served on defendant, . . . . . 721  
 service on trustee attaches the defendant's property in his hands, . . . . . 723  
 what property may, and what may not, be attached and held by such process, 723, 724, 791  
 trustee must be summoned in county where he dwells or has his usual place of business; and, if he is summoned elsewhere, effect as to costs, . . . . . 721, 728  
 if trustee is discharged, writ not to proceed against defendant unless legal service has been made on him, . . . . . 721

**APPEARANCE AND ANSWER OF TRUSTEE.**

person summoned as trustee must appear and file full answer, under oath, within first ten days of return term of the writ, or before end of term if less than ten days, . . . . . 722  
 liable to costs, if he fails to appear and answer, . . . . . 728  
 if trustee is out of state at time of service, and appears and answers at first term after his return, he may have his costs, . . . 728  
 plaintiff may further examine trustee upon written interrogatories, . . . . . 722  
 answers to interrogatories to be filed in clerk's office within seven days after notice, . . 722  
 if answers are not full, court may pass order respecting same, . . . . . 722  
 corporations may answer by cashier, treasurer,

**TRUSTEE PROCESS — continued.**

secretary, or other officer appointed therefor or required by the court, . . . 722  
 answers to be taken as true; but facts not stated nor denied may be alleged and proved by either party, . . . . . 722  
 such additional facts may be tried by court or jury, . . . . . 722  
 person summoned as trustee, if he does not appear and answer, to be defaulted and adjudged a trustee, . . . . . 722  
 persons willfully answering falsely, liable, in an action of tort, to pay full amount of plaintiff's judgment against defendant, and to be punished for perjury, . . 722

**ADVERSE CLAIMANTS.**

if the goods and effects, &c., in hands of trustee, are claimed by another person by assignment or otherwise, claimant may voluntarily appear or be summoned in, 722  
 claimant may be admitted as a party respecting his title to the property, and trial how conducted, . . . . . 722  
 testimony may be taken by deposition or orally, 722  
 costs, in such cases, may be allowed between plaintiff, trustee, and claimant, as court orders, . . . . . 729

**CHARGING AND DISCHARGING TRUSTEE.**

goods, effects, and credits of defendant in hands of trustee, held chargeable, and to respond to final judgment for plaintiff, 723  
 debts, legacies, and other effects, in hands of, or due from, an executor or administrator, held, . . . . . 723  
 dividends in hands of assignees of insolvent debtors, except upon claim for wages, in certain cases held, . . . . . 723  
 debts due absolutely, and not upon contingency, although not yet payable, how may be held, . . . . . 723  
 property in hands of trustee by a conveyance void against creditors, held, although defendant could not maintain action therefor against trustee, . . . . . 723  
 trustee may set off all demands which he has against defendant, and is chargeable only with balance due from him, . . . 723  
 except unliquidated balance for wrongs or injuries, . . . . . 723, 724  
 if, after service of process on trustee, and before he has knowledge thereof, he in good faith pays over, or becomes liable to pay, to a third person, the property in his hands, he is not chargeable therefor, . . . . . 724  
 twenty dollars due for wages of defendant, or for services of his wife or minor children, not to be held, . . . . . 724  
 when a savings bank is charged as trustee, and there is doubt as to identity of defendant, court may require plaintiff to give bond, . . . . . 724  
 for what a trustee shall not be chargeable, . . . 724

**COSTS.**

allowed to trustee, who appears and answers as required, . . . . . 727  
 on trials of issues of facts between plaintiff and trustee, may be awarded by court to either party, . . . . . 727

**TRUSTEE PROCESS — continued.**

- for trustee, when charged, to be retained out of effects in his hands, if he has sufficient; and if not, he may have an execution for balance against plaintiff, 727, 728
- trustee, when discharged, to have judgment and execution for costs against plaintiff, . 728
- allowed to trustee who is out of state at time of service on him, if he appears and answers at first term after his return, . 728
- if such trustee is summoned in a county other than that in which he dwells or has his usual place of business, he may have his costs, if he appears at any time, . . . . . 728
- may be recovered against trustee, if he fails to appear, . . . . . 728
- how demanded and collected of trustee, in such case, . . . . . 728
- when recovered against more than one trustee in same writ, execution to issue against them jointly; and either one, paying, may have contribution against the others, . . . . . 728
- on scire facias against trustee who is defaulted, to be paid by trustee, . . . . . 728
  - unless it appears that he has paid over, on the execution, all the effects in his hands, . . . . . 728
  - or trustee was prevented from appearing in original suit by absence from state, or sufficient cause, &c., . . . . . 728
- when to be paid by trustee in original suit, and on scire facias also, one execution for both sums may issue against him, . . 728
- no more to be recovered, in several suits of scire facias, against trustees who might have been joined, than if but one suit had been brought, . . . . . 728, 729
- in case of adverse claimants, may be awarded between plaintiff, claimant, and trustee, as court shall order, . . . . . 729
- not to be allowed to plaintiff in suits, except for necessities, wherein defendant's wages are attached, unless plaintiff recovers five dollars debt, . . . . . 729

**DEATH OF PARTIES.**

- if trustee summoned in his own right dies, attachment to continue, and his executor or administrator liable, . . . . . 725
- if he dies before judgment, executor or administrator may voluntarily appear, or be cited in, . . . . . 726
- examination of deceased, which had been filed, to have same effect as if he were living, . . . . . 726
- if executor or administrator does not appear, judgment and execution may be had as if trustee were living, . . . . . 726
- if amount of execution, in such case, is not paid by executor or administrator, scire facias may be brought against him, . 726
- if trustee dies after judgment, executor or administrator to pay amount on execution, or scire facias may be brought against him, . . . . . 726
- when trustee, against whom execution issues, dies before thirty days after judgment, demand may be made on executor or administrator within thirty days after appointment, . . . . . 726

**TRUSTEE PROCESS — continued.**

- judgment against executors and administrators, how enforced, . . . . . 726
- execution in original suit on scire facias not to issue against their own goods or their bodies, but against the estate of deceased in their hands, . . . . . 726
- if executor or administrator does not pay the amount due on the judgment, remedy for creditors, . . . . . 726

**JUDGMENT, EXECUTION, AND SCIRE FACIAS.**

- judgment in original suit need not express amount with which trustee is chargeable, . . . . . 724
- but the amount to be expressed in judgment on a writ of scire facias, . . . . . 724
- if demand is not made within thirty days after judgment, property may be attached and held in other suits, . . . . . 724
- or may be recovered by defendant, . . . . 724
- but if not attached by a subsequent process, and no action is brought therefor by defendant, and trustee has not paid over, it may, after that time, be demanded and held, . . . . . 724
- demand, how made, when trustee cannot be found in state, . . . . . 725
- judgment against trustee to protect him against defendant for all property accounted for by force of same, . . . . . 725
- discharging trustee to be no bar to an action by defendant against him, . . . . . 725
- if trustee does not pay over to officer upon demand on execution, he is liable to scire facias, . . . . . 725
- scire facias may issue against trustees jointly or severally, . . . . . 725
- if several suits are brought, without sufficient reason, when all trustees might be joined, plaintiff to recover costs only of one suit, . . . . . 728, 729
- if trustee served with scire facias does not appear and answer, and was not examined in original suit, judgment to be entered against him for whole sum due plaintiff and costs, . . . . . 725, 728
- if such trustee appeared and answered in original suit, he shall be charged for such sum as appears, by his examination, and facts proved, to be due, . . . . . 725
- trustee may appear and answer fully on scire facias as he might have done in original suit, and may prove any facts necessary for his defence, . . . . . 725
- judgment in scire facias to be rendered according to whole facts appearing, . . . . . 725
- scire facias to be served within two years after judgment, and not after, unless money was not payable when judgment was rendered, . . . . . 725
- may be served within one year after money becomes due, if not payable at time of judgment, . . . . . 725

**SPECIAL PROVISIONS.**

- Mortgaged property,** and property on which trustee has liens, how held by trustee process, . . . . . 727
- how may be attached, and mortgage summoned as trustee and held to answer interrogatories, . . . . . 628



TRUSTEE PROCESS — continued.

Suits pending against person when summoned as trustee, . . . . . 723

when defendant in an action is summoned as trustee, first suit not to be delayed, unless by order of court for judgment, 723

suit may proceed so far as to ascertain amount due, . . . . . 723

may be continued, on application of plaintiff in trustee suit, . . . . . 723

if not so continued, and judgment is rendered against defendant, he shall not be liable in the trustee process while liable to execution on first suit, . . . 723

if, during first suit, defendant is adjudged trustee in trustee process, how he may avail himself thereof, and judgment entered, in first suit, . . . . . 723

Specific goods, in hands of trustee, how disposed of, . . . . . 726, 727

when trustee is charged by reason of specific property which he is bound to deliver to defendant, he shall deliver same to officer on the execution, . . . . . 726

officer to sell such property, and apply same in like manner as if taken on execution in other cases, . . . . . 726

value of property, as between defendant and trustee, how determined, . . . . . 726, 727

trustee not bound by trustee process to deliver specific goods at any other time and place than according to his contract, . . . . . 727

may, notwithstanding such process, deliver same according to contract, unless he has previously been adjudged trustee, . . . . . 727

when trustee has a lien or mortgage on the goods for a debt, creditor may, on order of court, pay or tender the amount thereof, and trustee shall deliver the same to officer, . . . . . 727

if the property is held for any other security than payment of money, court may make order respecting same, and proceedings thereon, . . . . . 727

goods so taken shall be sold by officer; and, out of proceeds, creditor to be first paid, or indemnified for what he advanced or became liable for to trustee, before payment by creditor, trustee shall not be prevented from disposing of the property, if he has authority therefor, 727

if trustee refuses or neglects to deliver to officer specific goods for which he is chargeable, he shall be liable to plaintiff for their value, . . . . . 727

BEFORE JUSTICES OF THE PEACE AND POLICE COURTS.

all personal actions, except replevin, before justices of peace and police courts, may be brought by trustee process, . . . 729

foregoing provisions, so far as applicable, to apply to actions so brought, . . . . . 729

writ may run into any county for service on defendant, in certain cases, and how served, . . . . . 729

trustee not held to answer in any county except where he dwells or has his usual place of business, . . . . . 729

if he is out of county at time of service of writ

TRUSTEE PROCESS — continued.

on him, and does not return before final judgment, he shall not be chargeable, . . . . . 729

trustee may appear by himself or attorney, and declare in writing that he had not, at time of service of writ, any goods, effects, &c., and submit to an examination on oath, . . . . . 729

if, in such case, plaintiff declines to examine him, or his declarations appear to be true, he shall be discharged, . . . . . 729

examination to be on written interrogatories, and sworn answers, . . . . . 729

if trustee admits effects in his hands, or wishes to submit the question to court, he may make full answer on oath, and may be further examined, . . . . . 729

all declarations, interrogatories, and answers to be filed, . . . . . 729

trustee costs, amount of, and how taxed, . . . 729

scire facias against trustee may be issued by justice or court before whom judgment was recovered, although the debt and cost amount to a sum beyond their ordinary jurisdiction, . . . . . 729, 730

TUMULTS. (See Riots.)

how suppressed, . . . . . 815, 816

TURF.

punishment for wilfully digging up, &c., without authority, . . . . . 805

TURNKEYS IN STATE PRISON.

number, appointment, salary, duty, &c., 870, 871, 873

TURNPIKE CORPORATIONS.

shares in, to be personal estate, . . . . . 344

to be transferred by deed acknowledged and recorded by clerk of corporation, . . . 344

provision as to erection of gates, . . . . . 344

may petition county commissioners for permission to remove gates, &c., . . . . . 344

rates of toll allowed to be taken, . . . . . 344, 345

board containing, to be erected at every gate, . . . . . 344

may commute the rates of toll with any person, of whom toll shall not be demanded or received, 345

penalty for passing, &c., gates, without paying toll, . . . . . 345

for going round a gate, and entering on the road again to avoid toll, . . . . . 345

for making passage way, &c., to avoid toll, . 345

for giving false answer to toll-gatherer, and thereby going toll free, . . . . . 345

on corporation, for creating illegal toll, . . 345

on corporation for toll gatherer's hindering travellers, . . . . . 345

all above penalties accruing to corporations may be sued for by their treasurer in an action of tort, . . . . . 348

carts or wagons with more than forty-five hundred pounds' load not to pass on road, unless with broad wheels, . . . . . 345

drivers of loaded carts, &c., with narrow wheels, to give account of the weight of their loads, &c., if requested, . . . 345

penalty on, for misrepresentation, . . . . . 345

for locking, &c., wheels without putting iron shoe under them, . . . . . 345

liability of, for injury sustained by persons chargeable with toll, by reason of roads being out of repair, . . . . . 345, 346

finer imposed on, for neglect to repair, to be appropriated to repairing, &c. . . . . 346

**TURNPIKE CORPORATIONS—continued.**  
 provisions for commissioners to lay out turnpike roads as highways, . . . . . 346  
 proceedings, in such case, to be as in laying out highways in other cases, . . . . . 346  
 what damages shall be allowed in such case, by whom to be paid, and how payment thereof may be enforced, . . . . . 346  
 duties, &c., of, to cease, when their road is established as a highway, . . . . . 346  
 established after March 16, 1805, shall exhibit yearly to governor and council an account of their income and necessary disbursements, . . . . . 346  
 books of, subject to inspection of governor, council, and legislature, . . . . . 346  
 when road of such corporation is out of repair, county commissioners may cause gates to be set open till they otherwise order, . . . . . 346, 347

**TURNPIKE CORPORATIONS—continued.**  
 toll not to be demanded until commissioners revoke their order, . . . . . 347  
 such corporation may be dissolved by legislature, . . . . . 347  
 not more than twenty cattle or horses to be on bridge of, without consent, . . . . . 347  
 not liable for loss of cattle, loads, &c., caused by breaking of bridge, if driven upon it contrary to law, and without consent, . . . . . 347  
 no corporation liable for deficiency in its bridges when carriage and load exceed weight of six tons, . . . . . 347, 345  
 road of, how raised or lowered by railroad corporation, . . . . . 356, 357  
 may assign franchises to railroad corporations, with consent of county commissioners, &c., or superior court, . . . . . 359  
 damages, how estimated in such case, . . . . . 359

U.

**UMPIRE.**  
 corruption of, how punished, . . . . . 813  
 acceptance of bribes by, how punished, . . . . . 813  
**UNCURRENT BILLS.** (*See Bank Bills.*)  
 punishment for having in possession, with intent to pass, and for passing, . . . 810, 811  
 sheriff to seize and destroy, . . . . . 811  
**UNDERTAKER.**  
 to make return to town clerk of certain facts respecting deaths, . . . . . 169  
 compensation for such return, . . . . . 169  
 to give notice of burials made without certificate of town clerk, under penalty, . . . 169  
**UNIFORM, &c.**  
 of officers and soldiers exempted from attachment, execution, &c., . . . . . 102, 688  
**UNITED STATES.**  
 words, include territories and District of Columbia, . . . . . 51  
 constitution of, analysis, . . . . . 1, 2  
 officers of, except postmasters, excluded from certain state offices, . . . . . 33  
 jurisdiction of, in places ceded, concurrent, &c., 43-45  
 coast survey, officers of, may enter upon, &c., damages thereby, if not agreed upon, may be assessed by county commissioners, subject to appeal to superior court, tender, costs, . . . . . 46  
 penalty for injuring monument, &c., erected for, . . . . . 46  
 property of, exempt from taxation, . . . . . 74  
 judicial and executive officers of, exempted from military duty, . . . . . 92

**UNITED STATES—continued.**  
 stocks of, &c., capital of certain companies to be invested in, . . . . . 323  
 may use jails, except in cases arising under the acts of congress concerning fugitives from service and labor, . . . . . 857  
 when to have priority in distribution of estates of insolvent debtors, . . . . . 594  
 statute laws and judicial proceedings and records, how proved, &c., . . . . . 678  
 in prosecutions for forgery, &c., when certificate of treasurer of, &c., to be evidence, . . . . . 809  
 what officers of, exempt from serving as jurors, 679, 680  
**UNIVERSITY AT CAMBRIDGE,** (*see Harvard College.*) . . . . . 28, 216  
**UNLAWFUL ASSEMBLIES.** (*See Riot.*)  
 how to be suppressed, . . . . . 815, 816  
**UNLAWFUL GAMES.**  
 those using, how to be arrested and punished, . . . . . 820, 821  
**UNLAWFUL USE.**  
 of another's property, but not with intent to steal, how punished, . . . . . 801  
**UNMARRIED FEMALE, &c.**  
 property of, to amount of five hundred dollars, when exempted from taxation, . . . . . 74  
**UNWRITTEN LAWS.**  
 of foreign countries and of other states, &c., how proved, . . . . . 679  
**USURY.**  
 provisions concerning, . . . . . 292

V.

**VACCINATION.**  
 children to be vaccinated before two years old, . 191  
 not to attend public schools until vaccinated, 229  
 when to be revaccinated, . . . . . 191  
 penalty on parents, &c., for neglect, . . . . . 191  
 revaccination of all inhabitants may be enforced, when, &c., . . . . . 191

**VACCINATION—continued.**  
 penalty for neglect, . . . . . 191  
 means of, to be provided by towns for those unable to pay, . . . . . 191  
 of inmates of public institutions, &c., . . . 191, 192  
 further provisions for, may be made by towns, . 192

**VAGABONDS.**  
and rogues, how to be arrested and punished, 820, 821

**VALUATION OF ESTATES.**  
to be taken once in ten years at least, . . . . . 18

**VARIANCE.**  
in civil actions, amendments may be made to enable parties to sustain their cases for causes intended, . . . . . 658  
acquittal because of, between indictment and proof, no bar to new indictment, . . . 790  
what shall not be deemed, in allegations of intent to defraud, in cases when such intent constitutes the offence, . . . 809  
in certain cases of embezzlement, . . . . . 800  
in offences upon real or personal estate, as to ownership thereof, . . . . . 841

**VEGETABLES.**  
to be sold by dry measure, under penalty, . . . 264

**VEHICLES, (see Carriages,)** . . . . . 167, 423, 801

**VENIRES.**  
for jurors, how issued, served, &c., 680, 681, 682, 683

**VENUE.**  
of actions, . . . . . 620  
in transitory actions, where either or neither party lives in state, . . . . . 620  
where land lies in different counties, . . 620, 621  
by and against counties, . . . . . 621  
towns, cities, parishes, and school districts, . . . . . 621  
other corporations, . . . . . 621  
the city of Boston, . . . . . 621  
in actions for the recovery of forfeitures, . . 621  
not changed by laws relating to pleading and practice, . . . . . 662  
when a local action is brought in an erroneous venue, court may order a nonsuit, or the trial to proceed, . . . . . 661  
when judgment is rendered in a local action brought in an erroneous venue, how execution shall be directed, . . . . . 686  
Judgment not to be arrested or avoided on writ of error in civil action, by reason of mistake in, . . . . . 745

**VERDICTS.**  
to bear interest, . . . . . 685  
may be set aside and new trials granted by courts in which the same are rendered, . . . . . 566  
rules respecting forms of, may be made by courts, so as to place on record findings of juries, . . . . . 566  
acquitting of part of offence charged and convicting of residue, when may be received, . . . . . 842

**VESSEL.**  
word, how construed, . . . . . 290

**VESSELS.**  
where and to whom taxable, . . . . . 74, 75, 77  
pilotage of, . . . . . 287-289  
penalty for boarding in certain harbors without leave, except by pilots, &c., . . . . . 290  
for not leaving, when ordered, after having so boarded, . . . . . 290  
for enticing away crew of, . . . . . 290  
for inducing seamen to leave who have received advance wages, . . . . . 290  
how recovered in such cases, . . . . . 290  
what to be deemed limits of certain harbors, in such cases, . . . . . 290  
record not necessary to validity of mortgage of, 767  
lien on, . . . . . 768, 769  
punishment for wilfully casting away, &c., . 804, 805

**VESSELS—continued.**  
punishment for breaking and entering, and larceny therein, . . . . . 797

**Weighers of, and of lighters, for transporting stone, &c., how appointed, . . . 290**  
to be sworn, . . . . . 290  
to cause such vessels to be weighed and marked, . . . . . 291  
to furnish requisite marks, and affix them, . 291  
how to mark vessels, &c., . . . . . 291  
to keep account, and give certificate to master, of distance of marks, . . . . . 291  
fees of, and by whom paid, . . . . . 291  
penalty on, for falsely placing marks, or false certificate, . . . . . 291  
how to be marked to express weight which they will carry, . . . . . 251  
deduction, how made in taking tonnage of, . . 291  
persons on board of, where to be stationed during marking, &c., . . . . . 291  
penalty for not remaining in such station, . 291  
marks of, to be examined annually, . . . . . 291  
proceedings if marks do not agree with former certificate, . . . . . 291  
penalty on owner and master of, for neglect to have such vessels weighed, &c., . . . . . 291  
cities and towns may establish ordinances, with penalties, regulating weighing and marking of, &c., . . . . . 291, 292

**VESTRY.**  
when to be a corporation, together with minister, &c., to take and hold grants, &c., 205  
conveyance of land by church wardens, not valid without consent of, . . . . . 206

**VETO.**  
of president of United States, . . . . . 4  
two thirds of both houses may pass bill over, . . . . . 4  
of governor, . . . . . 17  
two thirds of both houses may pass bill over, . . . . . 17

**VICTUALLERS, (see Innholders,)** . . . . . 455, 456

**VIEW.**  
court may order, by jury, in criminal cases, . . 841  
by jury, may be ordered in actions for waste, . 709  
may be had by order of court, at request of either party, in any case, . . . . . 683  
expenses of jury in such case, how paid and taxed, . . . . . 683

**VISITORS.**  
to state prison or convicts, provisions respecting, 875

**VOTERS.**  
qualifications of, . . . . . 19, 32, 38, 39, 56, 159  
to be able to read the constitution in English, and write name, . . . . . 38  
naturalized citizens to be, after two years' residence, . . . . . 39  
census of, when and how to be taken, 38, 39, 167, 168  
selectmen, &c., to make lists of, and post, ten days before elections, . . . . . 56  
to meet to receive evidence of qualifications, 56  
to give notice of meeting on posted lists, . 56, 57  
when to meet if voters exceed one thousand, 57  
to correct lists, . . . . . 57  
to require proof of naturalization, . . . . . 57  
when not answerable for omissions, . . . . . 57  
penalty for giving false answer to, . . . . . 57  
penalty on town, &c., officers for neglect of duty, presiding officer at elections to be provided with list of, . . . . . 58  
no person to vote unless his name is on list of, . 58

**VOTES. (See Elections.)**



W.

**WAGES.**

- sums due for wages of defendant, or his minor children, to extent of twenty dollars, not to be held by trustee process, except for necessaries, . . . . . 724
- when attached by trustee process, except for necessaries, plaintiff to have no costs, unless he recovers five dollars debt, . . 729
- of operatives, when entitled to preference in distribution of estates of insolvent debtors, . . . . . 594, 595
- in manufacturing establishments, how recovered of stockholders, . . . . . 386

**WALNUTS.**

- to be sold by the strike or level measure, . . . 264

**WARDS.** (*see Guardian.*) . . . . . 543-547

**WARDEN OF STATE PRISON.**

- appointment, duties, &c., . . . . . 870-875
  - to notify commissioner of insanity of convict, . 878
  - duty of, in such cases, . . . . . 878
  - duties of, when those pardoned violate conditions of pardon, . . . . . 855, 856
- (*See State Prison.*)

**WAREHAM.**

- provisions for regulation of fisheries in, . . . . 432

**WARRANT.**

IN CRIMINAL CASES.

- how signed, issued, &c., by justices of the peace and police courts, . . . . . 571, 572, 608
- may be issued by judges, &c., of police court, when court not in session, . . 570
- issued by police courts and justices of the peace, where to be made returnable, 570, 571
- fees for, not to be allowed justices in certain cases, . . . . . 570, 608
- issued by police courts, to be returned as specified therein, with return of officer who had the same indorsed thereon, . 571
- to make search or arrest, to be supported by oath and accompanied with a special designation of the object of search or arrest, . . . . . 15
- not to be issued except as prescribed by law, . 16
- to make search for liquors unlawfully kept, &c., when to be issued, . . . . . 445
- not to be issued for search of dwelling-houses, unless, &c., . . . . . 445
- place to be searched to be described, &c., . 445
- proceedings under, in such cases, . . . . . 445
- form of, &c., . . . . . 450, 451
- costs in proceedings in, . . . . . 446, 447
- to arrest person charged as being a fugitive from justice, . . . . . 854
- in capital cases, how to be executed, and return thereof, . . . . . 847
- of distress may issue against corporation indicted and convicted, to compel payment of the penalty, . . . . . 847

IN CIVIL CASES.

- to summon jurors for coroner's inquest, . . . . 848
- penalty on constable for neglecting or failing to execute, . . . . . 848
- of distress, in favor of state, how debtor imprisoned on, may be discharged on taking poor debtor's oath, . . . . . 630

**WARRANT** — *continued.*

- from court of insolvency, to be under seal in all cases, . . . . . 582
- for taking possession of debtor's estate, form of, &c., . . . . . 582, 583
- fees for service of, . . . . . 600

**WASTE.**

- penalty on joint tenants, and tenants in common, for strip or waste without notice or during pendency of process for partition, . . . . . 709
- damages in such case, how recovered by other co-tenants and divided, . . . . . 709
- equity jurisdiction of supreme court, in case of waste, . . . . . 550
- injunction to stay, may issue by one judge of supreme court in term time or vacation, . 710
- such injunction may be dissolved by single judge in term time or vacation, . . 710
- committed or threatened when land is attached, or when an action is brought to foreclose a mortgage, or for possession under same, or for recovery of land, injunction may be issued, . . . 710
- in such case court may require applicant to give bonds, . . . . . 710
- if injunctions are violated, court may commit defendant, and issue process proper to enforce obedience, . . . . . 710
- court, in which suit is pending, may dissolve injunction at any time, . . . . . 710
- how stayed or prevented by injunction when suits in equity or actions of tort are pending concerning nuisances, . . . . 711
- Scire facias may be brought on suggestion of, when execution against an executor, &c., is returned unsatisfied, . . . . 651
- may be brought in such case before justices of the peace, . . . . . 605
- may be brought against executors and administrators when they neglect to pay on judgment in trustee process, . . . 726
- Action of, may be brought by person having next estate of inheritance, against tenant in dower, by curtesy or for years, committing or suffering waste, 708
- may be brought by heir for waste done while ancestor lived, . . . . . 708
- issue of fact joined in, to be tried by jury, 708, 709
- plaintiff may recover place wasted and damages, . . . . . 708
- damages to be assessed by jury, . . . . . 709
- Action of tort, in nature of waste, may be brought instead of action of waste, . 709
- may be maintained by persons having remainders and reversions, in fee simple, fee tail, after an intervening life estate, or for life or years, . . . . . 709
- damages may be recovered in such action, . 709
- may be commenced, or if commenced, may be prosecuted against executors and administrators, . . . . . 709
- may be maintained against tenant who commits waste, during pendency of action to recover lands, and three times amount of damages recovered, . . . . 709

**WATCH AND WARD.**

may be established by cities and towns, . . . . 173  
 expense of, to be defrayed like other town charges, . . . . . 173  
 officer of, to be appointed, . . . . . 173  
 powers and duties of watchmen, . . . . . 173  
 badges and weapons of watchmen, . . . . . 173  
 selectmen may order, when none is established, 173  
   may determine number of watch, &c., . . . 173  
   may order constables, &c., to warn persons to attend, &c., . . . . . 173, 174  
 persons liable to duty of, . . . . . 174  
 exempt from duty, . . . . . 174  
 penalty on persons liable to duty, for neglect to appear, &c., . . . . . 174  
   on constables, watchmen, &c., for refusing to execute orders, . . . . . 174  
   how and to whose use recovered, . . . . . 174

**WATCH DISTRICTS.**

may be established in villages of not less than one thousand persons, . . . . . 174  
 meetings for organization, how called, . . . . 174  
 proceedings when village is situated in two or more towns, . . . . . 174  
 clerks of, to be chosen and sworn, . . . . . 174  
   may be removed or may resign, . . . . . 174  
   in case of vacancy another may be chosen, . 174  
   to certify to assessors of town amount of money to be raised, . . . . . 175  
 prudential committee to be chosen by ballot and sworn, . . . . . 174  
   to consist of not less than three nor more than five persons, . . . . . 174  
   to have superintendence of watchmen, management of money, &c., . . . . . 175  
 annual meeting for choice of officers, how and when called, . . . . . 174  
   moderator to be chosen, . . . . . 174  
   clerk to preside until moderator is chosen, . 175  
 may raise money for payment of watchmen, &c., . . . . . 175  
 such money to be assessed and collected in same manner as town taxes, . . . . . 175  
 duty of prudential committee and assessors when district is situated in different towns, . . . . . 175  
 territory adjoining, how may be annexed to, . 175  
 heretofore organized, to continue, &c., . . . . 175

**WATCHMEN.**

refusing to assist, how punished, . . . . . 813  
 falsely assuming to be, how punished, . . . . 814  
 of state house, how and when appointed, . . 133, 134  
   duties and salaries of, . . . . . 134  
   to receive no fee for opening rooms for view of visitors, . . . . . 134  
 in state prison, number, appointment, salary, duty, &c., . . . . . 870-873  
 Assistant, in state prison, appointment, duties, and pay of, . . . . . 870, 871

**WATER.**

wilfully and maliciously corrupting, &c., . . . 823

**WATERCOURSES.**

in roads, how regulated, . . . . . 246

**WATER RIGHTS.**

owned by tenants in common, may be divided upon petition for partition or suit in equity, . . . . . 706  
 in a navigable stream, may in like manner be partitioned in certain cases, . . . . . 706

**WATERTOWN.**

land in, for forts, arsenals, &c., ceded to United States, . . . . . 44

**WAY.** (*See Highways.*)

punishment for opening, through burial grounds without consent, . . . . . 822  
 laying out, &c., . . . . . 232-244

**WEARING APPAREL.**

exempted from taxation and distress for taxes, 74, 82  
 allowed to widow and minor children of deceased person, . . . . . 489  
 what exempt from attachment and execution, 624, 688

**WEIGHERS.**

Public, and their duties, . . . . . 286  
 Of beef, how appointed, . . . . . 288  
   not to be dealers in cattle, . . . . . 288  
   to be sworn, . . . . . 288  
   fees of, for weighing, . . . . . 288  
 Of hay, how appointed, term of office, &c., 161, 266  
   duties and fees of, . . . . . 266  
   may be removed, . . . . . 266  
 Of coal, how appointed, &c., . . . . . 279  
   not to be dealers in coal, . . . . . 279  
   to be sworn, . . . . . 279

**WEIGHTS, MEASURES, AND BALANCES.**

Congress may fix standards of, . . . . . 4  
 what to be authorized standards in this state, . 284  
 Standards of, to be kept by treasurer of commonwealth, . . . . . 284  
   to be replaced when necessary, marked, stamped, &c., . . . . . 284  
   treasurer to furnish duplicates of, to his deputy, . . . . . 284  
   deputy to be sworn and give bond, . . . . . 284  
   to keep duplicates, and seal weights, &c., . 284  
   complete sets of, to be furnished to treasurers of newly incorporated towns, . 284  
   furnished by state, to be kept and repaired by treasurers at expense of counties, towns, &c., . . . . . 284, 885  
   penalty on treasurers of counties, &c., for neglect to keep in repair, &c., . . . . . 285  
   to be proved and sealed once in ten years, at expense of county, &c., . . . . . 285  
   penalty on treasurers for neglect, . . . . . 285  
 Sealers of, one or more to be appointed by selectmen, unless chosen, . . . . . 161  
   each to have a set of standards, . . . . . 285  
   accountable to towns for preservation of standards, . . . . . 285  
   to have seals, . . . . . 285  
   form of seal, . . . . . 285  
   to notify inhabitants to have weights proved, . 285  
   to prove hay scales, &c., annually, . . . . 285  
   not to remove standards except for such purpose, . . . . . 285  
   penalty on, for neglect of duties, . . . . . 285  
   fees of, . . . . . 285  
   penalty for selling by, unsealed, . . . . . 285, 286  
   " hundred weight " to be construed the net hundred, . . . . . 286  
   who to be deemed public weighers, . . . . . 286  
   rules for weighing, . . . . . 286  
   penalty on weighers for neglect, &c., . . . . 286  
   special provisions for measurers of salt and grain, &c., . . . . . 286  
   not to prevent measuring salt for vessels by measures used by government of United States, . . . . . 286  
   weights of banks to be sealed by treasurer, &c., once in five years, . . . . . 310  
   tender of gold by banks, weighed with unsealed weights, &c., not valid, . . . . . 310

**WELLFLEET.**

land in, ceded to United States, . . . . . 45

**WELLS.**

poisoning, how punished, . . . . . 794

wilful and malicious corrupting, defiling, &c.,  
how punished, . . . . . 823**WEST CHOP.**

land at, ceded to United States, . . . . . 44, 45

**WESTPORT.**

land in, ceded to United States, . . . . . 45

penalty for taking fish in waters of, by persons,  
living out of state, . . . . . 431**WHARVES, &c.**

how proprietors of, may become a corporation, 379

justice of peace may call meeting, &amp;c., . . . . . 379

notice of first meeting, how given, . . . . . 379

organization of proprietors, . . . . . 379, 380

moderator's powers, &amp;c., . . . . . 380

clerk, treasurer, collector, &c., may be chosen,  
379, 380

tenure of their office, . . . . . 380

clerk to be sworn, and to record all votes, &amp;c., . . . 380

treasurer to receive and pay out money, &amp;c., . . . 380

proprietors may sue and be sued, &amp;c., . . . . . 380

not to sue individually, and also as corpora-  
tion for the same injury, . . . . . 380

may make by-laws, &amp;c., . . . . . 380

by-laws, with penalties annexed, to be ap-  
proved by county commissioners, &c., . . . 380

powers of, at legal meetings, . . . . . 380

to vote according to shares of each, . . . . . 380

may raise money by assessments, &amp;c., . . . . . 380

shares of, may be sold to pay assessments, . . . 380

notice of sale, how to be given, &amp;c., . . . . . 380

how redeemed, after sale, . . . . . 380, 381

when proprietors may sell, &amp;c., . . . . . 381

may, after division, hold meetings, and do all  
acts necessary to close their business, 381how long, after division, they may act as a  
corporation, . . . . . 381records of, after final division, where to be  
deposited, . . . . . 381**WHEAT.**

standard weight of bushel of, . . . . . 265

provisions concerning sale of, . . . . . 265

**WIDOW.**property of, to amount of five hundred dollars,  
when exempted from taxation, . . . . . 74, 75to have dower in lands of her husband unless  
lawfully barred, . . . . . 469

in lands taken on execution, . . . . . 524

may occupy lands in which she is entitled to  
dower in common with heirs, with  
their assent, . . . . . 470dower of, may be barred by jointure or pecuniary  
provision before marriage, . . . . . 470may waive such jointure, &c., if made without  
her assent, within six months after  
death of husband, . . . . . 470

not to be endowed of wild lands, . . . . . 470

if evicted of lands assigned to her as dower, or  
jointure, &c., may be endowed anew, . . . 470of intestate without issue, to take half of real  
estate for life, &c., . . . . . 470, 471

or may have dower, if she so elects, . . . . . 471

undivided estate of, in lands of her husband,  
may be set off same as dower, . . . . . 471endowed in lands demised for one hundred  
years, &c., liable for part of rent to  
the owner of residue of term, . . . . . 471right of, to dower, &c., not affected by advance-  
ment to heirs, . . . . . 475**WIDOW — continued.**may waive provision in husband's will, and be  
entitled to property as if he died intes-  
tate, . . . . . 478if she makes no waiver, not to be endowed of  
lands, unless it plainly appears by the  
will that the provision therein was in  
addition to dower, . . . . . 478claim of, to administration of husband's estate, 483  
allowance to, from funds in hands of special ad-  
ministrator, . . . . . 484to be entitled to one third of residue of personal  
estate of deceased husband, after pay-  
ment of debts, &c., . . . . . 485in distribution of personal estate to, advance-  
ment to issue not to be computed, . . . 485if no issue, to be entitled to five thousand dol-  
lars and one half of excess over ten  
thousand dollars of residue, . . . . . 485

to be allowed her apparel and ornaments, . . . 489

provisions for sustenance and use of hus-  
band's house, &c., for forty days, . . . 471, 489such provisions for herself and children as  
circumstances require, . . . . . 489homestead rights to continue for benefit of,  
after husband's death, &c., . . . . . 526

may be set off to, . . . . . 526

may join in sale of such homestead, &amp;c., . . . 526

provisions concerning the assignment of  
dower, . . . . . 469, 470*(See Dower.)***WIFE, (see Married Woman),** . . . . . 390, 483, 533-535, 826**WIGWAM POINT.**

land on, for lighthouse, ceded to United States, 44

**WILFUL.**injury to burial grounds and appurtenances,  
grave-stones, &c., . . . . . 821, 822

disturbance of religious meetings, . . . . . 819

of camp-meetings, . . . . . 819

of schools or other lawful assembly, . . . . . 820

of funeral procession, . . . . . 820

making false entry in prison book by jailer, . . 866

**WILFUL AND WANTON.**destruction by convict, of property in jail or  
house of correction, how punished, . . . 862**WILFUL AND MALICIOUS.**

killing of horses, cattle, &amp;c., how punished, . . 805

poisoning, or administering or exposing poison  
to them, . . . . . 805injury to, or removal of, boundaries, guide  
boards, mile stones, &c., . . . . . 803

defacing inscriptions thereon, . . . . . 803

extinguishment of lamps, &c., removal of lamp-  
posts, &c., . . . . . 803

defacing any building, . . . . . 803

removing railings, &c., from bridges, streets,  
&c., . . . . . 803injury, &c., to any church, school-house, furni-  
ture, or appurtenances thereof, . . . . . 803dwelling or building, by explosion of gun-  
powder, &c., . . . . . 803, 804

by oil of vitriol, coal tar, &amp;c., . . . . . 804

dams, mills, &amp;c., . . . . . 804

ice intended for merchandise, . . . . . 804

of toll bridges, gates, canal locks, embank-  
ments, &c., . . . . . 804of ship or vessel, to injure owner or insur-  
er, . . . . . 804, 805

horses, cattle, &amp;c., . . . . . 805

fruit and ornamental trees, . . . . . 805

glass, fences, &amp;c., . . . . . 805, 806

personal property of another, . . . . . 806



**WILFUL AND MALICIOUS—continued.**  
 injury to bank bills, how punished, . . . . . 810  
 taking of another's property, but not with intent to steal, how punished, . . . . . 801  
 corrupting wells, springs, reservoirs, &c., . . . 823

**WILFUL TRESPASS.**  
 by cutting timber, grain, &c., . . . . . 805  
 by entering gardens, orchards, &c., with intent, how, when done on Lord's day, . . . . . 806  
 to fruit or forest trees on the Lord's day, . . . 806  
 persons injuring, may be arrested without warrant, . . . . . 806  
 and be detained not over twenty-four hours, 806  
 killing or frightening pigeons from beds, how punished, . . . . . 806  
 person so doing, liable to owner, &c. of such beds, . . . . . 806  
 -(See *Wilful and Malicious.*)

**WILL.**  
 to include "codicil," . . . . . 52  
 may be made by persons of full age, of all real estate, and all right to and interest in the same, except estates tail, . . . . . 476  
 and of all personal estates, and rights to and interests in the same, . . . . . 476  
 how made by a married woman, . . . . . 538  
 property disposed of by, to be subject to payment of debts of testator, . . . . . 476, 479  
 real estate undevisee by, first liable for debts, unless different provision is made by will, . . . . . 450  
 shall pass devisor's right to land, though he be not seised at time of making it, or be dis-seised afterwards, . . . . . 476  
 shall pass estate, &c., in land, acquired after it is made, if such be his manifest intention, . . . . . 476  
 shall be construed to convey all devisor's estate which he could lawfully devise, unless it clearly appears that he meant to pass a less estate, . . . . . 476  
 giving land to one for life, and to his heirs in fee, to vest estate for life in first taker, and remainder in fee simple in his heirs, . . . . . 466  
 giving land to two or more, to create estate in common, and not in joint tenancy, unless expressly provided, &c., . . . . . 466  
 exception, in such case, if devise be made to husband and wife, or in trust, . . . . . 467  
 not to pass or affect any property, unless written and signed by testator, &c., and subscribed in his presence by three or more competent witnesses, . . . . . 476  
 or made in conformity to laws existing at time of, . . . . . 476  
 or if made in conformity to laws of state, &c., where made, . . . . . 476, 477  
 or nuncupative will, made by soldier in actual service, or mariner at sea, . . . . . 477  
 if witnesses are competent at time of attesting, subsequent incompetency, not to prevent probate thereof, . . . . . 476  
 devise to attesting witness of, void unless there are three other competent witnesses, 477  
 by what acts may be revoked; revocation of, may be implied by law, . . . . . 477  
 may be deposited in registry of probate, and shall be received and kept by register, provisions for sealing, securing, &c., in such case, . . . . . 477  
 to whom to be delivered, . . . . . 477

**WILL—continued.**  
 when to be opened by probate court, . . . . . 477  
 not effectual to pass any property, until duly proved and allowed in probate court, 480  
 probate of, conclusive as to due execution of, in all cases, . . . . . 480  
 person having custody of, (except register of probate,) to deliver to probate court, or executor, within thirty days after notice of testator's death, . . . . . 477  
 punishment, &c., for neglect so to deliver, after being cited by judge of probate, 477  
 proceedings against persons suspected of concealing, . . . . . 477, 478  
 costs in such cases, . . . . . 478  
 when probate of, may be granted on testimony of one subscribing witness only, . . . 478  
 on appeal from probate of, what questions may be tried by jury, by direction of the court, . . . . . 478  
 provisions in, may be waived by widow, and dower may be assigned her in place thereof, &c., . . . . . 478  
 omission in, to provide for children, &c., not to affect their inheritance, unless testator had provided for them in his lifetime, or omission was intentional, . . . 478, 479  
 posthumous child, not provided for in, to take share as if father died intestate, . . . 479  
 devisees, &c., under, to contribute to share of child omitted, or posthumous child, in such cases, . . . . . 479  
 if devisee dies before testator, his issue to take property devised, unless, &c., . . . 479  
 if any estate devised is taken for testator's debts, other devisees, &c., to contribute, unless different provision is made in will, . . . . . 479  
 share of child omitted, or posthumous child, liable to contribution as devisees, . . . 479  
 proceedings in suits for contribution in such cases, . . . . . 480  
 devisees, unless exempted by will, to contribute equally when dower, &c., is assigned, &c., . . . . . 480  
 letters testamentary on, when proved, &c., to be granted by probate court, . . . . . 481  
 or letters of administration, if executor does not accept, &c., or is not of age, . . . 481, 482  
 executors of, if legally competent, &c., to receive letters testamentary, . . . . . 481  
 to give bond, except in certain cases, . . 481, 482  
 conditions of bond, . . . . . 481  
 when residuary legatees, may be allowed to give bond to pay debts of testator, &c., . . . . . 481  
 such bond not to discharge lien of creditors on real estate of testator, . . . . . 481  
 executors of executors, not to administer estate of first testator, . . . . . 482  
 administrator with will annexed, to give bond, &c., . . . . . 482  
 penalty for larceny, or fraudulent destruction of, indictment need not allege value or ownership, . . . . . 798  
 certain disclosures not to be evidence, . . . 798

**PROVED AND ALLOWED IN ANOTHER STATE OR COUNTRY.**  
 may be allowed, &c., in this state, in any county where there is property on which it may operate, . . . . . 478

**WILL — continued.**

- what notice to be given, before such will is allowed, . . . . . 478
- if allowed, copy thereof, and of the foreign probate, to be filed, &c., . . . . . 478
- such will not valid, if made in this state by an inhabitant thereof, unless executed, &c., as required by laws of this state, . . . . . 478
- when allowed, &c., estate to be settled as in other cases, . . . . . 478

**WINDOWS.**

- overlooking land of another, easements of light, &c., not acquired by, . . . . . 472

**WINE.**

- unadulterated, may be sold for sacramental purposes, . . . . . 442

**WINTHROP.**

- to vote with Middlesex county for county commissioners, . . . . . 71, 72
- return of votes in, for county commissioners and register of deeds, to whom made, . . . . . 95
- county commissioners of Middlesex to have jurisdiction in, . . . . . 148, 242
- not to be taxed for county purposes, . . . . . 78
- to have no interest in county property of Suffolk, . . . . . 144

**WITHERNAM.**

- writ of, to be called writ of reprisal, . . . . . 733
- when to be issued, . . . . . 733

**WITNESSES.**

- may be summoned before any person authorized to examine them, . . . . . 672
- by any clerk of a court of record, or by a justice of the peace, . . . . . 672
- summons for, how served, . . . . . 672
- not obliged to attend unless fees for one day's attendance and travel are first paid or tendered, . . . . . 672
- neglecting to attend when summoned, liable to damages, and to punishment for contempt of court, . . . . . 672, 673
- may be brought in on warrant to testify and to answer for contempt, . . . . . 673
- may be sworn by arbitrators, referees, and auditor, . . . . . 673
- may be sworn and compelled to testify by judges of court of insolvency, . . . . . 581
- to be sworn according to mode heretofore practised, . . . . . 673
- may be sworn according to their own peculiar mode, in certain cases, . . . . . 673
- who are Quakers, or have conscientious scruples as to taking an oath, may affirm, . . . . . 673
- believing in any other than the Christian religion, how sworn, . . . . . 673
- not believing in any religion, shall be required to testify, . . . . . 673
- evidence of non-belief in the existence of God, may be received to affect credibility of, . . . . . 673
- not to be excluded, by reason of crime or interest in any proceeding civil or criminal, . . . . . 673
- conviction of any crime may be given in evidence to affect credibility of, . . . . . 673
- parties may be, in certain cases, . . . . . 673, 678
- exception in relation to witnesses to wills, . . . . . 673
- wife may be, in actions against husband growing out of certain matters relating to her, . . . . . 674
- when and how may be summoned and compelled to give their deposition when living in this state, . . . . . 674, 675
- when living out of, by being within this state, . . . . . 675
- when their deposition is required to be used in other states and countries, . . . . . 676

**WITNESSES — continued.**

- how summoned before coroner's inquest, . . . . . 849
- fees of attendance in such cases, . . . . . 849
- may be examined separately, . . . . . 849
- testimony of, to be reduced to writing, and signed, . . . . . 849
- may be required to recognize by coroner, . . . . . 849
- Fees of,** for travel and attendance, . . . . . 786
- to certify amount thereof in writing, . . . . . 786
- in contested elections, before payment, committee to certify necessity of attendance, . . . . . 787
- in criminal trials, attending in two or more cases, fees to be apportioned, . . . . . 688
- when may be wholly disallowed, . . . . . 788
- certificates of, officer not to be interested in, . . . . . 788
- penalty for making false, with intent to defraud, . . . . . 788
- to be prosecuted for, within two years, . . . . . 788
- In equity cases,** to be examined as in suits at law, . . . . . 678
- testimony in certain cases before single judge, how reported to full court, . . . . . 561

**IN CRIMINAL CASES.**

- may be summoned by justices of the peace, on request of attorney-general or party accused, but need not attend in latter case unless fees are paid, . . . . . 610
- in examinations before magistrate in criminal cases, . . . . . 832-835
- for prosecution, to be examined by magistrate, . . . . . 833
- for the prisoner, by himself or counsel, . . . . . 834
- testimony to be reduced to writing and subscribed, . . . . . 834
- to be recognized, with or without surety, . . . . . 834
- married woman or minor may recognize, . . . . . 834
- refusing to recognize when ordered, may be committed, . . . . . 834
- when unable to procure surety, his deposition may be taken, with consent of defendant, . . . . . 833, 834
- when recognizance of, may be discharged, . . . . . 834
- proceedings when recognizance is forfeited, and action brought, . . . . . 835
- surrender of, by surety, . . . . . 835, 836
- summoned for state to attend without payment of fees, . . . . . 839
- if unable to defray expenses, court may order their fees to be paid, . . . . . 839
- and make other reasonable order, . . . . . 839
- court, at each term, may make general order for payment of, . . . . . 839
- must obey subpoena issued by prosecuting officer in criminal cases, . . . . . 839
- for persons indicted for capital crime, or for crime punishable with imprisonment in state prison for life, to be summoned at expense of state, . . . . . 839
- two required to same overt act in treason, . . . . . 791
- after issue of fact joined, defendant may have commission for witnesses out of state, . . . . . 840
- prosecuting officer may join therein, and name witnesses on part of commonwealth, . . . . . 840
- further provisions in such cases, . . . . . 840
- may be detained in jails, . . . . . 857
- except in cases under laws of congress respecting fugitives from service, &c., . . . . . 857
- in police courts, need not attend from day to day when cases are adjourned to a future day, but may recognize to attend at the time of adjournment, . . . . . 571

<b>WOOD.</b>	
cord, exposed for sale, dimensions of, . . . . .	278
penalty for selling without being measured, . . . . .	278
brought by water, how to be measured, . . . . .	278
cities and towns may make regulations for measurement, sale, &c., of, . . . . .	278
measurers of, to be chosen at annual town meeting, or appointed by selectmen, . . . . .	161
to be sworn, . . . . .	161
to measure wood, and deliver ticket certifying quantity, &c., . . . . .	278
fees of, and by whom to be paid, . . . . .	278
carters of, &c., from wharves to have ticket from owner or seller, certifying quantity, &c., . . . . .	279
penalty on, for not having or showing ticket, &c., . . . . .	279
not to apply when owner, &c., transports from wharf to his own house, &c., . . . . .	279
<b>WOODLAND.</b>	
burning of coal pits and brushwood on certain, how punished . . . . .	807
<b>WORKHOUSE.</b>	
persons convicted a second time of drunkenness may be committed to, . . . . .	820
duty of keepers of, as to rogues committed, . . . . .	820
(See <i>Almshouses.</i> )	
<b>WORSHIP.</b> (see <i>Public Worship.</i> ) . . . . .	14, 34, 819
<b>WRECKS AND SHIPWRECKED GOODS.</b>	
commissioners of, to be appointed by governor, to be sworn and give bonds, . . . . .	427
bond to be given to judge of probate, and remedy thereon as on administration bonds, . . . . .	427
<b>Commissioners of,</b> to take charge of, and secure wrecked goods, if of one hundred dollars' value, and not in owner's custody, . . . . .	428
power of, to employ assistants, and suppress disorders, . . . . .	428
penalty on person disobeying lawful order of, . . . . .	428
duty of, as to taking inventories, and delivering copies thereof to parties interested, . . . . .	428
compensation of, how determined, in case of dispute, . . . . .	428
to publish particulars of shipwreck, and of goods found, . . . . .	428
penalty on, for not so publishing, . . . . .	429
may sell by auction, within thirty days, property sufficient to pay duties thereon, . . . . .	429
when may sell perishable goods, after advertising, . . . . .	429
if no owner, &c., establishes his claim within a year, commissioners to account, &c., to state treasurer, . . . . .	429
treasurer to make compensation to commissioners for services and expenses, . . . . .	429
how such compensation to be adjusted, in case of disagreement, . . . . .	429
treasurer to commence suit for neglect to account, &c., within sixty days after expiration of a year, . . . . .	429
owner not liable to pay any person except a commissioner, unless for services rendered before a commissioner arrives, . . . . .	428
commissioner to decide on compensation for services thus rendered, . . . . .	428
such decision final, if sum demanded does not exceed fifty dollars, . . . . .	428

<b>WRECKS AND SHIPWRECKED GOODS—continued.</b>	
when appeal is taken, superior court to determine the question summarily, and issue necessary process, . . . . .	428
penalty for intermeddling with wrecked property after a commissioner is present, . . . . .	428
<b>WRITS.</b>	
issuing from clerk's office, how to be signed, sealed, and bear test, . . . . .	31
how issued, signed, filled out, and returnable, before supreme and superior courts, . . . . .	622
may run into any county, . . . . .	622
not to be abated for circumstantial errors or defects of form, . . . . .	657, 836
of right, formed on, and some others in real actions abolished, saving certain rights, . . . . .	696
original, how framed in different cases, . . . . .	621
when goods are attached on, separate summons to be served, . . . . .	621
in actions against corporations, and persons not liable to arrest, writs of summons and attachment may be combined, . . . . .	621, 622
in actions against executors and administrators, form of, . . . . .	651
forms of, in civil actions, to be same as heretofore used, but may be altered by courts when necessary, . . . . .	622
changes in forms of, to be subject to supreme court, and said court may make rules in relation thereto, . . . . .	622
when defendant's name is not known, may issue against him by a fictitious name, . . . . .	622
to be returnable at next term after expiration of time of service, . . . . .	622
of error, certiorari, mandamus, quo warranto, and prohibition, to be issued by supreme court, . . . . .	553
and processes of supreme court may be returnable at adjourned term, . . . . .	622
and processes of supreme court, in suits cognizable by full court, how sued out and returnable, . . . . .	556
form of, when not prescribed, may be framed by courts, . . . . .	566
not to be made or filled up by sheriffs, deputy sheriffs, coroners, or constables, under penalty, . . . . .	616
<b>From police courts,</b> how to be sealed, bear test, and signed, . . . . .	571
<b>From justices of the peace,</b> to be according to forms prescribed, or if there are none such, may be framed by justice, . . . . .	605, 610
how may issue, run, and be returnable, . . . . .	605
to be signed by justice, and dated and filled up like other writs, . . . . .	622
may be returnable at dwelling-houses, and not to be returnable before nine o'clock in the forenoon nor after five o'clock in the afternoon, . . . . .	605
in action on probate bonds, how indorsed, &c., . . . . .	506
to be indorsed before entry, when all plaintiffs live out of the state, . . . . .	622
liabilities of indorsers, . . . . .	622
after entry, indorser may be required, or indorser changed, . . . . .	657
(See <i>Indorsers.</i> )	
<b>SERVICE OF.</b>	
from supreme and superior courts, to be served fourteen days before return day, . . . . .	622



**WRITS** — *continued.*

from police courts and justices of the peace, seven days, . . . . .	622
against counties, towns, cities, parishes, religious societies, school districts, and proprietors of common lands, to be served thirty days, . . . . .	622
separate summons on, to be served by delivering, or leaving original, . . . . .	623
may be served after an attachment, and certificate thereof indorsed on writ, . . .	623
original writs, without attachment, to be served by copy, . . . . .	623
summons, if not served personally on defendant, may be left at his last and usual place of abode, and if he has none, with his tenant, agent, or attorney, . .	623
to be left with co-defendant, if he has no such agent, tenant, or attorney, and is not personally served with process, .	623

**WRITS** — *continued.*

in real actions, if defendant is out of state, summons to be left with occupant of premises in addition, . . . . .	623
additional notice to be given, when defendant is out of state, . . . . .	623
in actions against counties, cities, towns, parishes, school districts, and proprietors of common and undivided lands, or general fields, or wharves lying in common, summons, how served, . . .	623
to be served by arrest or attachment, according to directions of plaintiff, . . . . .	632
arrest on, how made, and proceedings thereon,	633-641
<b>WRITTEN.</b>	
and "in writing," words, how construed, . . .	52
<b>WRITTEN CONTRACT.</b>	
specific performance of, how enforced, . . .	559, 575

**Y.**

**YARMOUTH.**

land in, for lighthouse, ceded to United States,	44
<b>YEAR.</b>	
word means calendar year, unless otherwise expressed, . . . . .	51
alone, is equivalent to year of our Lord, . .	51
Political, commencement and termination of,	33

**YOUTH.** (*See Schools.*)

provisions for the instruction of, . . . . .	215, 219
best endeavors to be used, that they shall regularly attend schools, . . . . .	217
all instructors of, to impress on their minds the principles of piety and justice, and a sacred regard to truth, &c., . . . . .	216







MAR 31 1936



